



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[EPA-R06-RCRA-2017-0324; FRL-9984-40-Region 6]

Oklahoma: Proposed Authorization of State Hazardous Waste Management Program Revision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The State of Oklahoma Department of Environmental Quality (ODEQ) has applied to the Environmental Protection Agency (EPA) for final authorization of the changes to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). The EPA has reviewed Oklahoma's application, and has determined that these changes satisfy all requirements needed to qualify for final authorization, and is proposing to authorize the State's changes. The EPA is seeking public comment prior to taking final action.

DATES: Comments on this proposed rule must be received by **[INSERT DATE 30 DAYS AFTER THE DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: Submit your comments by one of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the on-line instructions for submitting comments.
- E-mail: patterson.alima@epa.gov.
- Fax: (214) 665-2182 (prior to faxing, please notify Alima Patterson at (214) 665-8533).

- Mail: Alima Patterson, Regional Authorization/Codification Coordinator, RCRA Permit Section (6MM-RP), Multimedia Division, EPA Region 6, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202-2733.

- Hand Delivery or Courier: Deliver your comments to Alima Patterson, Regional Authorization/Codification Coordinator, RCRA Permit Section (6MM-RP), Multimedia Division, EPA Region 6, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202-2733.

Instructions: EPA must receive your comments by **[INSERT DATE 30 DAYS FROM THE DATE OF PUBLICATION OF THE FEDERAL REGISTER]**. Direct your comments to Docket ID Number **EPA-R06-RCRA-2017-0324**. The EPA's policy is that all comments received will be included in the public docket without change and may be made available online at <http://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through <http://www.regulations.gov>, or e-mail. The Federal <http://www.regulations.gov> Web site is an "anonymous access" system, which means the EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to the EPA without going through [regulations.gov](http://www.regulations.gov), your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, the EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If the EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, the EPA may not be able to consider your comment. Electronic files should avoid

the use of special characters, any form of encryption, and be free of any defects or viruses. (For additional information about the EPA's public docket, visit the EPA Docket Center homepage at <http://www.regulations.gov>).

Docket: All documents in the docket are listed in the <http://www.regulations.gov> index.

Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in <http://www.regulations.gov>, or in hard copy.

You can view and copy Oklahoma's application and associated publicly available materials from 8:30 a.m. to 4 p.m., Monday through Friday, at the following locations:

Oklahoma Department of Environmental Quality, 707 North Robinson, Oklahoma City, Oklahoma 73101-1677, (405) 702-7180 and EPA, Region 6, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202-2733, phone number (214) 665-8533. Interested persons wanting to examine these documents should make an appointment with the office at least two weeks in advance.

FOR FURTHER INFORMATION CONTACT: Alima Patterson , Region 6, Regional Authorization/Codification Coordinator, Permit Section (6MM-RP), Multimedia Division, (214) 665-8533, EPA Region 6, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202-2733, and Email address patterson.alima@epa.gov.

SUPPLEMENTARY INFORMATION:

A. Why are revisions to State programs necessary?

States which have received final authorization from the EPA under RCRA section 3006(b), 42 U.S.C. 6926(b), must maintain a hazardous waste program that is equivalent to,

consistent with, and no less stringent than the Federal program. As the Federal program changes, States must change their programs and ask the EPA to authorize the changes. Changes to State programs may be necessary when Federal or State statutory or regulatory authority is modified or when certain other changes occur. Most commonly, States must change their programs because of changes to the EPA's regulations in 40 Code of Federal Regulations (CFR) parts 124, 260 through 266, 268, 270, 273, and 279.

B. What decisions has the EPA made in this rule?

On March 31, 2017, the ODEQ submitted a final program revision application, excluding the Definition of Solid Waste (DSW), rule seeking authorization of changes to its hazardous waste program that correspond to Federal rules promulgated between July 2014 and June 2015 (RCRA Cluster XXIV). The EPA has reviewed Oklahoma's application to revise its authorized program and has made a tentative decision that it meets all of the statutory and regulatory requirements established by RCRA. Therefore, we propose to grant ODEQ final authorization to operate its hazardous waste program with the changes described in the authorization application. ODEQ will continue to have responsibility 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 Hazardous and Solid Waste Amendments of 1984 (HSWA). New Federal requirements and prohibitions imposed by Federal regulations that the EPA promulgates under the authority of HSWA take effect in authorized States before they are authorized for the requirements. Thus, the EPA will implement those requirements and prohibitions in Oklahoma, including issuing permits, until the State is granted authorization to do so.

C. What is the effect of this proposed authorization decision?

If Oklahoma is authorized for these changes, a facility in Oklahoma subject to RCRA will now have to comply with the authorized State requirements instead of the equivalent Federal requirements in order to comply with RCRA. Additionally, such facilities will have to comply with any applicable Federal requirements such as, for example, HSWA regulations issued by the EPA for which the State has not received authorization. ODEQ continues to have enforcement responsibilities under its State hazardous waste program for violations of such program, but the EPA retains its authority under RCRA sections 3007, 3008, 3013, and 7003, which include, among others, authority to:

- conduct inspections, and require monitoring, tests, analyses, or reports;
- enforce RCRA requirements and suspend or revoke permits, and
- take enforcement actions after notice to and consultation with the State.

The action to approve these provisions would not impose additional requirements on the regulated community because the regulations for which ODEQ is requesting authorization are already effective under State law, and are not changed by the act of authorization.

D. What happens if the EPA receives comments on this action?

If the EPA receives comments on this proposed action, we will address those comments in our final action. You may not have another opportunity to comment. If you want to comment on this proposed authorization, you must do so at this time.

E. For what has Oklahoma previously been authorized?

ODEQ initially received final authorization on January 10, 1985 (49 FR 50362-50363), published December 27, 1984, to implement its base hazardous waste management program. We authorized the following revisions: ODEQ received authorization for revisions to its program with publication dates: April 17, 1990 (55 FR 14280- 14282), effective June 18, 1990;

September 26, 1990 (55 FR 39274), effective November 27, 1990; April 2, 1991 (56 FR 13411-13413), effective June 3, 1991; September 20, 1991 (56 FR 47675-47677), effective November 19, 1991; September 29, 1993 (58 FR 50854-50856), effective November 29, 1993; October 12, 1993 (58 FR 52679-52682), effective December 13, 1993; October 7, 1994 (59 FR 51116-51122), effective December 21, 1994; January 11, 1995 (60 FR 2699-2702), effective April 27, 1995; October 9, 1996 (61 FR 52884 - 52886), effective December 23, 1996; Technical Correction March 14, 1997 (62 FR 12100 - 12101), effective March 14, 1997; September 22, 1998 (63 FR 50528 - 50531), effective November 23, 1998; March 29, 2000 (65 FR 16528-16532), effective May 30, 2000; May 10, 2000 (65 FR 29981-29985), effective June 10, 2000; January 2, 2001 (66 FR 28 - 33), effective March 5, 2001; April 9, 2003 (68 FR 17308 - 17311), effective June 9, 2003; February 4, 2009 (74 FR 5994- 6001), effective April 6, 2009; April 6, 2011 (76 FR 18927 – 18930), effective June 6, 2011; March 15, 2012 (77 FR 15273 - 15276), effective May 14, 2012; May 29, 2013 (78 FR 32161 - 32165), effective July 29, 2013; and August 29, 2014 (79 FR 51497 - 51500), effective October 28, 2014. The authorized Oklahoma RCRA program was incorporated by reference into the CFR published on October 12, 1993 (58 FR 52679 - 52682), effective December 13, 1993; April 30, 1998 (63 FR 23673 - 23678), effective July 14, 1998; August 26, 1999 (64 FR 46567 - 46571), effective October 25, 1999; August 27, 2003 (68 FR 51488 - 51492), effective October 27, 2003; June 28, 2010 (75 FR 36546 - 36550), effective August 27, 2010; May 17, 2012 (77 FR 29231- 29235), effective July 16, 2012; August 7, 2012, (77 FR 46964 - 46968), effective October 9, 2012; and July 1, 2014 (79 FR 37226 – 37230), effective September 2, 2014 and July 13, (82 FR 32249 – 32252) effective September 11, 2017. On March 31, 2017, ODEQ submitted a final program revision application seeking authorization of its program revision in accordance with 40 CFR 271.21.

The Oklahoma Hazardous Waste Management Act (OHWMA) provides the ODEQ with the authority to administer the State Program, including the statutory and regulatory provisions necessary to administer portions of the provisions of RCRA Cluster XXIV, and designates the ODEQ as the State agency to cooperate and share information with EPA for purpose of hazardous waste regulation. The Oklahoma Environmental Quality Code (“Code”), at 27A O.S. Section 2-7-101 et seq establishes the statutory authority to administer the hazardous waste management program under RCRA Subtitle C. The State regulations to manage the hazardous waste management program is at Oklahoma Administrative Code (OAC) Title 252:205-3-2. .

The Oklahoma Legislature in April 2015 amended the OHWMA by passing 27A O.S. § 2-7-116(H), which clarified that the temporary staging of hazardous waste in a permitted hazardous waste unit while the waste was undergoing analysis to determine that the waste is acceptable for disposal does not constitute disposal of the waste. This provision, effecting what constitutes disposal in Oklahoma, has not been submitted for EPA review and we are taking no action on it in this rulemaking.

The ODEQ adopted applicable federal hazardous waste regulations as amended July 1, 2014 through June 30, 2015. The regulatory amendment implementing this adoption by reference has an effective date of September 15, 2016. The provisions for which the State of Oklahoma is seeking authorization, as documented in the *Regulatory Documentation For Federal Provisions For Which The State Of Oklahoma Is Seeking Authorization, Federal Final Rules Published Between July 1, 2014 Through June 30, 2015 RCRA CLUSTER XXIV*, excluding the DSW rule; prepared on February 21, 2017.

The ODEQ incorporates the Federal Regulations by reference, and there have been no changes in State or Federal laws or regulations that have diminished the ODEQ’s ability to adopt

the Federal regulations by reference. The Federal hazardous waste regulations are adopted by reference by the ODEQ at OAC 252:205-3-2, Subchapter 3. The ODEQ does not adopt Federal regulations prospectively.

The State hazardous waste management program (“State Program”) has in place, the statutory authority and regulations for all required components of federal regulations adopted in Checklists 234 and 235 in RCRA Cluster XXIV. 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.

The Environmental Quality Act, at 27A O.S. Section 1-3-101(E), grants the Oklahoma Corporation Commission (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 ODEQ and OCC developed an ODEQ/OCC Jurisdictional Guidance Document to identify respective areas of jurisdiction. The current ODEQ/OCC Jurisdictional Guidance Document was amended and signed on January 27, 1999. The revisions to the State Program necessary to administer portions of RCRA Cluster XXIV will not affect the jurisdictional authorities of the ODEQ or OCC.

The ODEQ has adopted portions of RCRA Cluster XXIV applicable federal hazardous waste regulations as amended July 1, 2014 through June 30, 2015, and became effective on September 15, 2016. The rules were also codified at OAC 252 Chapter 205.

Pursuant to OAC 252:205-3-2, the State’s incorporation of Federal regulations does not incorporate, prospectively, future changes to the incorporated sections of the 40 CFR, and no other Oklahoma law or regulation reduces the scope of coverage or otherwise affects the

authority provided by these incorporated-by-reference provisions. Further, Oklahoma interprets these incorporated provisions to provide identical authority to the Federal provisions. Thus, OAC Title 252, Chapter 205 provides equivalent and no less stringent authority than the Federal Subtitle C program in effect July 1, 2015. The State of Oklahoma incorporates by reference the provisions of 40 CFR Part 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 through 268 [with the exception of 260.21, 262 Subparts E and H, 264.1(f), 264.1(g)(12), 264.149, 264.150, 264.301(1), 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.

The ODEQ is the lead Department to cooperate and share information with the EPA for purpose of hazardous waste regulation.

Pursuant to 27A O.S. Section 2-7-104, the Executive Director has created the Land Protection Division (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 the State Program Subtitle C hazardous waste management program.

F. What changes are we proposing to authorize with this action?

On March 31, 2017, the ODEQ submitted a final complete program application seeking authorization of their changes in accordance with 40 CFR 271.21. We have determined that the ODEQ's hazardous waste program revision satisfies all of the requirements necessary to qualify for final authorization. We are now proposing to authorize, subject to receipt of written

comments that oppose this action, Oklahoma’s hazardous waste program revision. The ODEQ revisions consist of regulations which specifically govern Federal hazardous waste revisions promulgated between July 1, 2014 through June 30, 2015 (RCRA Cluster XXIV), excluding the Definition of Solid Waste rule. We propose to grant Oklahoma final authorization for the ODEQ requirements included in the Table within this document. Requirement 2 in the Table below concerns changes based on Coal Combustion Residuals Rulemaking (CCR) . In that rulemaking, the Agency amended 40 CFR 261.4(b)(4) under RCRA Subtitle C to clarify that “*wastes produced in conjunction with the combustion of fossil fuels, which are necessarily associated with the production of energy, and which traditionally have been, and which actually are, mixed with and co-disposed or co-treated with fly ash, bottom ash, boiler slag, or flue gas emission control wastes from coal combustion are not hazardous wastes.*” The Requirement 2 in the Table below only addresses this change to Subtitle C. CCR also amended 40 CFR Part 257 to regulate the disposal of (CCR) as solid waste under Subtitle D. This is not part of this Proposal. In a separate action, EPA has proposed approval of a CCR permitting program for Oklahoma. See, 83 FR 2100, January 16, 2018.

Description of federal requirement (include checklist #, if relevant)	Federal Register date and page and/or RCRA statutory authority	Analogous state authority
1. Vacatur of the Comparable Fuels Rule and the Gasification Rule. (Checklist 234).	80 FR 18777 - 18780 April 8, 2015, effective April 8, 2015.	Oklahoma Statutes Title 27A Section 2-7-101 et seq., Oklahoma Hazardous Waste Management Act, as amended September 15, 2015, Oklahoma Administrative Code, Title 252, Chapter 205, Section 252:205-3-2, effective September 15, 2016

Description of federal requirement (include checklist #, if relevant)	Federal Register date and page and/or RCRA statutory authority	Analogous state authority
2. Disposal of Coal Combustion Residuals from Electric Utilities. (Checklist 235).	80 FR 21302 - 21501 April 17, 2015; effective October 19, 2015 [40 CFR 261.4(b)(4)(i) – (ii)(H) only].	Oklahoma Statutes Title 27A Section 2-7-101 et seq., Oklahoma Hazardous Waste Management Act, as amended September 15, 2015, Oklahoma Administrative Code, Title 252, Chapter 205, Section 252:205-3-2, effective September 15, 2016

G. Why are the revised State rules different from the Federal rules?

There are no State requirements that are more stringent or broader in scope than the Federal requirements.

H. Who handles permits after the final authorization takes effect?

ODEQ will continue to issue permits for all the provisions for which it is authorized and will administer the permits it issues. The EPA will continue to administer any RCRA hazardous waste permits or portions of permits which we issued prior to the effective date of this authorization. We will not issue any more new permits or new portions of permits for the provisions listed in the Table in this document after the effective date of this authorization. The EPA will continue to implement and issue permits for HSWA requirements for which Oklahoma is not yet authorized.

I. How does this action affect Indian country (18 U.S.C. 1151) in Oklahoma?

Section 18 U.S.C. 1151 does not affect the State of Oklahoma because under section 10211(a) of the SAFETEA, Public Law 109-59, 119 Statute 1144 (August 10, 2005) provides the State of Oklahoma opportunity to request approval from EPA to administer RCRA Subtitle C in

Indian Country and for carrying out the aspects of the RCRA program described in its revised program application, subject to the limitations of the HSWA.

K. What is codification and is the EPA codifying Oklahoma’s hazardous waste program as authorized in this proposed rule?

Codification is the process of placing the State’s statutes and regulations that comprise the State’s authorized hazardous waste program into the CFR. We do this by referencing the authorized State rules in 40 CFR Part 272. We reserve the amendment of 40 CFR Part 272, Subpart LL for this proposed authorization of ODEQ’s program changes until a later date. In this action, the EPA is not proposing to codify the rules documented in this **Federal Register** document.

I. Administrative Requirements

The Office of Management and Budget (OMB) has exempted this action from the requirements of Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011). This action proposes to authorize State requirements for the purpose of RCRA 3006 and imposes no additional requirements beyond those imposed by State law. Therefore, this action is not subject to review by OMB. This action is not an Executive Order 13771 (82FR 9339, February 3, 2017) regulatory action because actions such as today’s proposed authorization of the State of Oklahoma’s revised hazardous waste program under RCRA are exempted under Executive Order 12866. Accordingly, I certify that this action will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). Because this action proposes to authorize preexisting requirements under State law and does not impose any additional enforceable duty beyond that required by State law, it does not contain any unfunded mandate or significantly or

uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4). For the same reason, this proposed action also does not significantly or uniquely affect the communities of Tribal governments, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

This action will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely proposes to authorize State requirements as part of the State RCRA hazardous waste program without altering the relationship or the distribution of power and responsibilities established by RCRA.

This proposed action also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant and it does not make decisions based on environmental health or safety risks. This proposed rule is not subject to Executive Order 13211, “Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use” (66 FR 28355 May 22, 2001), because it is not a significant regulatory action under Executive Order 12866.

Under RCRA 3006(b), the EPA grants a State’s application for authorization, as long as the State meets the criteria required by RCRA. It would thus be inconsistent with applicable law for the EPA, when it reviews a State authorization application to require the use of any particular voluntary consensus standard in place of another standard that otherwise satisfies the requirements of RCRA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this proposed

rule, the EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct.

The EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the “Attorney General’s Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings” issued under the Executive Order. This proposed rule does not impose information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Executive Order 12898 (59 FR 7629, February 16, 1994) establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, the disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States. Because this rule proposes to authorize pre-existing State rules which are at least equivalent to, and no less stringent than existing federal requirements, and imposes no additional requirements beyond those imposed by State law, and there are no anticipated significant adverse human health or environmental effects, the rule is not subject to Executive Order 12898.

List of Subjects in 40 CFR Part 271

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

Authority: This action 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).

Dated: September 26, 2018.

Anne L. Idsal,
Regional Administrator,
Region 6.

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