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

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Part I: Organization and Management of the State Program [40 CFR 271.5 and 271.6]

A. Introduction

With this revision authorization application, the State of Oklahoma, through the DEQ, is seeking authorization to implement Cluster XVIII of RCRA. The State hazardous waste management program ("State Program") now has in place the statutory authority and regulations for all required components through Cluster XVIII. These statutory and regulatory provisions were developed to ensure the State Program is equivalent to, consistent with, and no less stringent than the Federal hazardous waste management program ("RCRA Subtitle C"). Appendices A and B contain the RCRA Statutory Checklist and RCRA Revision Checklists for Clusters XVIII, respectively.

The DEQ received final authorization for the base RCRA program in January 1985. Since then, DEQ has received final authorization for non-HSWA Clusters I through VI, HSWA Clusters I and II, and RCRA Clusters I through XVII. No major changes have taken place in the State Program since the Addendum to the Program Description for Clusters XVI and XVII was submitted to the EPA.

In accordance with 40 CFR 271.6(a), Part II of this Addendum describes the scope of Cluster XVIII as it is implemented in Oklahoma.

B. State Agency Authorities, Regulations, and Organization [§ 271.5(a)(5) and 271.6(b)]

1. Authorities

Oklahoma statutes provide authority for a single agency, the DEQ, to administer the provisions of the State Program. Furthermore, these statutes ensure there is ample opportunity for members of the public to be involved in rulemaking and permitting activities. The following Oklahoma statutes fully implement the State Program:

- Appendix C: Oklahoma Environmental Quality Act (27A O.S. § 1-1-101, *et seq.*, as amended through July 1, 2009);
- Appendix D: Portions of the Oklahoma Environmental Quality Code affecting the State Program (27A O.S. §§ 2-1-101 through 2-3-507, as amended through July 1, 2009);
- Appendix E: Oklahoma Hazardous Waste Management Act (27A O.S. § 2-7-101, *et seq.*, as amended through July 1, 2009);
- Appendix F: Oklahoma Uniform Environmental Permitting Act (27A O.S. § 2-14-101, *et seq.*, as amended through July 1, 2009);
- Appendix G: Administrative Procedures Act (75 O.S. § 250, *et seq.*, as amended through July 1, 2009);
- Appendix H: Oklahoma Open Meeting Act (25 O.S. § 301, *et seq.*, as amended through July 1, 2009);
- Appendix I: Environmental Crimes Act (21 O.S. § 1230.1, *et seq.*, as amended through July 1, 2009); and
- Appendix J: Oklahoma Open Records Act (51 O.S. § 24A.1, *et seq.*, as amended through July 1, 2009).

The OHWMA provides the DEQ with the authority to administer the State Program, including the statutory and regulatory provisions necessary to administer the provisions of Cluster XVIII and designates the DEQ as the State agency to cooperate and share information with the EPA for purpose of hazardous waste regulation.

The OEQC, at 27A O.S. §2-2-101, establishes an EQB to be the rulemaking body for the DEQ, specifically charged with the responsibility of promulgating rules to implement the duties and responsibilities of the DEQ. The EQB consists of 13 members appointed by the Governor with the advice and consent of the Senate. 27A O.S. §2-2-201 establishes a HWMAC with the authority to recommend rules to the EQB on behalf of the DEQ.

EQB and HWMAC meetings are public forums conducted in accordance with the Oklahoma Open Meeting Act.

Permanent rules to implement the State Program are promulgated by the EQB with the advice of the HWMAC; however, emergency rules may be promulgated by the EQB without HWMAC input.

The HWMAC may not recommend rules to the EQB unless all applicable requirements of the Oklahoma Administrative Procedures Act have been followed, including but not limited to public notice, rule impact statement, and rulemaking hearings.

The OEQA at 27A O.S. § 1-3-101(E) grants the OCC authority to regulate certain aspects of the oil and gas production and transportation industry in Oklahoma, including certain wastes generated by pipelines, bulk fuel sales terminals and certain tank farms, as well as underground storage tanks. To clarify areas of environmental jurisdiction, the DEQ and the OCC developed a *DEQ/OCC Jurisdictional Guidance Document* to identify respective areas of jurisdiction. Appendix K contains the current *DEQ/OCC Jurisdictional Guidance Document* as amended through January 27, 1999.

The revisions to the State Program necessary to administer Cluster XVIII will not affect the jurisdictional authorities of the DEQ or OCC.

2. Regulations

Appendix L contains the Hazardous Waste Management regulations found at Title 252, Chapter 205 of the Oklahoma Administrative Code ("OAC 252:205"), effective July 1, 2009. The Federal RCRA Subtitle C program found in Title 40 of the Code of Federal Regulations ("40 CFR") is implemented in Oklahoma through OAC 252:205. In accordance with the *Guidelines for State Adoption of Federal Regulations by Reference*, OAC 252:205-3-1 through 252:205-3-6 set forth in Appendix L, incorporate by reference the following provisions of 40 CFR as amended through July 1, 2009:

- the provisions of Part 124 of 40 CFR ("40 CFR 124") that are required by 40 CFR 271.14 [with the addition of 40 CFR 124.19 (a) through (c), 124.19(e), 124.31, 124.32, 124.33, and Subpart G];
- 40 CFR Parts 260-268 [with the exception of 260.21, 261.4(b)(18), 262 Subparts E and H, 264.1(f), 264.1(g)(12), 264.149, 264.150, 264.301(i), 264.1030(d), 264.1050(g), 264.1080(e), 264.1080(f), 264.1080(g), 265.1(c)(4), 265.1(g)(12), 265.149, 265.150, 265.1030(c), 265.1050(f), 265.1080(e), 265.1080(f), 265.1080(g), 268.5, 268.6, 268.13, 268.42(b), and 268.44(a) through (g)];
- 40 CFR Part 270 [with the exception of 270.1(c)(2)(ix) and 270.14(b)(18)];
- 40 CFR Part 273; and
- 40 CFR Part 279.

Pursuant to 27A O.S. § 2-2-104, the DEQ's incorporation of Federal regulations does not operate to incorporate prospective future changes to the incorporated sections of 40 CFR.

No other Oklahoma laws or regulations reduce the scope of coverage or otherwise affect the requirements of these incorporated-by-reference provisions. Language was added at OAC 252:205-3-2(c)(3) which clarified the new federal definition of F019 waste but did not change it in any way. Thus, OAC 252:205-3-1 through 252:205-3-6 and Subchapter 25 of OAC 252:205 ensure the State Program is equivalent to, and no less stringent than, the Federal RCRA Subtitle C program in effect through July 1, 2009.

3. Organization

Appendix M contains the organizational chart for the LPD as of March 26, 2009.

Appendix O shows staffing requirements for the State Program based on the EPA/State Grant and itemized personnel costs for SFY 2008, which runs from July 1, 2007 through June 30, 2008.

Appendix P is the State Program budget for SFY 2008, showing funding amounts based on the personnel requirements set out in the EPA/State Grant, as well as projected budgets for SFY 2009 and 2010.

In accordance with the OEQC at 27A O.S. § 2-3-201, the executive officer of the DEQ is the Executive Director who is appointed by the EQB. The Executive Director is granted those powers and duties necessary to fully implement a State Program that is equivalent to the Federal RCRA Subtitle C program. Those responsibilities have not changed significantly since the previous Addendum to the Program Description for Clusters XVI and XVII.

The Executive Director has the authority to establish those divisions and such other programs and offices as are necessary to implement and administer the programs and functions within the

jurisdiction of the DEQ. Accordingly, pursuant to 27A O.S. § 2-7-104, the Executive Director has created the LPD to be responsible for implementing the State Program. The LPD is staffed with personnel that have the technical background and expertise to effectively implement the provisions of Cluster XVIII.

Many of the personnel currently employed in the State Program have several years of experience with RCRA Subtitle C. 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 within the State Program has been in use for several years.

LPD personnel who implement the State Program include Environmental Program Specialists of the HWCS and engineers and hydrologists in the HWPS. Personnel of the HWCS are responsible for inspection of RCRA facilities and development of enforcement actions, while personnel of the HWPS are involved in RCRA permitting, corrective action, and TSDF management activities throughout the state. The HWCS and HWPS are directly managed by an Environmental Programs Manager and Engineering Manager, respectively, both of whom have many years of experience in the RCRA universe. During SFY 2007, LPD realigned its organizational structure to bring both its hazardous waste and radiation management programs under one manager.

With respect to assignment of personnel necessary to implement Cluster XVIII, many factors will be taken into consideration, such as: (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. No additional personnel will be required to implement the provisions of Cluster XVIII. The state matching funds are required to be spent within the hazardous waste program. There are no restrictions or limitations that would prohibit these funds from being spent on RCRA requirements.

C. State Procedures [§ 271.6(c)]

The Oklahoma Uniform Environmental Permitting Act is designed to provide uniform procedures for permits and other authorizations issued by the DEQ. Appendix N contains the DEQ's Rules of Practice and Procedure (OAC 252:4) that specify the practices and procedures of the EQB, the HWMAC, and the DEQ, and includes those rules necessary to implement the Oklahoma Environmental Permitting Act.

The most recent amendments to OAC 252:4 became effective July 1, 2009. Nothing in OAC 252:4 in any way restricts the LPD from fulfilling its responsibilities under the OHWMA, the MOA, or the 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 incorporates by reference.

The DEQ 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 DEQ receives authorization for provisions of 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 DEQ requests EPA's assistance.

D. Forms Used to Implement the State Program [§ 271.6(d)]

The primary forms utilized by the LPD to implement the State Program include the following:

- RCRA Site Identification Form (EPA Form 8700-12);

- RCRA Hazardous Waste Part A Permit Application and Site Identification (EPA Form 8700-23);
- Hazardous Waste Permit Application Review Checklist, revised February 2001; and
- Hazardous Waste Inspection Forms dated March 2002 and July 2006.

These, as well as additional forms used by the LPD to implement the State Program may be found on DEQ's webpage at <http://www.deq.state.ok.us/lpdnew/forms/indexhazforms.html>. DEQ requires the use of the Uniform Hazardous Waste Manifest (EPA Form 8700-22, 8700-22A) in accordance with 40 CFR 262.21.

E. Compliance Tracking and Enforcement [§ 271.6(e)]

1. Compliance Tracking

The HWCS continues to achieve and maintain a high rate of compliance within the regulated universe by adhering to a comprehensive inspection program and taking timely and effective enforcement actions against violators.

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, RCRA permits, and state disposal plans), and complaints (as verified by subsequent investigation or inspection). The DEQ utilizes numerous inspection forms and checklists to identify violations found during inspections of hazardous waste facilities.

2. Enforcement

The DEQ works diligently to adhere to the time frames for enforcement actions specified in the ERP and the multi-year EPA/DEQ Enforcement MOU. In those circumstances in which DEQ determines it cannot meet a specified time frame, it makes every effort to notify the EPA of the reason for the delay in advance of the deadline, as specified in the ERP and MOU, and identifies an alternate time frame.

HWCS staff use EPA's December 1987 Violation Classification Guidance document to assist with determining the seriousness of violations found, as well as the ERP to designate violators as SNCs or SVs. Penalties are calculated based on DEQ's Hazardous Waste Penalty Guidance dated October 2005.

Each inspection, whether or not a violation is identified, is recorded by entry into EPA's RCRAInfo system. Violations are documented by the issuance of an NTC for SVs, and an NOV followed by an ACO or CO for SNCs. When an NTC, NOV, ACO, or CO is issued, compliance is tracked to resolution via RCRAInfo and a computerized docket system of the DEQ's Office of General Counsel. Compliance is verified by requiring the violator to submit appropriate documentation to demonstrate compliance, by a follow-up inspection, or a combination of these.

Both the OEQC at 27A O.S. § 2-3-504 and the OHWMA at 27A O.S. § 2-7-129 authorize the DEQ to bring actions in district court for injunctive relief and civil penalties. Fines of up to \$25,000.00 per day per violation are authorized in administrative, civil and criminal actions (27A O.S. §§ 2-7-126 and 2-7-130).

The DEQ is also authorized to refer violations to state district attorneys for civil or criminal proceeding (27A O.S. § 2-7-131). The most serious violations, if committed knowingly and willfully,

may be prosecuted as felonies under Oklahoma's Environmental Crimes Act (21 O.S. § 1230.1 *et seq.*), which provides for prison terms of up to ten years and fines up to \$100,000.00. To investigate potential criminal activities, the DEQ has an ECIT, chaired by the General Counsel of the DEQ. The ECIT includes one or more assigned attorneys, one or more assigned Environmental Program Specialists, the HWCS Manager, and compliance and enforcement managers from other DEQ Divisions.

F. State Manifest Tracking System [§ 271.6(f)]

As noted in Part I.D. of this Addendum, DEQ requires the use of the Uniform Hazardous Waste Manifest. In accordance with the PPA, copies of all manifests for international shipments are provided to EPA.

G. Estimated Regulated Activities [§§ 271.6 (g) and (h)]

Based on the information in RCRAInfo as of June 2, 2009, Oklahoma's hazardous waste generator and transporter universe is comprised of the following:

- 135 large quantity generators,
- 568 small quantity generators;
- 2016 conditionally exempt generators; and
- 111 transporters.

Appendix Q contains a listing from RCRAInfo of Oklahoma's full-enforcement TSDF universe as of June 3, 2009.

Based on the 2007 Biennial Report data at

<http://www.epa.gov/epawaste/inforesources/data/biennialreport/index.htm>, the most recently compiled data; the following quantities of hazardous waste were managed in Oklahoma:

- 134,426 tons of hazardous waste were generated;
- 160,866 tons of hazardous waste were managed;
- 42,266 tons of hazardous waste were shipped to off-site TSDFs;
- 69,232 tons were received by Oklahoma TSDFs;
- 29,756 tons of hazardous waste were shipped to an out-of-state TSDF; and
- 59,492 tons of hazardous waste were received by Oklahoma TSDFs from out-of-state.

ATTACHMENT A

*This column may be used to describe what State-initiated changes the State has made to its previously authorized program. The State should indicate the impact of the change on its authorized program; i.e, the State should explain whether the changes were made for **clarity**; the State remains/or is now **equivalent** or **more stringent**; or the State's provision is **broader in scope**.

Remarks of the Independent Counsel: No State-initiated changes were made that would negatively impact the stringency or scope of its previously authorized program.