

US EPA ARCHIVE DOCUMENT

**ADDENDUM TO PROGRAM DESCRIPTION  
OKLAHOMA DEPARTMENT OF ENVIRONMENTAL QUALITY  
HAZARDOUS WASTE MANAGEMENT PROGRAM  
RCRA CLUSTER XII**

**Part I: Organization and Management of the State Program (40 CFR 271.6 (b) through (h))**

With this revision authorization application, the State of Oklahoma, through the Oklahoma Department of Environmental Quality (“DEQ”), is seeking authorization for RCRA Cluster XII. The State program now has in place statutory authority and regulations for all required program components through RCRA Cluster XII. These statutory and regulatory provisions were developed to provide corresponding authority to the Federal program; therefore, the State program is equivalent to, consistent with, and no less stringent than the Federal program.

The DEQ has received final authorization for the base RCRA program for non-HSWA Clusters I through VI; for HSWA Clusters I and II; and for RCRA Clusters I through X. The DEQ received final authorization for the Base Program in January of 1985.

No major changes have taken place in the State program since the last draft Addendum to the Program Description was submitted to the U.S. Environmental Protection Agency on June 25, 2002.

**A. State Agency Responsibilities (40 CFR 271.6 (b))**

Oklahoma statutes provide authority for a single agency, the DEQ, to administer the provisions of the State hazardous waste management program. These statutes are the Oklahoma Environmental Quality Act, 27A O.S. Supp 2002 §§ 1-1-101 et seq. (Appendix A); general provisions of the Oklahoma Environmental Quality Code which may affect the hazardous waste program, 27A O.S. Supp. 2002 §§

2-1-101 through 2-3-507 (Appendix B); and the Oklahoma Hazardous Waste Management Act, 27A O.S. §§ 2-7-101 et seq. (“OHWMA”), specifically § 2-7-104 (Appendix C). 27A O.S. § 2-14-305 allows for issuance of general permits (Appendix D). No amendments were made to the above statutory authorities during the 2003 legislative session, which will substantially affect the State hazardous waste management program.

As was the case when the June 25, 2002, draft Addendum to Program Description was submitted, the Environmental Quality Board (“Board”), which consists of thirteen (13) members, is appointed by the Governor with the advice and consent of the Senate. The Board is the rulemaking body of the DEQ. Permanent rules regarding hazardous waste are promulgated with the advice of the Hazardous Waste Management Advisory Council (“Council”); however, emergency rules may be promulgated by the Board without the advice of the Council.

The Council may not recommend rules for promulgation by the Board unless all applicable requirements of the Oklahoma Administrative Procedures Act 75 O.S. Supp. 2002 §§ 250 et seq. (Appendix E) have been followed, including but not limited to notice, rule impact statement and rule-making hearings.

Board meetings and Council meetings are conducted in accordance with the Oklahoma Open Meeting Act, 25 O.S. § 301 et seq. (Appendix F).

The DEQ Hazardous Waste Management Rules are located at: OAC 252:205-1-1 et seq. These rules include provisions, found at OAC 252:205-3-1 through 252:-3-6 to incorporate by reference, in accordance with the *Guidelines For State Adoption of Federal Regulations By Reference*, the following EPA Hazardous Waste Management Regulations as amended through July 1, 2002: the provisions of

Title 40 of the Code of Federal Regulations (“CFR”) Part 124 which are required by 40 CFR 271.14 as well as 124.19 (a) through (c) and (e), 124.31, 124.32, and 124.33; 40 CFR Parts 260-266, with the exception of 40 CFR 261.21, 264.1 (f), 264.149, 264.150, 264.301(l), 2964.1030(d), 264.1050(g), 264.1080(e), 264.1080(f), 264.1080(g), 251.( c)(4), 265.149, 265.150, 265.1030 ( c), 265.1050(f), 265.1080(e), 265.1080(f), and 265.1080(g); 40 CFR Part 268 except 268.5, 268.6, 268.13, 268.42(b) 268.44(a) through (g), and 268.44 (m) through (p); 40 CFR Part 270 except 270.14(b)(18); 40 CFR Part 273; and 40 CFR Part 279.

The Board adopted these amendments on February 28, 2003, as permanent rules. These permanent rules which became effective on June 12, 2003, implement the State hazardous waste program, and are codified in the OAC at OAC 252:205 et seq. (Appendix G).

The State’s incorporation of Federal regulations does not operate to incorporate prospectively future changes to the incorporated sections of 40 CFR, and no other Oklahoma law or regulations reduces 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, OAC 252:205-3-1 through 252:205-3-6 provides equivalent and no less stringent authority than the Federal Subtitle C program in effect through July 1, 2002.

Pursuant to the Oklahoma statutes listed in Part I.(A) above, a single state agency, the DEQ, has authority to administer the provisions of the State hazardous waste management program.

The DEQ remains the official agency of the State of Oklahoma, as designated by 27A O.S. § 2-7-105(13) to cooperate with Federal agencies for purposed of hazardous waste regulation.

The OHWMA delegates authority to the DEQ to administer the State hazardous waste program,

including the statutory and regulatory provisions necessary to administer the RCRA Cluster XII provisions. The DEQ is the sole State agency responsible for administering the provisions of OHWMA.

Currently, the Oklahoma Corporation Commission (“OCC”) regulates certain aspects of the oil and gas production and transportation industry in Oklahoma, including certain waste generated by pipelines, bulk fuel sales terminals and certain tank farms. The DEQ and the OCC have in place a *DEQ/OCC Jurisdictional Guidance Document* that reflects the jurisdictional areas involving the two agencies. Appendix H contains the current *DEQ/OCC Jurisdictional Guidance Document* that was signed, as amended, on January 27, 1999. Although this guidance has not been revoked by the DEQ or OCC, the OCC has passed rules that some may argue affect a portion of the RCRA universe. Attached as Appendix M is a copy of the OCC rules that amend OAC 165:10.

The revision of the State program to include administering the provisions of RCRA Cluster XII will not require a change regarding which state agency is responsible for administering the State hazardous waste program.

**B. Staffing and Funding Resources (40 CFR 271.6(b))**

The Executive Director of the DEQ, whose responsibilities have not changed significantly since the June 25, 2002, draft Addendum to the Program Description submittal, is appointed by the Board, and is responsible for the administration of the DEQ. The Executive Director is given specific powers and duties necessary to fully implement a State hazardous waste program that is equivalent to the Federal hazardous waste program.

The Executive Director is given the duty to “establish such divisions and such other programs and offices as the Executive Director may determine necessary to implement and administer programs and

functions within the jurisdiction of the DEQ pursuant to the Oklahoma Environmental Quality Code.” Accordingly, pursuant to 27A O.S. § 2-7-104, the Executive Director has created the Waste Management Division, renamed the “Land Protection Division” (LPD) effective January 1, 2001, which is responsible for implementing the provisions of the OHWMA.

The LPD continues to be staffed with personnel that have the administrative expertise, technical background and experience necessary to effectively administer and implement the RCRA Cluster XII program.

Many of the personnel currently employed in the RCRA program of the LPD have several years of experience in the hazardous waste program. Both experienced and new personnel participate in a variety of training programs to increase their expertise and skills. A training curriculum designed specifically for new employees of the RCRA program of the LPD has been used for several years and is currently being utilized.

The organization of the LPD is depicted in Appendix I. Table I of Appendix I shows staffing requirements for the LPD hazardous waste program support personnel, based on the EPA/State Grant. Table I-A of Appendix I itemizes the costs of administrative support, technical support, and costs of personnel for fiscal year 2003, based on contributions the State will make above the amounts in the EPA/State Grant. Table II of Appendix I shows the LPD hazardous waste program budget for State Fiscal Year 2003 (July 1, 2002 - June 30, 2003), which shows funding amounts based on the personnel requirements set out in the EPA/State Grant. Tables III and IV of Appendix I are estimated budgets for FY 2004 and FY 2005, respectively. Tables II, III, and IV of Appendix I also identify the sources and amounts of funding, including Federal grant money, and explain how the funding may be expended.

Personnel are primarily engineers and hydrologists in the RCRA Permitting & Site Remediation Sections of the LPD. These individuals are presently involved in the ongoing RCRA permitting, corrective action, and permitted facility management activities throughout the state.

With respect to assignment of personnel to perform necessary duties to meet the requirements of implementation of RCRA Cluster XII, many factors will be taken into consideration. These factors include: (1) other Program Plan commitments; (2) other state program commitments; (3) the nature of the work being performed; and (4) the specific skills of the personnel. For example, although most of the personnel involved will be engineers and groundwater specialists, if a project requires specialized knowledge of hazardous waste combustion, the DEQ technical staff utilizes personnel with advanced knowledge in this area. Therefore, RCRA work involving combustion is handled by these individuals and other work assignments and adjusted accordingly.

The DEQ estimates that a full-time technical employee costs \$55,000 - \$60,000 annually, including benefits and all administrative costs. It is anticipated that no additional personnel will need to be hired to implement the provisions of RCRA Cluster XII. The state matching funds are required to be spent within the hazardous waste program. There are no restrictions or limitations which would prohibit these funds from being spent on RCRA requirements.

**C. State Procedures (40 CFR 271.6(c))**

The Environmental Quality Board amended the current rules of procedure in place for the DEQ on June 26, 2001. These rules, OAC 252:004, became effective as permanent rules on June 1, 2002. See Appendix J. Nothing in the current rules in any way restricts the Land Protection Division from fulfilling its responsibilities under the OHWMA, the Memorandum of Agreement (“MOA”) which is included with

this Revision Application, or the Performance Partnership Agreement (“PPA”) entered into by the DEQ and EPA.

Appeal procedures for RCRA hazardous waste permits issued by the DEQ are specified in 40 CFR 124.19 (a) through (c) and (e), which the DEQ adopts by reference.

The Department and EPA have agreed to a joint permitting process (see section V.D. of the MOA) for the joint processing and enforcement of permits for those provisions of HSWA promulgated after June 30, 1996; however, as the Department receives authorization for provisions of the HSWA promulgated after June 30, 1996, EPA will suspend issuance of Federal permits in the State for those provisions.

The division of responsibility between the State and EPA for administration of respective provisions of RCRA is described in detail in the MOA.

While EPA may comment on any permit application or draft permit, EPA’s overview function will focus primarily on those facilities identified in the PPA and on facilities for which the Department requests EPA’s assistance.

**D. Compliance Tracking and Enforcement (40 CFR 271.6(e))**

The goal of the RCRA Compliance Section of the DEQ has not changed since the submittal of the June 25, 2002, draft Addendum to Program Description. The RCRA Compliance Section continues to achieve and maintain a high rate of compliance within the regulated universe by establishing a comprehensive inspection program and taking timely and effective enforcement actions against violations.

The DEQ continues to diligently attempt to adhere to the time frames for enforcement actions

specified in the current EPA Enforcement Response Policy (“ERP”) and the multi-year EPA/DEQ Enforcement Memorandum of Understanding (“MOU”) [generally, 180 days for formal enforcement against Significant Non-Compliers (“SNC”), and 180 days from the first day of discovery of exceedence with the compliance schedule (and extensions granted) established through the informal enforcement action (Notice of Violation “NOV”) resulting in escalation to formal enforcement, if necessary or appropriate, against Secondary Violators (“SV”)]. In those circumstances in which DEQ determines it cannot meet a specified time frame, it makes every effort to notify the EPA, as specified in the ERP and MOU, in advance of the deadline with a specification of the reason(s) for the delay and identifies an alternate time frame.

The PPA specifies the annual goals for inspections to be performed by the DEQ within the various categories of hazardous waste handlers.

The DEQ identifies violations of RCRA hazardous waste requirements by three primary means: inspections, periodic record reviews (e.g. manifests and state disposal plans), and complaints (as verified by subsequent investigation or inspection). The DEQ utilizes numerous inspection forms and checklists to identify violations, including the Land Disposal Restriction checklist, when performing inspections at hazardous waste handler sites. Once a violation is identified, it is recorded by entry into the EPA RCRA Info system. Violations are documented by the issuance of a Notice to Comply (“NTC”) and a Notice of Violation (“NOV”) for most Class I and II violations and by the issuance of an Administrative Compliance and Penalty Order (“ACPO”) and/or Consent Orders for SNC’s. When either an NOV or ACPO is issued, compliance is tracked by the computerized docket system of the Office of General Counsel of the DEQ, until resolution.

The DEQ continues to use EPA's Violation Classification Guidance document, i.e., violations are classified as Class I\* (most serious), Class I (very serious), and Class II (less serious), and violators as SNC's and SV's. A SNC is a handler who, by its violations, has caused actual exposure or a substantial likelihood of exposure to hazardous waste or hazardous constituents, or who is a chronic or recalcitrant violator, or who substantially deviated from the terms of a permit, order or decree. Generally, a SV is a handler who does not meet the criteria for identification as a SNC. More details, along with examples, of the violation classification scheme are contained in the EPA Violation Classification Guidance Document.

As noted above, Administrative Orders with penalties are the means commonly used to address SNC's. NOV's and NTC's are issued to SV's, with an administrative order subsequently issued if necessary within 180 days from the first day of discovery of exceedence with the schedule (and extensions granted) established through the NOV. State statutes also authorize the DEQ to bring actions in state court for injunctions and civil penalties (27A O.S. § 2-7-129) (Appendix C), and refer violations to state district attorneys for criminal prosecution (27A O.S. § 2-7-131) (Appendix C). Fines of up to \$25,000.00 per day per violation are authorized in administrative, civil and criminal actions (27A O.S. § 2-7-103 & 2-7-131) (Appendix C); additionally, the most serious violations (e.g. illegal disposal), if committed knowingly and willfully, are now classified as felonies under state law, with prison terms of up to ten years. The DEQ currently has an Environmental Crimes Investigation Team, chaired by the General Counsel of the DEQ, which includes one or more assigned attorneys, one or more assigned Environmental Program Criminal Investigators, the RCRA Compliance Section Manager, and other DEQ media compliance and enforcement managers as needed. A copy of the Environmental Crimes Act, 21

O.S. § 1230.1 et seq. is attached as Appendix K.

Once any type of order is issued to a facility, it is tracked by the above-mentioned tracking mechanisms until resolution. Verification of compliance is usually accomplished by either requiring the violator to submit appropriate documentation to demonstrate compliance, by a follow-up inspection or a combination of submittal of appropriate documentation and a follow-up inspection.

**E. Estimated Regulated Activities (40 CFR 271.6 (g) and (h))**

Currently, based on Hazardous Waste Notifications, there are approximately 175 large quantity generators, 688 small quantity generators, 1,857 conditionally exempt generators; and 98 transporters.

There are approximately 2 on-site and 2 off-site treatment facilities in Oklahoma. The State has 4 on-site disposal facilities and 2 off-site disposal facilities. Of the total 13 permitted storage facilities, there are approximately 9 on-site facilities and 4 off-site facilities. Treatment facilities that were also storage facilities were only counted in that category. Virtually all of the treatment and disposal facilities also had storage capability.

DEQ data from 1985, which was the year the State program was originally authorized, indicates the universe in the State at that time included approximately 136 large quantity generators; 160 small quantity generators; 350 conditionally exempt generators; 115 transporters; 17 burner/blenders; and 47 treatment, storage and disposal facilities.

Estimates of annual quantities of hazardous wastes managed in Oklahoma, based upon the most recent available compiled Biennial Report (1999) data, are:

- 417,460 tons generated within the State;
- 108,035 tons transported into the State;

- 42,048 tons transported out of the State:
- 310,936 tons managed on-site within the State:
- 106,524 tons managed off-site within the State (including 97,388 tons of imported waste).

**F. Copies of State Forms, Coordination With Other Agencies (40 CFR 271.6(d) & (f))**

There is no impact upon State forms or upon interagency coordination by the changes discussed herein. It should be noted in particular, because of the ramifications for other authorized State programs and the Federal program, that the DEQ continues to require use of the Uniform Hazardous Waste Manifest for the shipment of hazardous waste. The DEQ supplies copies of all international shipment manifests to EPA in accordance with the PPA. Copies of the forms used by the State are attached as Appendix L.

## CLUSTER XII (12)

### Part II: Scope, Structure, Coverage & Processes

To provide a more detailed discussion of the scope of the program revisions being applied for, the following narrative discussion corresponds to the format of the Reviewer's Checklist for the Program Description included in SPA 23 of the EPA State Authorization Manual:

#### **A. Correction to the Hazardous Waste Identification Rule (HWIR): Revisions to the Mixture and Derived-From Rules (Revision Checklist 194)**

**Checklist Title:** Mixture and Derived-From Rules Revision II  
**Reference:** 66 FR 50332-50334  
**Promulgation Date:** October 3, 2001  
**Effective Date:** February 1, 2002 (see 66 FR 61053, December 3, 2001)  
**Cluster:** RCRA Cluster XII  
**Provision Type:** HSWA/Non-HSWA

In accordance with 66 FR 50332-50334; 40 CFR 261.3(a)(2)(iv) [reinstated] and 40 CFR 261.3 (g) [revised] as amended on December 3, 2001 (66 FR 60153); State statutes 27A O.S. §§ 2-7-106, 2-2-104 and OAC 252:205-3-1 through 252:205-3-6 provide authority for State program requirements to be equivalent to the Federal program requirements which provide for clarification on mixtures of certain excluded wastes, commonly referred to as Bevill wastes, are exempt once the characteristic has been removed as indicated in Revision Checklist 192.

**Summary:** This rule finalizes a clarifying revision to the May 16, 2001 (Revision Checklist 192A; 66 FR 27266) mixture rule. Specifically, the rule clarifies that mixtures of certain excluded wastes, commonly referred to as Bevill wastes, and listed hazardous wastes that are listed solely because they contain a characteristic of ignitability, corrosivity, and/or reactivity, are exempt once the characteristic has been removed.

Accordingly, the State requirements are consistent with and equivalent to the Federal requirements, and no significant increase in funding or personnel will be required when the State

receives authorization for these provisions. Of the waste codes affected (K050, K156, K157, K169, K170, F171, and K172) only K050, K157, K170, and K171 are handled at the following petroleum facilities: Conoco, Phillips Petroleum, Tricat and Wynnewood Refining. However, these facilities generate other hazardous wastes and were not excluded from the regulated community due to the error in the 40 CFR. Thus there is no change in the size of the regulated community.

**B. Hazardous Waste Management System; Identification and Listing of Hazardous Waste: Inorganic Chemical Manufacturing Wastes; Land Disposal Restrictions for Newly Identified Wastes; and CERCLA Hazardous Substance Designation and Reportable Quantities (Revision Checklist 195)**

**Checklist Title:** Inorganic Chemical Manufacturing Wastes Identification and Listing  
**Reference:** 66 FR 58258-58300; 67 FR 17119-17120  
**Promulgation Date:** November 20, 2001; April 9, 2002  
**Effective Date:** May 20, 2002  
**Cluster:** RCRA Cluster XII  
**Provision Type:** HSWA/Non-HSWA

In accordance with Federal Authorities RCRA § 2002 (a), 3001 (b), 3001 (e)(2), 3004 (d)-(m) and 3007 (a); 40 CFR Parts 261.4, 261.32, 261 Appendix VII Basis for Listing, 261 Appendix VIII Hazardous Constituents, 268.36, 268.40 as amended November 20, 2001 (66 FR 58258); State statutes 27A O.S. §§ 2-7-106, 2-2-104 and OAC 252:205-3-1 through 252:205-3-6 provide authority for State program requirements to be equivalent to the Federal requirements which adds three inorganic chemical manufacturing wastes (K176, K177 and K178) and subjects the wastes to management and universal treatment standards (UTS) under the LDRs program, as indicated in Revision Checklist # 195.

In accordance with Federal Authorities RCRA § 2002 (a), 3001 (b), 3001 (e)(2), 3004 (d)-(m) and 3007 (a); 40 CFR 268.40 (Table) as amended April 9, 2002 (67 FR 17119); State

statutes 27A O.S. §§ 2-7-106, 2-2-104 and OAC 252:205-3-1 through 252:205-3-6 provide authority for State program requirements to be equivalent to the Federal requirements which provides corrections to the “Treatment Standards for Hazardous Wastes” of these newly listed hazardous wastes, as indicated in Revision Checklist # 195. [Rule Code 195.1 corrections].

Accordingly, the State requirements are consistent with and equivalent to the Federal requirements, and no significant increase in funding or personnel will be required when the State receives authorization for these provisions. As stated above, the narrowing of the mixture rule exemption for Toxicity Characteristic listed wastes had no impact on the scope of the Federal program, likewise for the State program. The State of Oklahoma will not be affected by the new waste codes of K176, K177 nor K 178; the addition of K176, K177 and K178 to 261 Appendix VII; plus the addition of Manganese to 261 Appendix VIII, as no facilities in the State of Oklahoma generate these inorganic chemical manufacturing wastes. Therefore, there will be no change in the size of the community.

### **C. Amendments to the Corrective Action Management Unit Rule (Revision Checklist 196)**

<b>Checklist Title:</b>	CAMU Amendments
<b>Reference:</b>	67 <u>FR</u> 2962-3029
<b>Promulgation Date:</b>	January 22, 2002
<b>Effective Date:</b>	April 22, 2002
<b>Cluster:</b>	RCRA Cluster XII
<b>Provision Type:</b>	HSWA

In accordance with Federal Authorities RCRA § 1006, 2002(a), 3004, 3005 ( c), 3007, 3008 (h), and 7004; 40 CFR 261.10, 264.550, 264.551, 264.552, 264.554, 264.555 as amended January 22, 2002 (67 FR 2962); State statutes 27A O.S. §§ 2-7-106, 2-2-104 and OAC 252:205-3-1 through 252:205-3-6 provide authority for State programs to be equivalent to the Federal

program requirements which has created the definition of “CAMU eligible waste” and has modified the associated applicable operating, storage and treatment standards, as indicated in Revision Checklist 196.

**Summary:** EPA is amending the 1993 Corrective Action Management Unit (CAMU) rule to facilitate treatment, storage and disposal of hazardous wastes managed for implementing cleanup, and to remove cleanup disincentives that RCRA can create. The 1993 CAMU rule is being revised as follows:

- (1) To govern the types of wastes eligible for placement in CAMUs, a definition for “CAMU-eligible waste” is created, which is distinct from the 40 CFR 260.10 definition of “remediation waste” [40 CFR 264.552 revised];
- (2) More detailed minimum design and operating standards for CAMUs in which waste remains after closure, with opportunities for Regional Administrator-approved alternate designs;
- (3) Treatment requirements for wastes placed in CAMUs, including minimum treatment standards, with opportunities for adjustment;
- (4) More specific CAMU application information requirements including public notice and opportunity for comment, before final CAMU determination;
- (5) Requirements for CAMUs used only for treatment and storage; and
- (6) “Grandfathering” of certain types of existing CAMUs and allowing them to operate under the 1993 rule [40 CFR 264.551 new].

With this rule, EPA has also:

- ◆ Amended the regulations for staging piles to allow for mixing, blending and other similar physical operations that prepare wastes for subsequent management or treatment [40 CFR 264.554 revised];
- ◆ Added a new provision that allows off-site placement of hazardous CAMU-eligible waste in hazardous waste landfills, if treated to meet CAMU treatment standards [40 CFR 264.555 new];
- ◆ Granted interim authorization for the new CAMU amendments, to states currently authorized for the 1993 CAMU rule; and
- ◆ Expedited state authorization for the CAMU rule, for states that have authorization for RCRA corrective action but not the 1993 CAMU rule.

Accordingly, the State requirements are consistent with and equivalent to the Federal requirements, and no significant increase in funding or personnel will be required when the State receives authorization for these provisions.

**D. NESHAP: Interim Standards for Hazardous Air Pollutants for Hazardous Waste Combustors (Interim Standards Rule) (Revision Checklist 197)**

<b>Checklist Title:</b>	Hazardous Air Pollutant Standards for Combustors: Interim Standards
<b>Reference:</b>	67 <u>FR</u> 6792-6818
<b>Promulgation Date:</b>	February 13, 2002
<b>Effective Date:</b>	February 13, 2002
<b>Cluster:</b>	RCRA Cluster XII
<b>Provision Type:</b>	HSWA/Non-HSWA

In accordance with Federal Authorities RCRA § 3006; 40 CFR 264.340, 265.340, 266.100, 270.19, 270.22, 270.62, 270.66, 270.235 as amended February 13, 2002 (67 FR 6795); State statutes 27A O.S. §§ 2-7-106, 2-2-104 and OAC 252:205-3-1 through 252:205-3-6 provide authority for State program requirements to be equivalent to the Federal program requirements

which replaces the vacated emission standards temporarily until final standards are promulgated by June 14, 2005, as indicated in Revision Checklist 197.

**Summary:** On September 30, 1999, as amended November 19, 1999 (Revision Checklist 182; 64 FR 52828 & 64 FR 63209), the Agency promulgated the NESHAPS rule to control emissions of hazardous air pollutants from incinerators, cement kilns and lightweight aggregate kilns that burn hazardous wastes. Portions of the rule were challenged and subsequently vacated by the U.S. Court of Appeals for the District of Columbia Circuit on July 24, 2001. On October 19, 2001, EPA and all petitioners jointly moved the Court to stay the issuance of its mandate for four months to allow EPA time to develop interim standards. The motion also included plans for EPA to issue final standards by June 14, 2005, and to promulgate by February 14, 2002, a rule with amended interim emission standards and compliance and implementation amendments. The Court granted EPA's request and stayed issuance of its mandate until February 14, 2002.

In general, this rule (Revision Checklist 197) amends the September 1999 NESHAPS rule to accommodate the parties' joint motion. This rule replaces the vacated emission standards temporarily until final standards are promulgated (by June 14, 2005). EPA believes this Interim Standards Rule best fulfills the statutory requirement to have national emission standards in place by a specified time, while avoiding unnecessary disruption and burden to regulated industry, and affected state and federal administrative agencies.

Accordingly, the State requirements are consistent with and equivalent to the Federal requirements, and no significant increase in funding or personnel will be required when the State receives authorization for these provisions.

**E. NESHAP: Standards for Hazardous Air Pollutants for Hazardous Waste Combustors;  
Final Rule (Revision Checklist 198)**

**Checklist Title:** Hazardous Air Pollutant Standards for Combustors: Corrections  
**Reference:** 67 FR 6968-6996  
**Promulgation Date:** February 14, 2002  
**Effective Date:** February 14, 2002  
**Cluster:** RCRA Cluster XII  
**Provision Type:** HSWA/Non-HSWA

In accordance with Federal Authorities RCRA § 1006, 2002(a), 3004; 40 CFR 266.100, 270.42 as amended February 14, 2002 (67 FR 6968); State statutes 27A O.S. §§ 2-7-106, 2-2-104 and OAC 252:205-3-1 through 252:205-3-6 provide authority for State program requirements to be equivalent to the Federal program requirements which apply to hazardous waste burned or processed in a boiler or industrial furnace and revise the September 1999 final rule to allow sources that inject hazardous waste only in the flame zone to use any previous destruction and removal efficiency (DRE) test results to document compliance with the DRE standard, as indicated in Revision Checklist 198.

**Summary:** This rule is promulgated to correct several technical errors which were made on September 30, 1999 (NESHAPs rule) when EPA established standards for hazardous waste-burning cement kilns, lightweight aggregate kilns, and incinerators (Revision Checklist 182; 64 FR 52828, as amended 64 FR 63209).

Additionally, this rule finalizes specific changes to the September 30, 1999 NESHAPs rule by focusing on improvements in emission standards implementation in part 63, subpart EEE. These changes are outside of the RCRA program and are not addressed by this checklist.

Accordingly, the State requirements are consistent with and equivalent to the Federal requirements, and no significant increase in funding or personnel will be required when the State receives authorization for these provisions.

**F. Hazardous Waste Management System; Definition of Solid Waste; Toxicity  
Characteristic (Revision Checklist 199)**

**Checklist Title:** Vacatur of Mineral Processing Spent Materials Being Reclaimed as Solid Wastes and TCLP Use with MGP Waste  
**Reference:** 67 FR 11251-11254  
**Promulgation Date:** March 13, 2002  
**Effective Date:** March 13, 2002  
**Cluster:** RCRA Cluster XII  
**Provision Type:** Non-HSWA

In accordance with Federal Authorities RCRA §3010(b); 40 CFR 261.2, 261.4, 264.24 as amended March 13, 2002 (67 FR 11251); State statutes 27A O.S. §§ 2-7-106, 2-2-104 and OAC 252:205-3-1 through 252:205-3-6 provide authority for State program requirements to be equivalent to the Federal requirements which revise the definition of a solid waste to exclude certain reclaimed secondary materials, to modify the exclusion from “secondary” material to “spent” material, and revise the toxicity characteristic definition to exclude manufactured gas plant waste (MGP), as indicated in Revision Checklist 199.

**Summary:** This rule was promulgated in response to vacatures ordered by the United States Court of Appeals for the District of Columbia Circuit in *Association of Battery Recyclers, v. EPA* 208 F.3d 1047 (2000). The court vacated two parts of the May 26, 1998, Phase IV LDR rule (63 FR 28556; Revision Checklist 167) in response to a legal challenge from the Association of Battery Recyclers, the National Mining Association and other trade groups. The first vacated part of the rule required deletion of regulatory language classifying mineral processing characteristic by-products and sludges being reclaimed as solid wastes. The second vacated part disallows the Toxicity Characteristic Leaching Procedure (TCLP) to be used for determining whether manufactured gas plant (MGP) waste is hazardous.

Accordingly, the State requirements are consistent with and equivalent to the Federal requirements, and no significant increase in funding or personnel will be required when the State receives authorization for these provisions.

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