

US EPA ARCHIVE DOCUMENT

OK Authorization FR

**ENVIRONMENTAL PROTECTION
AGENCY**

40 CFR Part 271

[FRL-6198-9]

**Oklahoma: Final Authorization of State
Hazardous Waste Management
Program Revisions**

AGENCY: Environmental Protection
Agency (EPA).

ACTION: Immediate final rule.

SUMMARY: The State of Oklahoma has applied for final authorization to revise its Hazardous Waste Program under the Resource Conservation and Recovery Act (RCRA). The EPA has reviewed Oklahoma Department of Environmental Quality's (ODEQ) application and determined that its Hazardous Waste Program revision satisfies all of the requirements necessary to qualify for final authorization. Unless adverse written comments are received on this action, EPA's decision to approve Oklahoma's Hazardous Waste Program Revision will take effect as provided below in accordance with Hazardous and Solid Waste Amendments of 1984 (HSWA).

DATES: This immediate final rule is effective on February 8, 1999 without further notice, unless EPA receives adverse comments by January 8, 1999. Should the EPA receive such comments, it will publish a timely withdrawal of this Immediate Final Rule in the **Federal Register** and inform the public that the rule will not take effect.

Written comments, referring to Docket Number OK-98-3, should be sent to Alima Patterson, Region 6 Authorization Coordinator, Grants and Authorization Section (6PD-G), Multimedia Planning and Permitting Division, EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202, phone (214) 665-8533.

ADDRESSES: Copies of the Oklahoma program revision application and the materials which EPA used in evaluating the revision are available for inspection and copying from 8:30 a.m. to 4:00 p.m. Monday through Friday at the following addresses: State of Oklahoma Department of Environmental Quality, 1000 Northeast Tenth Street, Oklahoma City, Oklahoma 73117-1212, phone (405) 271-5338 and EPA, Region 6 Library, 12th Floor, 1445 Ross Avenue, Dallas, Texas 75202, phone (214) 665-6444.

FOR FURTHER INFORMATION CONTACT: Alima Patterson, Region 6 Authorization Coordinator, Grants and Authorization Section (6PD-G), Multimedia Planning and Permitting Division, EPA Region 6,

1445 Ross Avenue, Dallas, Texas 75202, phone (214) 665-8533.

SUPPLEMENTARY INFORMATION:

A. Background

States with final authorization under section 3006(b) of the RCRA, 42 U.S.C. 6926(b), have a continuing obligation to maintain a Hazardous Waste Program that is equivalent to, consistent with, and no less stringent than the Federal hazardous waste program. Revisions to State hazardous waste programs are necessary when Federal or State statutory or regulatory authority is modified or when certain other changes occur. Most commonly, State program revisions are necessitated by changes to EPA's regulations in 40 Code of Federal Regulations (CFR) parts 124, 260-264, 265, 266, 268, 270, 273 and 279.

B. Oklahoma

Oklahoma initially received Final Authorization on January 10, 1985, (49 FR 50362) to implement its base hazardous waste management program. Oklahoma received authorization for revisions to its program on June 18, 1990 (55 FR 14280), effective November 27, 1990 (55 FR 39274), effective June 3, 1991 (56 FR 13411), effective November 19, 1991 (56 FR 47675), effective December 21, 1994 (59 FR 51116-51122), effective April 27, 1995 (60 FR 2699-2702), effective October 9, 1996 (61 FR 52884-52886), and Technical Correction effective March 14, 1997 (62 FR 12100). The authorized Oklahoma RCRA program was incorporated by reference into the CFR effective December 13, 1993 and July 14, 1998. On July 31, 1998, Oklahoma submitted a final complete program revision application for additional program approvals. The State of Oklahoma has also adopted the regulations for Import and Export of Hazardous Waste. However, the requirements of the Import and Export regulations will be administered by the EPA and not the State because the exercise of foreign relations and international commerce powers is reserved to the Federal government under the United States Constitution. Therefore, the State is not seeking authorization for this rule. Today, Oklahoma is seeking approval of its program revision in accordance with § 271.21(b)(3).

Oklahoma statutes provide authority for a single State agency, the ODEQ, to administer the provisions of the State Hazardous Waste Management Program. These statutes are the Oklahoma Environmental Quality Act, 27 O.S. Supplement (Supp) 1997 sections 1-101 *et seq.* General provisions of the Oklahoma Environmental Quality Code

which may affect the Hazardous Waste Program, 27A O.S. Supp. 1997 sections 2-1-101 through 2-3-507; and the Oklahoma Hazardous Waste Management Act (OHWA), 27A O.S. Supp. 1997 sections 2-7-101 *et seq.* No amendments were made to the above statutory authorities during the 1997 legislative session which will substantially affect the State Hazardous Waste Management Program; however, 27A O.S. sections 2-14-305 has been added to allow for issuance of general permits.

On January 8, 1998, the Council voted to recommend amendments to Oklahoma Administrative Code (OAC) 252:200-3-1 and 252:200:3-2 to incorporate by reference, in accordance with Guidelines For State Adoption of Federal Regulations by Reference, the following EPA Hazardous Waste Management Regulations as amended through July 1, 1997, the provisions of 40 CFR part 124 which are required by 40 CFR 271.14 as well as 124.31, 124.32 and 124.33; 40 CFR parts 260-266, with the exception of 40 CFR 260.20 through 260.22, 40 CFR part 268, 40 CFR part 270, 40 CFR part 273 and 40 CFR part 279. The Board adopted these amendments on January 27, 1998 as permanent and emergency rules. The emergency rules amendments became effective as permanent rules on June 1, 1998. The ODEQ remains the official agency of the State of Oklahoma, as designated by 27A O.S. Supp. 1997 sections 2-7-105(13) to cooperate with Federal agencies for the purposes of hazardous waste regulations. The OHWA delegates authority to the ODEQ to administer the State Hazardous Waste Program, including the statutory and regulatory provisions necessary to administer the RCRA Cluster VI requirements.

The EPA reviewed ODEQ's application, and today is making an immediate final decision, subject to public review and comment, that ODEQ's Hazardous Waste Program revisions satisfies all of the requirements necessary to qualify for final authorization. Consequently, the EPA intends to grant final authorization for the additional program modifications to Oklahoma. The public may submit written comments on EPA's final decision until January 8, 1999. Copies of Oklahoma's application for program revision are available for inspection and copying at the locations indicated in the **ADDRESSES** section of this document.

Approval of ODEQ's program revision shall become effective 60 days from the date this document is published, unless an adverse written comment pertaining

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to the State's revision discussed in this document is received by the end of the comment period. If an adverse written comment is received, the EPA will publish either, (1) a withdrawal of the immediate final decision, or (2) a document containing a response to the comment that either affirms that the

immediate final decision takes effect or reverses the decision.

The ODEQ's program revision application includes State regulatory changes that are equivalent to the rules promulgated in the Federal RCRA implementing regulations in 40 CFR parts 124, 260-263, 264, 265, 266, 270,

273, and 279, that were published in the FR from July 1, 1995 through June 30, 1996. This proposed approval includes the provisions that are listed in the chart below. This chart also lists the State analogs that are being recognized as equivalent to the appropriate Federal requirements.

Federal citation	State analog
1. Hazardous Waste Management; Liquids in Landfills, [60 FR 35703] July 11, 1995 (Checklist 145).	OAC 27A Oklahoma Statutes (O.S.), Supp. 1997, §2-2-104 laws added 1994, effective July 1, 1994; §§2-7-106, amended 1993, and 2-7-107(A)(10), effective July 1, 1993. OHWMA, as amended, 252:200-3-1, through 252:200-3-4, amended January 27, 1998, emergency rule effective March 23, 1998, permanent rule effective June 1, 1998.
2. RCRA Expanded Public Participation, [60 FR 63417] December 11, 1995 (Checklist 148).	OAC 27A O.S., Supp. 1997, §§2-7-104 added 1994, effective July 1, 1994; 27A O.S. Supp. 1996) §2-7-106, and §2-7-105(15), effective July 1, 1993; OHWMA Rules 252:200-3-1 through 252:200-3-4, amended January 27, 1998, emergency effective date March 23, 1998, permanent rule effective June 1, 1998.
3. Identification and Listing of Hazardous Waste; Amendments to Definition of Solid Waste, [61 FR 13103], March 26, 1996. (Checklist 150).	OAC 27A O.S., Supp. 1997, §2-7-106 amended 1993, effective July 1, 1993; and §2-7-104, added by Laws 1994, effective July 1, 1994; OHWMA Rules 252:200-3-1 through 252:200-3-4, amended January 27, 1998, emergency effective date March 23, 1998, permanent effective June 1, 1998.
4. Land Disposal Restrictions Phase III-Decharacterized Wastewaters, Carbamate Waste, and Spent Potliners, [61 FR 15660] April 8, 1996, [61 FR 19117] April 30, 1996 [61FR 33680], June 28, 1996, [61 FR 36419], July 10, 1996, [61 FR 43924], April 26, 1996, and [62 FR 7502] February 19, 1997, (Checklist 151.1, 151.2, 151.3, 151.4, 151.5 and 151.6).	OAC 27A O.S., Supp. 1996, §2-7-106 amended 1993, effective July 1, 1993; §2-7-104, Added by Laws 1994 and §2-7-106, effective July 1, 1994; OHWMA Rules 252:200-3-1 through 252:200-3-4, amended June 18, 1996, emergency effective date August 1, 1996, permanent effective June 1, 1997; 252:200-3-5, and 252:200-3-6, Finally adopted March 30, 1994, effective as permanent May 26, 1994. <i>107(A)(10) ? effective July 1, 1993</i>

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Oklahoma is not authorized to operate the Federal program on Indian lands. This authority remains with EPA.

C. Decision

I conclude that ODEQ's application for a program revision meets the statutory and regulatory requirements established by RCRA. Accordingly, ODEQ is granted Final Authorization to operate its hazardous waste program as revised. Upon effective final approval Oklahoma will be responsible for permitting treatment, storage, and disposal facilities within its borders and for carrying out the aspects of the RCRA program described in its revised program application, subject to the limitations of the HSWA. Oklahoma also has primary enforcement responsibilities, although EPA retains the right to conduct inspections under section 3007 of RCRA, and to take enforcement actions under sections 3008, 3013 and 7003 of RCRA.

D. Codification in Part 272

The EPA uses 40 CFR part 272 for codification of the decision to authorize ODEQ's program and for incorporation by reference of those provisions of its statutes and regulations that EPA will enforce under sections 3008, 3013, and 7003 of RCRA. Therefore, EPA is reserving amendment of 40 CFR part 272, subpart LL until a later date.

E. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law (Pub. L.) 104-4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector.

The EPA has determined that sections 202 and 205 requirements do not apply to today's action because this rule does not contain a Federal mandate that may result in annual expenditures of \$100 million or more for State, local, and/or tribal governments already exist under the State of Oklahoma's program, and today's action does not impose any additional obligations on regulated entities. In fact, the EPA's approval of State programs generally may reduce, not increase, compliance costs for the private sector. Further, as it applies to the State, this action does not impose a Federal intergovernmental mandate because UMRA does not include duties arising from participation in a voluntary federal program.

The requirements of sections 203 of UMRA also do not apply to today's action because this rule contains no regulatory requirements that might significantly or uniquely affect small governments. Although small governments may be hazardous waste generators, transporters, or own and/or operate of hazardous waste, treatments,

storage or disposal facilities (TSDFs), they are already subject to the regulatory requirements under the existing State laws that are being authorized by the EPA, and, thus, are not subject to any additional significant or unique requirements by virtue of this program approval.

F. Certification Under the Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (i.e., small businesses, small organizations, and small governmental jurisdictions). This analysis is unnecessary, however, if the agency's administrator certifies that the rule will not have a significant economic impact on a substantial number of small entities.

The EPA has determined that this authorization will not have a significant economic impact on a substantial number of small entities. Such small entities which are hazardous waste generators, transporters, or which own and/or operate TSDFs are already

subject to the regulatory requirements under the existing State laws that are now being authorized by the EPA. The EPA's authorization does not impose any significant additional burdens on these small entities. This is because the EPA's authorization would simply result in an administrative change, rather than a change in the substantive requirements imposed on these small entities.

Pursuant to the provision at 5 U.S.C. 605(b), the Agency hereby certifies that this authorization will not have a significant economic impact on a substantial number of small entities. This authorization approves regulatory requirements under existing State law to which small entities are already subject. It does not impose any new burdens on small entities. This rule, therefore, does not require a regulatory flexibility analysis.

G. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA submitted a report containing this rule and other required information to the U.S. Senate, the U. S. House of Representatives and the Comptroller General of the United States prior to publication of the rule in today's **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

H. Regulatory Review Under Executive Order 12866

The Office of Management and Budget (OMB) has exempted this rule from the requirements of section 3 of Executive Order 12866.

I. Protection of Children From Environmental Health Risk and Safety risks Under Executive Order 13045

Executive Order 13045, "Protection of Children from Environmental Health Risks and Safety Risk" applies to any rule that: (1) the OMB determines is "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that the EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children and explain why the planned

regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

J. Enhancing Intergovernmental Partnership Under Executive Order 12875

Under Executive Order 12875, the EPA may not issue regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If the mandate is unfunded, the EPA must provide to the OMB a description of the extent of EPA's prior consultation with representatives of affected State, local and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires the EPA to develop an effective process permitting elected officials and other representatives of State, local and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates."

This rule does not create a mandate on State, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1 (a) of Executive Order 12875 do not apply to this rule.

K. Consultation and Coordination With Indian Tribal Governments Under Executive Order 13084

Under Executive Order 13084, the EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance cost incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires the EPA to provide the OMB, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, summary of the nature of their concerns, and a statement supporting the need to issue the regulations. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of

Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

L. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104-113, section 12(d) (15 U.S.C. 272 note) directs the EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g. materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs the EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This action does not involve technical standards. Therefore, the EPA did not consider the use of any voluntary consensus standards.

Paper Reduction Act

Under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, Federal agencies must consider the Paperwork burden imposed by any information request contained in a proposed rule or a final rule. This rule will not impose any information requirements upon the required community.

List of Subjects in 40 CFR Part 271

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous waste, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control, Water supply.

Authority: This notice is issued under the authority of Sections 2002(a), 3006 and 7004(b) of the Solid Waste Disposal Act as amended 42 U.S.C. 6912(a), 6926, 6974(b).

Jerry Clifford,

Deputy Regional Administrator, Region 6.

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