

US EPA ARCHIVE DOCUMENT

Non-HWA IV

Signed 3/22/91

III. MEMORANDUM OF AGREEMENT

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 Program (hereinafter "State Program") authorized under Section 3006 of the Resource Conservation and Recovery Act (hereinafter "RCRA" or "the Act") of 1976 (42 USC 6901 et seq.) as amended (Public Laws 94-580, 96-482, 98-616), and the United State Environmental Protection Agency (hereinafter EPA) Regional Office for Region VI. This Agreement further sets forth the manner in which the State and EPA will coordinate in the State's administration and enforcement of the State program and, pending State authorization, EPA's administration of the provisions of the Hazardous and Solid Waste Amendments of 1984 (HSWA).

(For purposes of this agreement, references to "RCRA" include the Hazardous and Solid Waste Amendments of 1984 (HSWA) (P.L. 98-616).)

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

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

The parties will review the Agreement jointly at least once a year (and other times as appropriate) during preparation of the annual State Grant Work Plan in connection with grant funding 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 made or for any other purpose mutually agreed upon. Any revisions or modifications to this Agreement must be in writing and must be signed by the Commissioner and the Regional Administrator. This Agreement will remain in effect until such time as State program authorization is withdrawn by or is voluntarily transferred to EPA according to the criteria and procedures established in 40 CFR 271.22 and 40 CFR 271.23.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 is being executed, inter alia, because the Department is applying for authorization for certain provisions of the Hazardous and Solid Waste Amendments of 1984 (HSWA) (Pub.l. 98-616). This Agreement supplants the Agreement which was executed on December 5, 1984 in connection with the State's final authorization and subsequent amendments relating to Joint Permitting and Availability of Information.

This Agreement shall be executed by the Commissioner and the Regional Administrator and shall become effective upon the date of the later of the two signatures.

II. POLICY STATEMENT

Each of the parties to this Agreement is responsible for ensuring that its obligations under RCRA are met. Upon granting of final authorization by EPA, the Department assumes primary responsibility for implementing the authorized provisions of the RCRA hazardous waste program within Oklahoma. EPA retains its responsibility to ensure full and faithful execution of the requirements of RCRA, including direct implementation of HSWA in the event the Department is not authorized to act. The Department retains its responsibility to ensure full and faithful execution of the requirements of the Oklahoma Controlled Industrial Waste Disposal Act (OCIWDA), 63 O.S. 1981, §1-2001 et seq., as amended. 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 joint State/Federal program.

Section 3006(g) of the HSWA provides that hazardous waste requirements and prohibitions promulgated pursuant to the HSWA are applicable in authorized States at the same time that they are applicable in unauthorized States with the exception of §3006(f)-Availability of Information, which cannot be implemented by EPA in authorized States. While EPA retains responsibility for the direct implementation of those provisions of the HSWA which the Department is not authorized to implement, it is the intention of EPA and the Department to coordinate the implementation of such provisions to the greatest degree possible.

EPA will oversee implementation of the authorized State program in order to ensure full execution of the requirements of RCRA, to promote national consistency in implementation of the hazardous waste program, to allow EPA to report to the President and Congress on the achievements of the hazardous waste program, and to encourage States and the 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's programs.

III. STATE PROGRAM REVIEW

A. General

The Regional Administrator will assess the administration and enforcement of the State hazardous waste program on a continuing basis for equivalence and consistency with RCRA, with this Agreement, and with all applicable Federal requirements and policies and for adequacy of enforcement. This assessment will be accomplished by EPA review of information submitted by the Department in accordance with this Agreement and the State Grant Work Plan, permit overview, compliance and enforcement overview, and annual review of State program activities.

The Regional Administrator may also consider, as part of this regular assessment, written comments about the State's program administration and enforcement that are received from regulated persons, the public, and Federal, State and local agencies. Copies of any such comments received by the Regional Administrator will be provided to the Department.

To ensure effective program review, the Department agrees to allow EPA access to all files and other information requested by the Regional Administrator or his/her designee and deemed necessary by EPA for reviewing State program administration and enforcement.

Review of Department files may be scheduled at quarterly intervals. Program review meetings between Department and EPA personnel will be scheduled at reasonable intervals not less often than annually to review specific operating procedures and schedules, to resolve problems and to discuss mutual program concerns.

These meetings will be scheduled at least fifteen days in advance unless otherwise agreed. A tentative agenda for the meeting will be prepared by EPA.

B. Identification of Priority Activities

The Department and EPA agree to develop, on an annual basis as a part of the State Grant Work Plan, criteria for priority activities, including activities regarding handlers of hazardous waste. These criteria will be based on guidance issued by EPA in the annual Operating Year Guidance (OYG) and other guidance documents as may be appropriate, and will serve to identify those activities which should receive the highest priority during the grant period.

Examples of activities which will be considered high priority will include, but not be limited to, facilities to be inspected, facilities to be permitted, and enforcement against facilities with known or suspected groundwater contamination.

IV. INFORMATION SHARING

A. General

As the national hazardous waste program matures, the respective roles and responsibilities in this State/Federal partnership will become more clear. As the respective information needs of the Department and EPA evolve, changes to this section of the Agreement may be appropriate. During the annual review of this Agreement the Department and EPA will carefully examine the following information sharing provisions for needed revision.

B. EPA

1. EPA will 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 Program. EPA will also provide general technical guidance to the Department. EPA will share with the Department any national reports developed by EPA from the data submitted through State reporting requirements.
2. The Department and EPA have agreed to a joint permitting process (see Section V.D. of this Agreement). Under this process the Department and EPA have established policies and procedures by which each will pursue their respective and/or joint responsibilities under the HSWA.

The Department and EPA agree to the sharing of information as specified under "V.D. Joint Permitting Process" and the annual State Grant Work Plan. Specifically included shall be the procedures for sharing and coordinating the exchange of information on the following:

- a. Part A and Part B Permit Applications, whether received prior to the effective date of this Agreement or subsequent to the effective date of this Agreement and whether first received by the Department or EPA;
 - b. Such other information as necessary to support the foregoing information;
 - c. Copies of draft permits, proposed permit modifications, public notices;
 - d. Copies of final permits and permit modifications; and
 - e. Notices of permit denials.
3. EPA agrees to make available to the Department copies of any reports and data resulting from compliance inspections within sixty days of completion of the inspections.
 4. The State has not adopted nor incorporated any provisions for delisting. Therefore all petitions for delisting submitted by Oklahoma generators will be reviewed and determined by EPA. EPA shall

notify the Department of all such determinations at the time they are made.

5. EPA agrees to provide the Department notification information from EPA Form 8700-12 obtained prior to the effective date of this Agreement if such information has not already been provided to the Department. The Department and EPA shall agree on the format in which the information will be provided and the information will be provided within thirty days of the effective date of this Agreement. EPA will also forward, on a monthly basis, notification information (including newly assigned EPA identification numbers) submitted by persons in the State who file such forms after the effective date of this Agreement. This information will be submitted to the Department within 10 days of the end of each month for the preceding month.
6. EPA agrees to assign EPA identification numbers to generators and transporters and to owners and operators of hazardous waste treatment, storage and disposal facilities submitting notifications after the effective date of this Agreement. Pursuant to RCRA Section 3010 and agreement between EPA and the Department, the Department is responsible for receiving notification forms (Form 8700-12) and for forwarding the information to EPA for the assignment of EPA identification numbers.
7. EPA will provide access by the Department to EPA's files and will make available to the Department other relevant information as requested or appropriate which the Department needs to implement its approved program. Information provided to the Department will be subject to the terms of 40 CFR Part 2.

C. State

1. The Department agrees to inform EPA in advance of any proposed program changes which would affect the Department's ability to implement the authorized program. Program changes of concern include modification of the State's legal authorities (i.e., statutes, regulations and judicial or legislative actions affecting those authorities), modifications of Memoranda of Agreement or Understanding with other agencies, and modifications of resource levels (i.e., available or budgeted personnel and funds). The Department recognizes that program revisions must be made in accordance with the provisions of 40 CFR Part 271.21, and that until approved by EPA, revisions are not authorized as RCRA Subtitle C requirements.
2. Annually, through development of the State Grant Work Plan, EPA and the Department will agree on the type and frequency of reports the Department will make in order for EPA to maintain oversight of the implementation of the State's authorized program. Such reporting may include, but not be limited to, the following:
 - a. Compliance monitoring and enforcement information;

- b. Information indicating the status of the Department's permitting, closure, post-closure, and ground-water monitoring activities;
 - c. State decisions to grant variance or waiver requests made by hazardous waste handlers; and
 - d. Various reports designed to accurately describe the status of the State's authorized program including biennial reports summarizing the quantities and types of hazardous waste generated, transported, treated, stored and disposed in the State.
- 3. The Department agrees to provide EPA with a copy of each Department decision regarding variances or waivers at the time such requests are granted.
 - 4. The Department agrees to provide EPA a copy of any decisions regarding requests made by hazardous waste handlers to change their classification (e.g., requests to be deleted as generators but to retain their facility status) and facility requests to make on-site changes prior to permit issuance (e.g., requests to handle additional wastes not identified on the facility's original notification and RCRA Part A Permit Application.)
 - 5. The Department agrees to provide EPA with copies of reports on data resulting from any compliance inspection and subsequent enforcement actions, when EPA requests such copies.
 - 6. The Department agrees to provide any pertinent information requested by the Regional Administrator or his designee within a mutually agreed upon time frame, as necessary for EPA to carry out its oversight responsibilities.

D. Site Visits

Whenever 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 State Grant Work Plan, EPA will first seek to gain this information from the Department. The Department agrees to supply EPA with this information if readily available and as resources allow. If the Department is unable to provide the information or if it is necessary to supplement the Department's information, EPA may conduct a special survey or perform information-collection site visits after notifying the Department. EPA will share with the Department reports developed by EPA as a result of such information collection.

E. Emergency Situations

Upon receipt by EPA or the Department of any information that the handling, storage, treatment, transportation, or disposal of hazardous waste is endangering human health or the environment, the party in receipt of such information 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 hour emergency telephone number at (405) 271-5221. EPA, Region VI, may be notified through its twenty-four hour emergency telephone number at (214) 962-2666.

F. Confidentiality

1. Any information obtained or used in the administration of the authorized State program shall be available to EPA upon request without restriction. If the information has been submitted to the Department under a claim of confidentiality, the Department will submit that claim to EPA when providing information. Any information obtained from a State and subject to a claim of confidentiality will be treated in accordance with the regulations in 40 CFR Part 2.
2. EPA agrees to furnish to the Department information in its files which is not submitted under a claim of confidentiality and which the Department needs to implement its program. Subject to the conditions in 40 CFR Part 2, EPA will furnish the Department information submitted to EPA under a claim of confidentiality which the Department needs to implement its program. All such information which EPA agrees to transfer to the Department will be transferred in accordance with the requirements of 40 CFR Part 2. EPA will notify affected facilities when such information is sent to the Department.

V. PERMIT ISSUANCE

A. EPA Permitting

Upon authorization of the State program EPA will suspend issuance of Federal permits for hazardous waste treatment, storage, and disposal facilities for those components for which the State is receiving authorization.

Whenever EPA adds permitting standards for processes not currently covered by Federal regulations, EPA will process and enforce RCRA permits in the State in the new areas until the Department receives final authorization for them. At the time the State program is approved in the new areas, EPA will suspend issuance of such Federal permits in the State. EPA will also transfer any pending permit applications, completed permits or pertinent file information to the Department within thirty days of the approval of the State program in conformance with the conditions of this agreement.

The Department and EPA have agreed to a joint permitting process (see section V.D. of this Agreement) for the joint processing and enforcement of permits for those provisions of the HSWA for which the Department does not have authorization. As the Department receives authorization for additional provisions of the HSWA, EPA will suspend issuance of Federal permits in the State for those provisions.

B. EPA Overview of State Permits

While EPA may comment on any permit application or draft permit, EPA's overview function will focus primarily on those facilities identified by

the Department and EPA in the State's Multi-Year Permit Strategy, Annual State Grant Work Plan and the State's Program Description.

EPA may comment in writing on any draft permit or proposed permit modification, whether or not EPA commented on the permit application, within forty-five days of its receipt. Where EPA indicates in a comment that issuance, modification, reissuance, termination or denial of the permit would be inconsistent with the approved State program, EPA shall include in the comment:

- (a) A statement of the reasons for the comment (including the section of the State law or regulations that support the comment), and
- (b) 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 its written comments to the permit applicant.

EPA shall withdraw such comments when satisfied that the Department has met or refuted its 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-issued permit in accordance with the procedures of 40 CFR Part 124, Subpart E, or bring an enforcement action in accordance with the procedures of 40 CFR Part 22 in the case of a violation of a State program requirement. In exercising these authorities, EPA will 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 RCRA permits for those hazardous waste treatment, storage and disposal facilities contained in the authorized provisions of the State's program and shall do so in a manner consistent with RCRA as amended by the HSWA, with this Agreement, with all applicable Federal requirements, and with the State's Program Description. The Department agrees to reissue or to modify and reissue all permits contained in the authorized portions of the State's program in accordance with OCIWDA, as amended, including rules and regulations promulgated thereunder, and the Oklahoma Administrative Procedures Act, and to include as permit conditions all applicable provisions of OCIWDA and the regulations thereunder. This agreement also applies to permits issued after final authorization but for which the processing may have begun before final authorization.

The Department agrees that any compliance schedules contained in permits it issues will require compliance with applicable standards as soon as possible.

The Department agrees to consider all comments EPA makes on permit applications and draft permits. The Department will satisfy or refute

EPA's concerns on a particular permit application, proposed permit modification, or draft permit in writing before issuing the permit or making the modification.

D. Joint Permitting Process

Pursuant to RCRA Section 3006 (g)(1), and in accordance with the Hazardous and Solid Waste Amendments of 1984 (HSWA), EPA has the authority to issue or deny permits or those portions of permits to facilities in Oklahoma for the requirements and prohibitions in or stemming from the HSWA until the State's program is amended to reflect those requirements and prohibitions and authorization is received for the portion or portions of the program.

EPA and the Department hereby establish this joint permitting process for the issuance of RCRA permits in Oklahoma. This joint permitting process is established in accordance with Section 3006(c)(3) of RCRA. The details of the joint permitting process shall be incorporated into the Annual State Grant Work Plan. The duties and responsibilities of EPA and the Department for joint permitting shall also be specified in the Annual State Grant Work Plan.

The details of the joint permitting process as contained in the State Grant Work Plan shall be reviewed and revised as often as necessary, but no less often than annually to assure its continued appropriateness.

Upon authorization of the Department for any of the provisions of the HSWA, the specifics of the Joint Permitting Agreement as set out in the Annual State Work Grant Plan shall be amended to reflect the authorization. Amendment of this Memorandum of Agreement or the execution of a separate Memorandum of Agreement may be required for authorization of any of the provisions of the HSWA.

VI. PERMIT ADMINISTRATION

A. EPA

EPA will administer the RCRA permits or portions of permits it has issued to facilities in the State until they expire or are terminated. EPA will be responsible for enforcing the terms and conditions of the Federal permits while they remain in force. When the Department either incorporates the terms and conditions of the Federal permits in State RCRA permits or issues State RCRA permits to those facilities, EPA will terminate the Federal permits pursuant to 40 CFR Part 270 and rely on the Department to enforce those terms and conditions subject to the terms of an acceptable State/EPA Enforcement Agreement. See section V.D. of this Agreement. Until then EPA will coordinate with and assist the State in enforcing State mirror-image statutory and regulatory provisions.

B. State

The Department agrees to review any existing hazardous waste permits which were issued as State permits prior to the effective date of this Agreement and to modify or revoke and reissue such permits as necessary to require

compliance with the amended State Program. The Department agrees to modify or revoke and reissue these State permits as necessary in accordance with the schedules established in the Annual State Grant Work Plan.

VII. COMPLIANCE MONITORING AND ENFORCEMENT

A. EPA

Nothing in this Agreement shall restrict EPA's right to inspect any hazardous waste generator, transporter or facility or bring enforcement action against any person believed to be in violation of the State or Federal hazardous waste program or believed to have a release of hazardous constituents. Before conducting an inspection of a generator, transporter or facility, EPA will normally give the Department at least seven days notice of the 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 data relevant thereto within that time to EPA, no EPA inspection will be made, unless the Regional Administrator deems the State report and data to be inadequate. In case of an imminent hazard to human health and the environment, the Regional Administrator may shorten or waive the advance notice period, but every effort shall be made to notify the Department as soon as possible of any EPA action in the State.

The frequency of EPA oversight and training inspections will be specified in the annual State Grant Work Plan. EPA will negotiate on an annual basis with the Department the percentage of the Department's compliance inspections on which EPA will accompany the Department.

The EPA may take enforcement action against any person determined to be in violation of RCRA in accordance with Section 3008(a)(2). EPA will take enforcement action upon determining that the Department has not taken timely and appropriate enforcement action or upon request by the Department. Prior to issuing a compliance order under Section 3008(a) EPA will give notice to the Department. EPA also retains its rights to issue orders and bring actions under Sections 3008(h), 3013 and 7003 of RCRA and any other applicable Federal statute.

After notice to the Department, EPA may take action under Section 3008 of RCRA against a holder of a State-issued permit on the grounds 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-issued permit on the grounds that the permittee is not complying with a condition that the Regional Administrator, in commenting on that permit application or draft permit, stated was necessary to implement approved State program requirements, whether or not that condition was included in the final permit.

EPA will carry out a timely and effective program for monitoring the compliance by generators, transporters, and facilities with applicable requirements for which the State is not authorized. This will include compliance inspections to assess compliance with these requirements, including the types of requirements specified in the first paragraph of Subsection VII.B, below. EPA will take timely and appropriate enforcement

action against all persons in violation of these requirements. EPA will maintain procedures for receiving and ensuring proper consideration of information about violations submitted by the public. EPA agrees to retain all records for at least three years unless there is an enforcement action pending. In that case all records will be retained until such action is resolved.

B. State

The Department agrees to carry out a timely and effective program for monitoring the compliance by generators, transporters, and facilities with applicable program requirements (see 40 CFR 271.15). As part of this program, the Department will conduct compliance inspections to assess compliance with generator and transporter standards (including manifest requirements), facility standards, permit requirements, compliance schedules, and all other program requirements. Compliance monitoring activities and priorities will be specified in the State/EPA Enforcement Memorandum of Understanding and the annual State Grant Work Plan and shall be consistent with all applicable Federal requirements and with the State's Program Description.

Inspections of Federal facilities shall be conducted in accordance with the State/EPA Enforcement Memorandum of Understanding.

The Department agrees to take timely and appropriate enforcement action as defined in the State/EPA Enforcement Memorandum of Understanding against all persons in violation of generator and transporter standards (including manifest requirements), facility standards, permit requirements, compliance schedules, and all other program requirements, including violations detected by State or Federal compliance inspections. The Department will maintain procedures for receiving and ensuring proper consideration of information about violations submitted by the public. The Department agrees to retain all records for at least three years unless there is an enforcement action pending. In that case all records will be retained until such action is resolved.

VIII. AVAILABILITY OF INFORMATION [§3006(f)]

A. General

Section 3006(f) of the HSWA provides that States may be authorized by the Administrator under this section if the State program provides for the public availability of information obtained by the State regarding facilities and sites for treatment, storage and disposal of hazardous waste; and that such information is available to the public in substantially the same manner, and to the same degree, as would be the case if the Administrator were carrying out the provisions of this subtitle in the State.

B. Requests for Information

1. Pursuant to the Federal Freedom of Information Act (FOIA), 5 U.S.C. 552(a)(2), the Department and EPA agree certain materials will be

routinely available without a formal FOIA request. Examples of these materials are final opinions or orders in case adjudications, regulations, statements of Agency policy, and administrative staff manuals affecting the public. In addition, records prepared for routine public distribution will also be made available. Examples of such records are press releases, copies of speeches, pamphlets, and educational materials.

2. The Department and EPA agree to make reasonable efforts to assist a requestor in identifying records being sought, and helping the requestor formulate his or her request.
3. If a request for information is denied, the Department and EPA agree to provide the requestor the basis for the denial and notification of judicial and administrative procedures, including statutes of limitation.
4. A reduction or waiver of fees will be considered in connection with each request from a representative of the press or other communication medium, or from a public interest group. The Department and EPA agree to reduce or waive the fee if they determine that a reduction or waiver of the fee is in the public interest because furnishing the information can be considered as primarily benefitting the general public.
5. The Department and EPA agree to make the fullest possible disclosure of records to the public, subject to any of the exemptions under the Federal FOIA recognized by the State.

C. Confidentiality of Business Information

If a claim of confidentiality is asserted and cannot be resolved in the time period provided for an agency response to a request, the Department and EPA agree to notify the requestor of the confidentiality claim within the maximum 20-day time limit provided for an agency response. In addition, the requestor will be told that the request was denied in order to resolve the business confidentiality claim.

D. Oversight

1. The Department and EPA agree to keep a log of denials of requests for information (or a file containing copies of denial letters sent to requestors) which will be made available to the other during the State review.
2. The Department and EPA agree to keep each other fully informed of any proposed modifications to its basic statutory or regulatory authority, its forms, procedures, or priorities, as applied to Section 3006(f).

IX. REGULATION OF RADIOACTIVE MIXED 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, the Department has the authority to

regulate both controlled industrial wastes and radioactive wastes. The Department will regulate the hazardous waste component of radioactive mixed wastes as a hazardous waste pursuant to the Oklahoma Controlled Industrial Waste Disposal Act and the Resource Conservation and Recovery Act.

X. APPROVAL

Date: 8-31-89

By Marshall Coleman
for Joan K. Leavitt, M.D.
Commissioner of Health
Oklahoma State Department of Health

Date: 3-22-91

By Robert E. Layton, Jr.
Robert E. Layton, Jr., P.E.
Regional Administrator
U.S. Environmental Protection Agency
Region VI