

SECTION IV – SPECIAL CONDITIONS PURSUANT TO THE 1984 HAZARDOUS AND SOLID WASTE AMENDMENTS (HSWA)

A. STANDARD CONDITIONS

1. Waste Minimization

Annually, by March 1, for the previous year ending December 31, the Permittee shall enter into the operating record as required by 40 CFR 264.73(b)(9), a statement certified according to 40 CFR 270.11(d) specifying that the Permittee has a program in place to reduce the volume and toxicity of hazardous wastes generated by the facility's operation to the degree determined by the Permittee to be economically practicable; and the proposed method of treatment, storage, or disposal is that practicable method currently available to the Permittee which minimizes the present and future threat to human health and the environment. A current description of the program shall be maintained in the operating record and a copy of the annual certified statement shall be submitted to DEQ. The following are suggested criteria for the program:

- a. Any written policy or statement that outlines goals, objectives, and/or methods for source reduction and recycling of hazardous waste at the facility;
- b. Any employee training or incentive programs designed to identify and implement source reduction and recycling opportunities;
- c. Any source reduction and/or recycling measures implemented in the last five years or planned for the near future;
- d. An itemized list of the dollar amounts of capital expenditures (plant and equipment) and operating costs devoted to source reduction and recycling of hazardous waste;
- e. Factors that have prevented implementation of source reduction and/or recycling;
- f. Sources of information on source reduction and/or recycling received at the facility (e.g., local government, trade associations, suppliers, etc.);
- g. An investigation of additional waste minimization efforts that could be implemented at the facility. This investigation would analyze the potential for reducing the quantity and toxicity of each waste stream through production reformulation, recycling, and all other appropriate means. The analysis would include an assessment of the technical feasibility, cost, and potential waste reduction for each option;
- h. A flow chart or matrix detailing all hazardous wastes it produces by quantity, type, and building/area;

- i. A demonstration of the need to use those processes that produce a particular hazardous waste due to a lack of alternative processes or available technology that would produce less hazardous waste;
 - j. A description of the waste minimization methodology employed for each related process at the facility. The description should show whether source reduction or recycling is being employed; and
 - k. A description of the changes in volume and toxicity of waste actually achieved during the year in comparison to previous years.
2. Dust Suppression

Pursuant to 40 CFR 266.23(b), and the Toxic Substances Control Act, the Permittee shall not use waste or used oil or any other material which is contaminated with dioxin, polychlorinated biphenyls, or any other hazardous waste (other than a waste identified solely on the basis of ignitability), for dust suppression or road treatment.

3. Permit Modification

a. DEQ Initiated Modifications

If at any time DEQ determines that modification of this Permit is necessary, DEQ may initiate Permit modification proceedings in accordance with the regulations set forth at 40 CFR 270.41.

b. Permittee Initiated Modifications

The Permittee may, where appropriate, initiate Permit modifications in accordance with the regulations set forth at 40 CFR 270.42. The Permittee shall follow all applicable requirements and procedures in initiating such proceedings.

c. Modification of Corrective Action Schedules of Compliance (CASC)

The Permittee shall adhere to CASCs developed for newly identified and previously identified SWMUs covered by this Permit. If at any time the Permittee determines that such schedules cannot be met, the Permittee shall, within fifteen (15) days of such determination, notify DEQ and submit a request for a Permit modification under 40 CFR 270.42, with a justification as to why the current CASC cannot be met.

4. Permit Review

This permit will be reviewed by DEQ five (5) years after the date of permit issuance and may be modified, as necessary. Nothing in this section shall preclude DEQ from reviewing and modifying the permit at any time during its term.

5. Compliance with Permit

Compliance with a RCRA permit during its term constitutes compliance, for purposes of enforcement, with Subtitle C of RCRA except for those requirements not included in the permit which:

- a. Become effective by statute;
- b. Are promulgated under 40 CFR 268 restricting the placement of hazardous wastes in or on the land; or
- c. Are promulgated under 40 CFR 264 regarding leak detection systems for new and replacement surface impoundment, waste pile, and landfill units, and lateral expansions of surface impoundment, waste pile, and landfill units. The leak detection system requirements include double liners, construction quality assurance programs, monitoring action leakage rates, and response action plans, and will be implemented through the procedures of 40 CFR 270.42 Class 1 permit modifications.

6. Specific Waste Ban

- a. The Permittee shall not place in any land disposal unit the wastes specified in 40 CFR 268 after the effective date of the prohibition unless DEQ has established disposal or treatment standards for the hazardous waste and the Permittee meets such standards and other applicable conditions of this Permit.
- b. The Permittee may store wastes restricted under 40 CFR Part 268 solely for the purpose of accumulating quantities necessary to facilitate proper recovery, treatment, or disposal provided that it meets the requirements of 40 CFR 268.50(a)(2) including, but not limited to, clearly marking each tank or container.
- c. The Permittee is required to comply with all requirements of 40 CFR 268.7 as amended. Changes to the waste analysis plan will be considered permit modifications at the request of the Permittee, pursuant to 40 CFR 270.42.

- d. The Permittee shall perform a waste analysis at least annually, or when a process changes, to determine whether the waste meets applicable treatment standards. Results shall be maintained in the operating record.
- e. The Permittee must comply with requirements restricting placement of hazardous wastes in or on land that become effective by statute or promulgated under Part 268, regardless of requirements in the Permit. Failure to comply with the regulations may subject the Permittee to enforcement action under Section 3008 of RCRA.

7. Information Submittal

Failure to comply with any condition of this Permit, including information submittal, constitutes a violation of the Permit and is grounds for enforcement action, Permit amendment, termination, revocation, suspension, or denial of Permit renewal application. Falsification of any submitted information is grounds for termination of this Permit. [40 CFR 270.43].

The Permittee shall ensure that all plans, reports, notifications, and other submissions to DEQ required in this Permit are signed and certified in accordance with 40 CFR 270.11. One (1) hard copy and one (1) electronic copy for each of these plans, reports, notifications, or other submissions shall be submitted to DEQ by Certified Mail or hand delivered to:

Chief Engineer
Oklahoma Department of Environmental Quality
Land Protection Division
707 North Robinson
P.O. Box 1677
Oklahoma City, Oklahoma 73101-1677

8. Plans and Schedules Incorporated into Permit

All plans and schedules required by this Permit are, upon approval by DEQ, incorporated into this Permit by reference and become an enforceable part of this Permit. Since required items are essential elements of this Permit, failure to submit any of the required items or submission of inadequate or insufficient information may subject the Permittee to enforcement action under Section 3008 of RCRA which may include fines, suspension, or revocation of the Permit.

Any noncompliance with approved plans and schedules shall be termed noncompliance with this Permit. Written requests for extensions of due dates for submittals may be granted by DEQ.

If DEQ determines that actions beyond those provided for, or changes to what is stated herein, are warranted, DEQ may modify this Permit.

9. Data Retention

All raw data, such as laboratory reports, drilling logs, bench-scale or pilot-scale data, and other supporting information gathered or generated during activities undertaken pursuant to this Permit shall be maintained at the facility during the term of this Permit, including any reissued Permits.

10. Management of Wastes

All solid wastes which are managed pursuant to a remedial measure taken under the corrective action process or as an interim measure addressing a release or the threat of release from a solid waste management unit shall be managed in a manner protective of human health and the environment and in compliance with all applicable Federal, State and local requirements. Approval of units for managing wastes and conditions for operating the units, if approved, shall be granted through the permitting process.

B. SPECIFIC CONDITION – CLOSURE AND POST-CLOSURE

1. The Permittee shall close the hazardous waste management areas in accordance with the Closure Plan, Permit Attachment 5. The Permittee shall notify DEQ in writing at least forty-five (45) days prior to commencement of closure activities. Within sixty (60) days of completion of closure activities, Tulsa Cement will submit certification to DEQ that the unit has been closed according to the approved Closure Plan.
2. DEQ will require post-closure care requirements should permitted units not achieve satisfactory closure standards.

C. CORRECTIVE ACTION

1. Corrective Action for Releases

Section 3004(u) of RCRA, as amended by HSWA, and 40 CFR 264.101 require that Permits issued after November 8, 1984 address corrective action for releases of hazardous waste or hazardous constituents from any SWMU at the facility, regardless of when the waste was placed in the unit.

2. Releases Beyond Facility Boundary

- a. The Permittee shall notify DEQ verbally, within 24 hours of discovery, of any release of hazardous waste or hazardous constituents that has potential to migrate off-site.

- b. Section 3004(v) of RCRA, as amended by HSWA, and Federal regulations promulgated as 40 CFR 264.101(c) require corrective actions beyond the facility property boundary where necessary to protect human health and the environment, unless the Permittee demonstrates that, despite the Permittee's best efforts, the Permittee was unable to obtain the necessary permission to undertake such actions. The Permittee is not relieved of all responsibility to clean up a release that has migrated beyond the facility boundary where offsite access is denied.

3. Financial Responsibility

Assurance of financial responsibility for corrective action shall be provided as specified in the Permit following major modification for remedy selection.

4. Dispute Resolution

- a. The parties shall use their best efforts to informally and in good faith resolve all disputes or differences of opinion. If, however, disputes arise concerning the corrective action which the parties are unable to resolve informally, the following procedures shall apply. If the Permittee's dispute concerns its inability to meet a specified deadline, the Permittee is obligated to advise DEQ of the issue at least 30 days in advance of the deadline.
- b. DEQ shall provide the Permittee written notice of its disapproval or modification of any interim submission under HSWA, including, but not limited to, implementation of workplans, approval of documents, scheduling of any work, or selection, performance, or completion of any corrective action. The written notice of disapproval or modification shall set forth the reasons for the disapproval or modification. If the Permittee disagrees, in whole or in part, with any such written notice, the Permittee shall notify DEQ in writing within 10 days of receipt of the written notice. The Permittee and DEQ Permits staff shall use their best efforts to informally and in good faith resolve the dispute. The Permittee is entitled to meet with RCRA Permits staff in person at DEQ's office or by teleconference, if it so desires, in order to resolve the dispute.
- c. If Permittee and the RCRA Permits staff are unable to resolve the dispute, the Permittee may request a final decision by DEQ's official having been delegated final Permit approval authority. Within 30 days of receipt of DEQ's written notice, the Permittee shall submit to the Permit approval authority, a written statement of its arguments and explanations of its position. The written statement should include, at a minimum, the specific points of dispute, the position the Permittee maintains should be adopted as consistent with the Permit requirements and the basis therefore, any matters which it considers necessary for proper determination

of the dispute, and whether the Permittee requests an informal conference in front of the Permit approval authority. The Permittee's failure to follow the procedures set forth in this paragraph will constitute a waiver of its right to further consideration of the dispute.

- d. DEQ's duly appointed official having final Permit approval authority, at his/her discretion, will determine whether an informal conference, if requested by the Permittee, will be held.
- e. DEQ shall consider the written position of the Permittee and the oral arguments, if an informal conference is convened, and shall provide a written statement of its decision based on the record. This statement shall be considered to be incorporated as an enforceable part of the Permit. The written statement shall respond to the Permittee's arguments and shall set forth the reasons for DEQ's final decision. Such decision shall be the final resolution of the dispute and shall be implemented immediately by the Permittee according to the schedule contained therein.
- f. Notwithstanding the invocation of this dispute resolution procedure, the Permittee shall proceed to take any action required by those portions of the submission and of the Permit that DEQ determines are not substantially affected by the dispute.
- g. The Permittee shall invoke the Dispute Resolution provisions of this Permit in good faith and not for purposes of delay.

D. NOTIFICATION REQUIREMENTS FOR AND ASSESSMENT OF NEWLY-IDENTIFIED SWMU(s) AND POTENTIAL AOC(s)

1. The Permittee shall notify DEQ, in writing, of any newly identified SWMU(s) and potential AOC(s) (i.e., a unit or area not specifically identified during the RFA), discovered in the course of ground water monitoring, field investigations, environmental audits, or other means, no later than thirty (30) calendar days after discovery. The Permittee shall also notify DEQ of any newly-constructed land-based SWMUs (including but not limited to, surface impoundments, waste piles, landfills, land treatment units) and newly-constructed SWMUs where any release of hazardous constituents may be difficult to identify (e.g., underground storage tanks) no later than thirty (30) days after construction. The notification shall include the following items, to the extent available:
 - a. The location of the newly identified SWMU or potential AOC on the topographic map required in 40 CFR 270.14(b)(19). Indicate all existing units (in relation to other SWMUs);
 - b. The type and function of the unit;

- c. The general dimensions, capacities, and structural description of the unit (supply any available drawings);
 - d. The period during which the unit was operated;
 - e. The specifics, to the extent available, on all wastes that have been or are being managed at the SWMU or potential AOC; and
 - f. Results of any sampling and analysis required for the purpose of determining whether releases of hazardous waste including hazardous constituents have occurred, are occurring, or are likely to occur from the SWMU or whether the AOC should be considered a SWMU.
2. Based on the results of this notification, DEQ will designate the newly-identified AOC(s). Based on the results of this notification or investigation conducted, DEQ will determine the need for further investigation or corrective measures at any newly-identified SWMU(s) or AOC(s). If DEQ determines that such investigations are needed, DEQ may require the Permittee to prepare a plan for such investigations.

E. NOTIFICATION REQUIREMENTS FOR NEWLY-DISCOVERED RELEASES AT SWMU(s) AND AOC(s)

The Permittee shall notify DEQ in writing, no later than fifteen (15) calendar days after discovery, of any release(s) from a SWMU or AOC of hazardous waste or hazardous constituents discovered during the course of ground water monitoring, field investigation, environmental auditing, or other means. Such newly discovered releases may be from newly identified SWMUs or AOCs, newly-constructed SWMUs, or from SWMUs or AOCs for which, based on the findings of the RFA, completed RFI, or investigation of an AOC(s), DEQ had previously determined no further investigation was necessary. The notification shall include information concerning actual and/or potential impacts beyond the facility boundary and on human health and the environment, if available at the time of the notification. DEQ may require further investigation and/or interim measures for the newly identified release(s), and may require the Permittee to prepare a plan for the investigation and/or interim measure. The plan will be reviewed for approval as part of the RFI Workplan or a new RFI Workplan. The Permit will be modified to incorporate the investigation, if required.

F. INTERIM MEASURES

1. Permit Incorporation

If during the course of any activity initiated under the Permit, DEQ determines that a release or potential release of hazardous constituents poses a threat to human health and the environment, DEQ may require interim measures. DEQ shall determine the specific measures or require the Permittee to propose measures that control or minimize the threat. The interim measures may include a Permit modification, a schedule for implementation,

and a written plan. DEQ shall notify the Permittee in writing of the requirement to perform interim measures. DEQ shall modify this Permit to incorporate interim measures into the Permit.

2. Factors to be Considered by DEQ in Determining the Need for Interim Measures

- a. Time required to develop and implement a final remedy;
- b. Actual and potential exposure to human and environmental receptors;
- c. Actual and potential contamination of drinking water supplies and sensitive ecosystems;
- d. The potential for further degradation of the medium in the absence of interim measures;
- e. Presence of hazardous wastes in containers that may pose a threat of release;
- f. Presence and concentration of hazardous waste including hazardous constituents in soil that has the potential to migrate to groundwater or surface water;
- g. Weather conditions that may affect the current levels of contamination;
- h. Risks of fire, explosion, or accident; and
- i. Other situations that may pose threats to human health and the environment.

G. RFI WORKPLAN

For any newly identified SWMU(s), an RFI Workplan shall be submitted to DEQ within 180 days of identification. The RFI Workplan must address releases from SWMU(s) of hazardous waste or hazardous constituents to all media. DEQ will review for approval the RFI Workplan and any supplement plans and documentation.

H. RFI IMPLEMENTATION

Upon receipt of written approval from DEQ for the RFI Workplan, the Permittee shall implement the RFI in accordance with the schedules and information outlined in the approved Workplan. Deviations from the approved RFI Workplan which are necessary during implementation of activities must be approved by DEQ and fully documented and described in the RFI Final Report.

I. RFI FINAL REPORT AND SUMMARY

Within ninety (90) calendar days after completion of the RFI, or in accordance with an alternative schedule approved by DEQ, the Permittee shall submit an RFI Final Report and Summary. The RFI Final Report shall describe the procedures, methods, and results of all investigations.

J. DETERMINATION OF NO FURTHER ACTION

1. Should an RFI be required, the Permittee may, based on the results of the RFI and/or other relevant information, submit an application to DEQ for a Class III permit modification under 40 CFR 270.42(c) to terminate the RFI/CMS process for a specific unit. This permit modification application must contain information demonstrating that there are no releases of hazardous waste including hazardous constituents from a particular SWMU at the Facility that pose a threat to human health and/or the environment, as well as additional information required in 40 CFR 270.42(c). If, based upon review of the Permittee's request for a permit modification, the results of the RFI, and other information, including comments received during any public comment period required for Class III permit modifications, DEQ determines that releases or suspected releases which were investigated either are non-existent or do not pose a threat to human health and/or the environment, DEQ may grant the requested modification.
2. If necessary to protect human health or the environment, a determination of no further action shall not preclude DEQ from requiring continued or periodic monitoring of air, soil, groundwater, or surface water, when site-specific circumstances indicate that releases of hazardous waste or hazardous constituents are likely to occur.
3. A determination of no further action shall not preclude DEQ from requiring further investigations, studies, or remediation at a later date, if new information or subsequent analysis indicates a release or likelihood of a release from a SWMU at the Facility that is likely to pose a threat to human health or the environment. In such a case, DEQ shall initiate a modification to the permit.

K. CORRECTIVE MEASURES STUDY (CMS) PLAN

In the event that CMS work is required, this permit shall be modified to include requirements for a CMS Plan.

L. CMS IMPLEMENTATION

In the event that CMS work is required, this permit shall be modified to include requirements for CMS implementation.

M. CMS FINAL REPORT AND SUMMARY

In the event that the Permittee identifies additional SWMUs or AOCs, this permit may be modified to include requirements for a CMS Final Report and Summary.

N. CORRECTIVE MEASURE (REMEDY) SELECTION AND IMPLEMENTATION

In the event that the Permittee is required to perform additional corrective measures, this permit may be modified to include corrective measure selection and implementation requirements.