

US EPA ARCHIVE DOCUMENT

OKLAHOMA DEPARTMENT OF ENVIRONMENTAL QUALITY
REVISION ATTORNEY'S STATEMENT FOR FINAL
AUTHORIZATION FOR RCRA PROGRAM
RCRA CLUSTER III

I hereby certify, pursuant to my authority as independent legal counsel for the Oklahoma Department of Environmental Quality ("DEQ") 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 DEQ. 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 previous Attorneys General's certifications of January 20, 1984, January 14, 1988 as amended July 20, 1989, December 22, 1988 as amended June 7, 1989, November 20, 1989, November 16, 1990, and October 15, 1992, as amended September 24, 1993, as well as the Attorney's Statement of June 24, 1994. Similarly, this Attorney's Statement supplements the Attorney General's Statements and Attorney's Statement executed on those dates.

I. IDENTIFICATION AND LISTING

A. State statutes and regulations contain lists of hazardous waste which encompass all wastes controlled under the following Federal regulations as indicated in the designated Revision Checklists:

- (22) Administrative stay, from June 13, 1991 to December 24, 1992, of F032, F034 and F035 listings regarding 1) wastewaters that have not come into contact with process contaminants and 2) plants that have previously used chlorophenolic formulations, 40 CFR 261.31 as amended June 13, 1991 [56 FR 27332] and December 24, 1992 [57 FR 61492], Revision Checklists 91 and 120.

Federal Authority: RCRA §3001(b).

Citation of Laws and Rules

27A O.S. Supp. 1993 § 2-7-106
Rules 252:200-3-2 through 252:200-3-6

Remarks of Legal Counsel

NO LONGER APPLICABLE, administrative stay date has passed

- (23) Listing of seven wastes (K141, K142, K143, K144, K145, K147, and K148) generated during the production, recovery and refining of coke by-products produced from coal, 40 CFR 261.32, and Part 261 Appendix VII as amended August 18, 1992 [57 FR 37284], Revision Checklist 110.

Federal Authority: RCRA §3001(b).

Citation of Laws and Rules

27A O.S. Supp. §§ 2-2-104, 2-7-106
Rules 252:200-3-1 through 252:200-3-6

Remarks of Legal Counsel

Specific statutory language which addressed adoption of federal regulations by reference was formerly found at 63 O.S. Supp. 1992 § 1-2005. This section was repealed by HB 1002, effective July 1, 1993. Adoption by reference was continued through the general rule making language of 27A O.S. Supp. 1993 § 2-7-106. 27A O.S. Supp. § 2-2-104 was enacted to clarify the adoption by reference abilities of the DEQ. Rules 252:200-3-2 through 252:200-3-6 adopt the federal requirements by reference.

- (24) Listing of three wastes (K149, K150, and K151) from the production of chlorinated toluenes, 40 CFR 261.32 and Part 261 Appendix VII, as amended October 15, 1992 [57 FR 47376], Revision Checklist 115.

Federal Authority: RCRA §3001(b).

Citation of Laws and Rules

27A O.S. Supp. §§ 2-2-104, 2-7-106
Rules 252:200-3-1 through 252:200-3-6

Remarks of Legal Counsel

Rules 252:200-3-2 through 252:200-3-6 adopt the federal requirements by reference.

- (25) Exceptions to listings of F032, F034, and F035 for wastewaters that have not come into contact with process contaminants, 40 CFR 261.31 as amended December 24, 1992 [57 FR 61492], Revision Checklist 120.

Federal Authority: RCRA §3001(b).

Citation of Laws and Rules

27A O.S. Supp. §§ 2-2-104, 2-7-106
Rules 252:200-3-1 through 252:200-3-6

Remarks of Legal Counsel

Rules 252:200-3-2 through 252:200-3-6 adopt the federal requirements by reference.

- (26) Exception to listing of F032 for potentially cross-contaminated wastes that are otherwise currently regulated as hazardous wastes (i.e., F034 or F035), and where the generator does not reserve or initiate the use of chlorophenolic formulations, 40 CFR 261.31 as amended December 24, 1992 [57 FR 61492], Revision Checklist 120.

Federal Authority: RCRA §3001(b).

Citation of Laws and Rules

27A O.S. Supp. §§ 2-2-104, 2-7-106
Rules 252:200-3-1 through 252:200-3-6

Remarks of Legal Counsel

Rules 252:200-3-2 through 252:200-3-6 adopt the federal requirements by reference.

L. State statutes and regulations revise the existing toxicity characteristic by replacing the Extraction Procedure (EP) leach test with the Toxicity Characteristic Leaching Procedure (TCLP) for identifying wastes that are defined as hazardous and subject to regulation under Subtitle C of RCRA as indicated in Revision Checklists 74, 108 and 117B. State statutes and regulations also provide for the addition of 25 organic chemicals and their regulatory levels to the list of toxic constituents of concern as indicated in Revision Checklist 74.

Federal Authority: RCRA §§1006, 2002(a), 3001, 3002, 3004, 3005 and 3006; 40 CFR Parts 261, 264, 265 and 268 as amended March 29, 1990 (55 FR 11798), June 29, 1990 (55 FR 26986), June 1, 1992 (57 FR 23062), and July 10, 1992 (57 FR 30657).

Citation of Laws and Rules

27A O.S. Supp. §§ 2-2-104, 2-7-106
Rules 252:200-3-1 through 252:200-3-6

Remarks of Legal Counsel

Rules 252:200-3-2 through 252:200-3-6 adopt the federal requirements by reference.

X. State statutes and regulations exempt, from the definition of hazardous, used oil filters meeting the 40 CFR

261.4(b)(15)* criteria as indicated in Revision Checklists 104 and 107.

* 40 CFR 261.4(b)(15) was redesignated as 40 CFR 261.4(b)(13) (58 FR 26424)

Federal Authority: RCRA §§1004, 1006, 2002, 3001 and 3014; 40 CFR 261.4(b)(15) as amended May 20, 1992 (57 FR 21524) and July 1, 1992 (57 FR 29220).

Citation of Laws and Rules

27A O.S. Supp. §§ 2-2-104, 2-7-106, 2-7-107(A)(5)
Rules 252:200-3-1 through 252:200-3-6

Remarks of Legal Counsel

Rules 252:200-3-2 through 252:200-3-6 adopt the federal requirements by reference.

Y. State statutes and regulations exclude from being a solid waste K060, K087, K141, K142, K143, K144, K145, K147 and K148, and those coke by-product residues that are hazardous only because they exhibit the Toxicity Characteristic when, subsequent to generation, these wastes are recycled by being returned to coke ovens, to the tar recovery process as a feedstock to produce coal tar, or mixed with coal tar as specified in Revision Checklists 105 and 110.

Federal Authority: RCRA §§3001(e)(2) and (h); 40 CFR 261.4(a)(10) as amended June 22, 1992 (57 FR 27880) and August 18, 1992 (57 FR 37284).

Citation of Laws and Rules

27A O.S. Supp. §§ 2-2-104, 2-7-106
Rules 252:200-3-1 through 252:200-3-6

Remarks of Legal Counsel

Rules 252:200-3-2 through 252:200-3-6 adopt the federal requirements by reference.

Z. State statutes and regulations contain reissued mixture and derived-from rules as indicated in Revision Checklist 117 A.

Federal Authority: RCRA §§1006, 2002(a), and 3001-3005; 40 CFR 261.3, as amended March 3, 1992 (57 FR 7628), June 1, 1992 (57 FR 23062) and October 30, 1992 (57 FR 49278).

Citation of Laws and Rules

27A O.S. Supp. §§ 2-2-104, 2-7-106
Rules 252:200-3-1 through 252:200-3-6

Remarks of Legal Counsel

Rules 252:200-3-2 through 252:200-3-6 adopt the federal requirements by reference.

AA. State statutes and regulations do not require the use of the spike recovery correction as part of the Toxicity Characteristic Leaching Procedure as indicated in Revision Checklist 119.

Federal Authority: RCRA §§1006, 2002, 3001, 3002 and 3006; 40 CFR 261, Appendix II, as amended November 24, 1992 (57 FR 55114) and February 2, 1993 (58 FR 6854).

Citation of Laws and Rules

27A O.S. Supp. §§ 2-2-104, 2-7-106
Rules 252:200-3-1 through 252:200-3-6

Remarks of Legal Counsel

Rules 252:200-3-2 through 252:200-3-6 adopt the federal requirements by reference.

II. DEFINITION OF SOLID WASTE

B. State statutes and regulations include as solid waste secondary materials, fed to a halogen acid furnace, that exhibit a characteristic of a hazardous waste or are listed as a hazardous waste in 40 CFR 261, Subparts C and D as indicated in Revision Checklists 85, 96, and 111.

Federal Authority: RCRA §3001; 40 CFR Part 261.2(d)(2) and (e)(2)(iv) as amended February 21, 1991 (56 FR 7134), August 27, 1991 (56 FR 42504) and August 25, 1992 (57 FR 38558).

Citation of Laws and Rules

27A O.S. Supp. §§ 2-2-104, 2-7-106
Rules 252:200-3-1 through 252:200-3-6

Remarks of Legal Counsel

Rules 252:200-3-2 through 252:200-3-6 adopt the federal requirements by reference.

X. LIQUIDS IN LANDFILLS

B. State statutes and regulations prohibit the disposal, in hazardous waste landfills, of liquids that have been sorbed in materials that are biodegradable or that release liquids during routine landfill operations, as indicated in Revision Checklist 118.

Federal Authority: RCRA §3004(c); 40 CFR 260.10, 264.13, 264.314, 264.316, 265.13, 265.314, and 265.316 as amended November 18, 1992 (57 FR 54452).

Citation of Laws and Rules

27A O.S. Supp. §§ 2-2-104, 2-7-106, 2-7-105(10), 2-7-107(1), 2-7-110(B)
Rules 252:200-3-1 through 252:200-3-6

Remarks of Legal Counsel

Rules 252:200-3-2 through 252:200-3-6 adopt the federal requirements by reference.

XIII. CORRECTIVE ACTION

G. State statutes and regulations contain remediation waste management provisions for corrective action management units (CAMUs) and temporary units (TUs) at RCRA facilities, as indicated in Revision Checklist 121.

Federal Authority: RCRA §§1006, 2002(a), 3004(u), 3004(v), 3005(c), 3007, and 3008(h); 40 CFR 260.10, 264.3, 264.101(b), 264.552, 264.553, 265.1(b), 268.2(c), 270.2 and Appendix I to 270.42, as amended February 16, 1993 (58 FR 8658).

Citation of Laws and Rules

27A O.S. Supp. §§ 2-2-104, 2-7-106, 2-7-126(3), 2-7-127(A)
Rules 252:200-3-1 through 252:200-3-6

Remarks of Legal Counsel

Rules 252:200-3-2 through 252:200-3-6 adopt the federal requirements by reference.

XV. STANDARDS FOR FACILITIES

L. State statutes and regulations contain design, operating, inspection and closure requirements for drip pads and associated tanks, sumps and other devices used to assist in the collection of treated wood drippage as indicated in Revision Checklists 82, 92 and 120.

Federal Authority: RCRA §§2002(a) and 3001(b)&(e)(1); 40 CFR 262.34(a)(2), 264.190, 264.570, 264.571, 264.572, 264.573, 264.574, 264.575, 265.190, 265.440, 265.441, 265.442, 265.443, 265.444 and 265.445, as amended December 6, 1990 (55 FR 50450), July 1, 1991 (56 FR 30192), and December 24, 1992 (57 FR 61492).

Citation of Laws and Rules

27A O.S. Supp. §§ 2-2-104, 2-7-106
Rules 252:200-3-1 through 252:200-3-6

Remarks of Legal Counsel

Rules 252:200-3-2 through 252:200-3-6 adopt the federal requirements by reference.

M. State statutes and regulations contain an administrative stay, from June 13, 1991 to December 24, 1992, for the requirement that new drip pads be impermeable as indicated in Revision Checklists 91 and 120.

Federal Authority: 5 U.S.C. 705; RCRA §§2002(a) and 3001(b)&(e)(1); 40 CFR 264.572(a)(4) and 265.443(a)(4) as amended June 13, 1991 (56 FR 27332) and December 24, 1992 (57 FR 61492).

Citation of Laws and Rules

27A O.S. Supp. 1993 § 2-7-106
Rules 252:200-3-2 through 252:200-3-6

Remarks of Legal Counsel

NO LONGER APPLICABLE, administrative stay date has passed

O. State statutes and regulations allow the use of additional financial instruments (letter of credit, a surety bond, a guarantee, trust fund, and purchase of insurance by other firms) to meet the liability coverage requirements as specified in Revision Checklist 113.

Federal Authority: RCRA §§2002(a), 3004 and 3005; 40 CFR 264.141, 264.147, 264.151, 265.141, 265.147 and 265.151 as amended September 1, 1988 (53 FR 33938), July 1, 1991 (56 FR 30200), and September 16, 1992 (57 FR 42832).

Citation of Laws and Rules

27A O.S. Supp. §§ 2-2-104, 2-7-106, 2-7-116
Rules 252:200-3-1 through 252:200-3-6

Remarks of Legal Counsel

Rules 252:200-3-2 through 252:200-3-6 adopt the federal requirements by reference.

P. State statutes and regulations include conforming changes to 264.147(f)(6) and 265.147(f)(6) to expand the instruments available to owners and operators that no longer meet the requirements of the financial test for liability coverage as indicated in Revision Checklist 113.

Federal Authority: RCRA §3004; 40 CFR 264.147(f)(6) and 265.147(f)(6) as amended September 16, 1992 (57 FR 42832).

Citation of Laws and Rules

27A O.S. Supp. §§ 2-2-104, 2-7-106, 2-7-116(B)
Rules 252:200-3-1 through 252:200-3-6

Remarks of Legal Counsel

Rules 252:200-3-2 through 252:200-3-6 adopt the federal requirements by reference.

Q. State statutes and regulations require reporting of third-party claims against an owner's or operator's liability coverage as indicated by Revision Checklist 113.

Federal Authority: RCRA §§2002(a), 3004 and 3005; 40 CFR 264.147(a)(7)&(b)(7) and 265.147(a)(7)&(b)(7) as amended September 1, 1988 (53 FR 33938) and September 16, 1992 (57 FR 42832)

Citation of Laws and Rules

27A O.S. Supp. §§ 2-2-104, 2-7-106
Rules 252:200-3-1 through 252:200-3-6

Remarks of Legal Counsel

Rules 252:200-3-2 through 252:200-3-6 adopt the federal requirements by reference.

R. State statutes and regulations require owners or operators of new drip pads to have either 1) a surface protection system meeting the hydraulic conductivity, material chemical compatibility, and assessment requirements of 264.573(a)(4) or 265.443(a)(4), or 2) a liner and leak detection system below the pad as well as a leak collection system as specified in Revision Checklist 120.

Federal Authority: RCRA §§2002(a) and 3001(b)&(e)(1); 40 CFR 264.572, 265.573, 265.442 and 265.443 as amended December 24, 1992 (57 FR 61492).

Citation of Laws and Rules

27A O.S. Supp. §§ 2-2-104, 2-7-106
Rules 252:200-3-1 through 252:200-3-6

Remarks of Legal Counsel

Rules 252:200-3-2 through 252:200-3-6 adopt the federal requirements by reference.

S. State statutes and regulations require owners or operators of existing drip pads to meet the hydraulic conductivity, material chemical compatibility, and assessment requirements of 264.573(a)(4) or 265.443(a)(4), as specified in Revision Checklist 120.

Federal Authority: RCRA §§2002(a) and 3001(b)&(e)(1); 40 CFR 264.571, 264.573, 265.441 and 265.443 as amended December 24, 1992 (57 FR 61492).

Citation of Laws and Rules

27A O.S. Supp. §§ 2-2-104, 2-7-106
Rules 252:200-3-1 through 252:200-3-6

Remarks of Legal Counsel

Rules 252:200-3-2 through 252:200-3-6 adopt the federal requirements by reference.

T. State statutes and regulations contain requirements for the management of infrequent and incidental drippage in storage yards as indicated in Revision Checklist 120.

Federal Authority: RCRA §§2002(a) and 3001(b)&(e)(1); 40 CFR 264.570(c) and 265.440(c) as amended December 24, 1992 (57 FR 61492).

Citation of Laws and Rules

27A O.S. Supp. §§ 2-2-104, 2-7-106
Rules 252:200-3-1 through 252:200-3-6

Remarks of Legal Counsel

Rules 252:200-3-2 through 252:200-3-6 adopt the federal requirements by reference.

XX. STANDARDS FOR THE MANAGEMENT OF WASTE FUEL AND USED OIL AND FOR THE BURNING OF THESE MATERIALS IN BOILERS AND INDUSTRIAL FURNACES

C. State statutes and regulations include control standards for emissions of toxic organic compounds, toxic metals, hydrogen chloride, chlorine gas and particulate matter from boilers and industrial furnaces burning hazardous waste, and require owners and operators of such facilities to comply with the general facility standards applicable to hazardous waste treatment, storage and disposal facilities, as indicated in Revision Checklists 85, 94, 96, 111, and 114. Hazardous waste storage units at regulated burners are subject to the 40 CFR Part 264 requirements.

Federal Authority: RCRA §§1006, 2002, 3001 through 3007, 3010 and 7004; 40 CFR 260.10, 260.11, 260.20, 261.3, 261.6, 264.1, 264.112, 264.340, 265.1, 265.112, 265.113, 265.340, 265.370, Part 266 Subpart H, and Part 266 Appendices I-X as amended February 21, 1991 (56 FR 7134), July 17, 1991 (56 FR 32688), August 27, 1991 (56 FR 42504), August 25, 1992 (57 FR 38558), and September 30, 1992 (57 FR 44999).

Citation of Laws and Rules

27A O.S. Supp. §§ 2-2-104, 2-7-106, 2-7-107(A) (4), 2-7-107(A) (5)
Rules 252:200-3-1 through 252:200-3-6

Remarks of Legal Counsel

Rules 252:200-3-2 through 252:200-3-6 adopt the federal requirements by reference.

E. State statutes and regulations provide used oil management standards for used oil generators, transporters, processors, re-refiners, burners, and marketers as indicated in Revision Checklists 112 and 122.

Federal Authority: RCRA §§1004, 1006, 2002, 3001, 3014 and 7004; 40 CFR Parts 260, 261, 266 and 279 as amended September 10, 1992 (57 FR 41566) and May 3, 1993 (58 FR 26420).

Citation of Laws and Rules

27A O.S. Supp. §§ 2-2-104, 2-7-106, 2-7-107(A) (5)
Rules 252:200-3-1 through 252:200-3-6

Remarks of Legal Counsel

Rules 252:200-3-2 through 252:200-3-6 adopt the federal requirements by reference.

XXI. LAND DISPOSAL RESTRICTIONS

I. State statutes and regulations provide an extension of the land disposal restriction effective date for hazardous waste debris until May 8, 1994, as indicated in Revision Checklists 103, 116, and 123.

Federal Authority: RCRA §3004(h)(3); 40 CFR 268.35(c)-(e) as amended May 15, 1992 (57 FR 20766); October 20, 1992 (57 FR 47772); and May 14, 1993 (58 FR 28506).

Citation of Laws and Rules

27A O.S. Supp. 1993 § 2-7-106
Rules 252:200-3-2 through 252:200-3-6

Remarks of Legal Counsel

NO LONGER APPLICABLE, extension date has passed

K. State statutes and regulations provide land disposal treatment standards for certain hazardous wastes listed after November 8, 1984 as well as treatment standards for debris contaminated with listed hazardous wastes or debris that exhibit certain hazardous waste characteristics as indicated in Revision Checklist 109.

Federal Authority: RCRA §§3004(d)-(k) and (m); 40 CFR 261.3(f), 268.2, 268.5, 268.7, 268.14, 268.36, 268.40, 268.41, 268.42, 268.43, 268.45, 270.13 and 270.14, as amended August 18, 1992 (57 FR 37194).

Citation of Laws and Rules

27A O.S. Supp. §§ 2-2-104, 2-7-106, 2-7-107(A)(10)
Rules 252:200-3-1 through 252:200-3-6

Remarks of Legal Counsel

Rules 252:200-3-2 through 252:200-3-6 adopt the federal requirements by reference.

L. State statutes and regulations include revisions to existing land disposal restrictions including revision of F001-F005 spent solvents treatment standards, conversion of wastewater standards for twenty-four "F" and "K" water codes based on scrubber standards; revisions to K061, K062 and F006 treatment standards; change of recordkeeping requirements; and clarification of rules related to wastes listed because they exhibit a characteristic as indicated in Revision Checklist 109.

Federal Authority: RCRA §§3004(d)-(k) and (m); 40 CFR 261.3(a)&(c), 268.9, 268.41, 268.42, 268.43 and 268.46, as amended August 18, 1992 (57 FR 37194).

Citation of Laws and Rules

27A O.S. Supp. §§ 2-2-104, 2-7-106, 2-7-107(A) (10)
Rules 252:200-3-1 through 252:200-3-6

Remarks of Legal Counsel

Rules 252:200-3-2 through 252:200-3-6 adopt the federal requirements by reference.

M. State statutes and regulations allow storage and treatment in containment buildings as indicated in Revision Checklist 109.

Federal Authority: RCRA §§3004(d)-(k) and (m); 40 CFR 260.10, 262.34, 264.110, 264.111, 264.112, 264.140, 264.142, 264 Subpart DD, 265.110, 265.111, 265.112, 265.140, 265.142, 265.221, 265 Subpart DD, 268.50, 270.42 and 270.72, as amended August 18, 1992 (57 FR 37194).

Citation of Laws and Rules

27A O.S. Supp. §§ 2-2-104, 2-7-106
Rules 252:200-3-1 through 252:200-3-6

Remarks of Legal Counsel

Rules 252:200-3-2 through 252:200-3-6 adopt the federal requirements by reference.

N. State statutes and regulations provide a case-by-case extension of the land disposal effective date until May 8, 1994 for Third Third hazardous soils whose best demonstrated available technology (BDAT) was incineration, retorting or vitrification, as well as for Third Third soils contaminated with radioactive mixed waste as indicated in Revision Checklists 116 and 123.

Federal Authority: RCRA §3004(h)(3); 40 CFR 268.35(c)-(e) as amended October 20, 1992 (57 FR 47772) and May 14, 1993 (57 FR 28506).

Citation of Laws and Rules

27A O.S. Supp. 1993 § 2-7-106
Rules 252:200-3-2 through 252:200-3-6

Remarks of Legal Counsel

NO LONGER APPLICABLE, extension date has passed

O. State statutes and regulations include land disposal restrictions and treatment standards for certain ignitable and corrosive characteristic wastes whose treatment standards were vacated, as indicated in Revision Checklist 124.

Federal Authority: RCRA §3004(d), (e)&(g); 40 CFR 268.37 as amended on May 24, 1993 (58 FR 29860).

Citation of Laws and Rules

27A O.S. Supp. §§ 2-2-104, 2-7-106, 2-7-105(17), 2-7-107(A) (10)
Rules 252:200-3-1 through 252:200-3-6

Remarks of Legal Counsel

Rules 252:200-3-2 through 252:200-3-6 adopt the federal requirements by reference.

FOR THE OKLAHOMA DEPARTMENT
OF ENVIRONMENTAL QUALITY

Jimmy D. Givens
Signature

Jimmy D. Givens
Name (print)

Staff Attorney
Title

12-8-94
Date