

US EPA ARCHIVE DOCUMENT

OKLAHOMA ATTORNEY GENERAL'S STATEMENT¹ FOR FINAL
AUTHORIZATION FOR NON-HSWA CLUSTER V CHANGES TO
THE FEDERAL RCRA PROGRAM

I hereby certify, pursuant to my authority as Assistant 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 USC 6901 et seq.), and 40 CFR 271 that in my opinion the laws of the State of Oklahoma provide adequate authority to carry out the revised program set forth in the revised "Program Description" submitted 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 as specified below. These authorities and this certification supplement the previously certified authorities described in the Attorney General certifications of January 20, 1984, January 14, 1988 as amended July 20, 1989, December 22, 1988 as amended June 7, 1989, and November 20, 1989. Similarly, this Attorney General's Statement supplements the Attorney General's statements executed on those dates.

Statutory authority is provided by the Oklahoma Controlled Industrial Waste Disposal Act, as amended, 63 O.S. 1981, §§1-2001 et seq. The Act was last amended May 30, 1990. 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 June 21, 1990, effective August 9, 1990. 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, 1989, 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. (Incorporation by reference is specifically authorized by 63 O.S. § 1-2005.) 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

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.

federal provisions. Thus, Rule 210 provides equivalent and no less stringent authority than the federal Subtitle C program in effect as of July 1, 1989.

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:

- (10) Generic delisting of iron dextran (CAS No. 9004-66-4), 40 CFR 261.33(f) and Appendix VIII, as amended October 31, 1988 [53 FR 43878], Revision Checklist 56.
- (11) Generic delisting of strontium sulfide (CAS No. 1314-96-1), 40 CFR 261.33(e) and Appendix VIII, as amended October 31, 1988 [53 FR 43881], Revision Checklist 57.

[Federal Authority: RCRA §3001(b).]

Citation of Laws and Regulations

63 O.S. Supp. 1990, §§ 1-2002 and 1-2005. Rules 200 through 240.²

Remarks of the Attorney General

Rules 200 through 240 adopt 40 CFR Part 261 by reference. Title 63 O.S. § 1-2005 authorizes the Board of Health to prepare rules, regulations and minimum standards for the listing and characterization of controlled industrial 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". This provides adequate authority for the Board of Health to determine what should be identified as a listed hazardous waste.

H. State statutes and regulations exempt (with certain limitations) waste samples used in small scale treatability studies from Subtitle C regulation as indicated in Revision Checklist 49.

²In this and all succeeding Citation of Laws and Regulations sections, the date of enactment and adoption is omitted since these were covered in the introduction to this Statement. As that introduction evidences, all statutes and regulations cited as State authorities are currently in effect.

[Federal Authority: RCRA §3001; 40 CFR 260.10 and 261.4(e)&(f) as amended July 19, 1988 (53 FR 27290).]

Citation of Laws and Regulations

63 O.S. Supp. 1990, §§ 1-2002 and 1-2005. Rules 200 through 240.

Remarks of the Attorney General

Rules 200 through 240 adopt 40 CFR 260.10 and 261.4(e) and (f) by reference. The authority of the Board of Health, in 63 O.S. § 1-2005, to adopt rules for the listing and characterization of controlled industrial waste, along with the charge in that same section that the rules adopted by the Board of Health be in reasonable accord with those adopted by EPA, provide sufficient authority for this limited exemption.

I. State statutes and regulations provide for listing of the six wastes indicated in Revision Checklist 53.

[Federal Authority: RCRA §3001(b); 40 CFR 261.4(b)(7) and 261.32 as amended September 13, 1988 (53 FR 35412).]

Citation of Laws and Regulations

63 O.S. Supp. 1990, §§ 1-2002 and 1-2005. Rules 200 through 240.

Remarks of the Attorney General

Rules 200 through 240 adopt 40 CFR 261.32 and Appendix VII to Part 261. Under the same authorities and rationale set forth in Section I(A) above, the listing of these wastes by virtue of incorporation by reference is valid.

XI. GROUND-WATER MONITORING

D. State regulations incorporate by reference statistical methods, sampling procedures, and performance standards that can be used in groundwater monitoring procedures to detect groundwater contamination at permitted hazardous waste facilities as indicated in Revision Checklist 55.

[Federal Authority: RCRA §§1006, 2002(a), 3004 and 3005; 40 CFR 264.91, 264.92, 264.97, 264.98 and 264.99 as amended October 11, 1988 (53 FR 39720).]

Citation of Laws and Regulations

63 O.S. Supp. 1990, §§ 1-2004(23) and (25), 1-2005, and 1-2008(G); 63 O.S. 1981, § 1-2007. Rules 200 through 240.

Remarks of the Attorney General

The federal requirements are adopted by reference by Rules 200 through 240. Statutory authority to require groundwater monitoring in 63 O.S. §§ 1-2004(25) and 1-2008(G) and to establish testing methods and standards in Section 1-2007, along with the more general permitting and rulemaking authorities of Sections 1-2004(23) and 1-2005, appear adequate to support these regulations.

XV. STANDARDS FOR FACILITIES

I. State statutes and regulations require companies that generate, treat or store hazardous waste in tanks to comply with tank standards equivalent to those indicated in Revision Checklists 28 and 52.

[Federal Authority: RCRA §§1006, 2002, 3001 - 3007, 3010, 3014, 3017 - 3019 and 7004; 40 CFR 260, 261, 262, 264, 265, and 270 as amended July 14, 1986 (51 FR 25422), August 15, 1986 (51 FR 29430) and September 2, 1988 (53 FR 34079).]

Citation of Laws and Regulations

63 O.S.Supp. 1990, §§ 1-2004(24), 1-2005. Rules 200 through 240.

Remarks of the Attorney General

The federal requirements are adopted by reference. The authority of the State to adopt (by reference) tank standards was recognized in earlier Attorney General's Statements dated December 22, 1988 and November 20, 1989. Because the amendments under consideration merely provide additional interpretation, clarification, and correction of typographical errors for already recognized valid standards, authority exists for these amendments under the same provisions previously cited.

XVI. REQUIREMENTS FOR PERMITS

O. 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 and Revision Checklist 59.

[Federal Authority: RCRA §§3004 and 3005; 40 CFR 264.600, 270.14 and 270.23 as amended December 10, 1987 (52 FR 46946) and January 9, 1989 (54 FR 615).]

Citation of Laws and Regulations

63 O.S. Supp. 1990, §§ 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. The amendments under consideration represent minor technical corrections to the "miscellaneous unit" requirements originally addressed in the Attorney General's Statement of November 20, 1989, and the same authority exists.

P. State statutes and regulations provide owners and operators more flexibility to change specified permit conditions, expand public notification and participation opportunities, and allow for expedited approval if no public concern exists for a proposed permit modification. Owner/operator permit modifications are categorized into three classes with administrative procedures for approving modifications established in each class. These changes are as indicated in Revision Checklist 54.

[Federal Authority: RCRA §§2002(a), 3004, 3005, and 3006; 40 CFR 124, 264, 265, and 270 as amended September 28, 1988 (53 FR 37912) and October 24, 1988 (53 FR 41649).]

Citation of Laws and Regulations

63 O.S. Supp. 1990, §§ 1-2004(1), 1-2005, 1-2008; 1-2012.3(B); 63 O.S. 1981, § 1-2006. Rules 200 through 240.

Remarks of the Attorney General

The new federal "3-tier" permit modification system has been incorporated by reference. While permit modification procedures are not explicitly addressed by statute, the statutory authority of the Department of Health to issue and to modify controlled industrial waste permits and of the Board of Health to promulgate regulations comporting with the hazardous waste regulations of the U.S. Environmental Protection Agency provides sufficient statutory authority for the establishment by rule of permit modification procedures.

Q. State statutes and regulations make it clear that existing incinerator facilities must either conduct a trial burn or submit other information as specified in 270.19(a) or (c) before a permit can be issued for that facility as indicated in Revision Checklist 60.

[Federal Authority: RCRA §3005(b); 40 CFR 270 as amended January 30, 1989 [54 FR 4286).]

Citation of Laws and Regulations

63 O.S. Supp. 1990, §§ 1-2004(17) and (23), 1-2005; 63 O.S. 1981, § 1-2007. Rules 200 through 240.

Remarks of the Attorney General

The federal requirements are incorporated by reference. Adequate statutory authority is provided by the State statutes cited above, including that portion of Section 1-2005(A) which authorizes the promulgation of regulations and minimum standards for the treatment of controlled industrial waste.

R. State statutes and regulations allow greater flexibility to interim status facilities to make changes during interim status following director approval. *not 61?*

[Federal Authority: RCRA §§2002(a), 3004, 3005, 3006; 40 CFR 270.72 as amended March 7, 1989 (54 FR 9596).]

Citation of Laws and Regulations

63 O.S. Supp. 1990, §§ 1-2005, 1-2009.1. Rules 200 through 240.

Remarks of the Attorney General

The federal provisions are adopted by reference. The authority to regulate interim status facilities pursuant to the statutory provisions cited above has been previously recognized in Attorney General's Statements dated December 30, 1987, December 22, 1988, and November 20, 1989.

S. State statutes and regulations lift the reconstruction limit for changes: 1) to certain interim status units necessary to comply with Federal, State, or local requirements, 2) necessary to allow continued handling of newly listed or identified hazardous waste, 3) made in accordance with an approved closure plan, and 4) made pursuant to a corrective action order as indicated in Revision Checklist 61.

[Federal Authority: RCRA §§2002(a), 3004, 3005, and 3006; 40 CFR 270.72 as amended March 7, 1989 (54 FR 9596).]

Citation of Laws and Regulations

63 O.S. Supp. 1990, § 1-2005; 63 O.S. 1981, § 1-2009.1. Rules 200 through 240.

Remarks of the Attorney General

The federal provisions are adopted by reference. The authority to regulate interim status facilities pursuant to the statutory provisions cited above has been previously recognized in Attorney General's Statements dated December 30, 1987, December 22, 1988, and November 20, 1989.

T. State statutes and regulations clarify that a permit can be denied for the active life of a facility while a decision on post closure permitting is pending as indicated in Revision Checklist 61.

[Federal Authority: RCRA §§2002(a), 3004, 3005, and 3006; 40 CFR 124.1, 124.15, 124.19, 270.1, 270.10 and 270.29 as amended March 7, 1989 (54 FR 9596).]

Citation of Laws and Regulations

63 O.S. Supp. 1990, §§ 1-2004(1), 1-2005, 1-2008; 63 O.S. 1981, § 1-2006. Rules 200 through 240.

Remarks of the Attorney General

The federal provisions in Part 270 are incorporated by reference. The federal provisions in Part 124 are not incorporated. Because this is an optional provision, authorization is not affected.

U. State statutes and regulations classify as Class 1 or as Class 1 with prior approval certain permit modifications requested by owners/operators necessary to enable permitted facilities to comply with the land disposal restrictions as indicated in Revision Checklist 61. Specifically these modifications include 1) adding restricted wastes treated to meet applicable Part 268 treatment standards or adding residues from treating "soft hammer" wastes, 2) adding certain wastewater treatment residues and incinerator ash, 3) adding new wastes for treatment in tanks or containers under certain limited conditions, and 4) adding new treatment processes, necessary to treat restricted wastes to meet treatment standards, that take place in tanks or containers.

[Federal Authority: RCRA §§2002(a), 3004, 3005 and 3006; 40 CFR 270.42 as amended March 7, 1989 (54 FR 9596).]

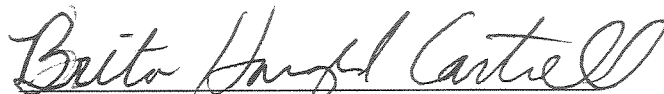
Citation of Laws and Regulations

63 O.S. Supp. 1990, §§ 1-2004(1), 1-2005, 1-2008, 1-2012.3(B); 63 O.S. 1981, § 1-2006. Rules 200 through 240.

Remarks of the Attorney General

The authority of the State to prescribe permit modification procedures was recognized earlier in this Attorney General's Statement. The specific "Class 1" provisions in question are incorporated by reference.

Dated this 16th day of November, 1990.



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