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## SUPPLEMENTARY INFORMATION:

### I. Background and Purpose

#### A. Introduction

As required under title V of the 1990 Clean Air Act Amendments (sections 501–507 of the Clean Air Act ("the Act'')), EPA has promulgated rules which define the minimum elements of an approvable State operating permits program and the corresponding standards and procedures by which the EPA will approve, oversee, and withdraw approval of State operating permits programs (see 57 FR 32250 (July 21, 1992)). These rules are codified at 40 Code of Federal Regulations (CFR) part 70. Title V requires States to develop, and submit to the EPA, programs for issuing these operating permits to all major stationary sources and to certain other sources, with the exception of sources on Indian country.

The Act requires that States develop and submit these programs to the EPA by November 15, 1993, and that the EPA act to approve or disapprove each program within one year after receiving the submittal. The EPA's program review occurs pursuant to section 502 of the Act and the part 70 regulations which together outline criteria for approval or disapproval. Where a program substantially, but not fully, meets the requirements of 40 CFR part 70, and where a State requests source category-limited interim approval, the EPA may grant the program interim approval for a period of up to two years. If the EPA has not fully approved a program by two years after the November 15, 1993, date or by the end of an interim program, it must establish and implement a Federal program.

# B. Federal Oversight and Sanctions

If the EPA were to finalize this proposed source category-limited interim approval, it would extend for two years following the effective date of final interim approval, and could not be renewed. During the interim approval period, the State of Oklahoma would be protected from sanctions, and the EPA would not be obligated to promulgate, administer, and enforce a Federal

permits program for the State of Oklahoma. Permits issued under a program with interim approval have full standing with respect to part 70, and the State will permit sources based on the transition schedule submitted with the source category-limited approval request. This schedule may extend for no more than five years beyond the interim approval date.

Following final interim approval, if Oklahoma has failed to submit a complete corrective program for full approval by the date six months before expiration of the interim approval, the EPA would start an 18-month clock for mandatory sanctions. If Oklahoma then failed to submit a corrective program that the EPA found complete before the expiration of that 18-month period, the EPA would apply sanctions as required by section 502(d)(2) of the Act, which would remain in effect until the EPA determined that the State of Oklahoma had corrected the deficiency by submitting a complete corrective program.

If, following final interim approval, the EPA were to disapprove Oklahoma's complete corrective program, the EPA would be required under section 502(d)(2) to apply sanctions on the date 18 months after the effective date of the disapproval, unless prior to that date Oklahoma had submitted a revised program and the EPA had determined that it corrected the deficiencies that prompted the disapproval.

In addition, discretionary sanctions may be applied where warranted any time after the end of an interim approval period if Oklahoma has not timely submitted a complete corrective program or the EPA has disapproved a submitted corrective program. Moreover, if the EPA has not granted full approval to Oklahoma's program by the expiration of an interim approval and that expiration occurs after November 15, 1995, the EPA must promulgate, administer, and enforce a Federal permits program for Oklahoma upon interim approval expiration.

# II. Proposed Action and Implications

### A. Analysis of State Submission

# 1. Support Materials

Pursuant to section 502(d) of the Act, the Governor of each State is required to develop and submit to the Administrator a part 70 program under State or local law or under an interstate compact meeting the requirements of title V of the Act. Under the signature of Governor David Walters, ODEQ requested approval with full authority to administer the State part 70 program in all areas of the State of Oklahoma.

The Governor's letter makes no reference to Indian country and specifically requests full authority over the State of Oklahoma. Because the Oklahoma permitting authorities have not demonstrated, consistent with applicable principles of Indian law and Federal Indian policies, legal authority to regulate sources in Indian country under the Act, the proposed interim approval of the Oklahoma part 70 program will not extend to any lands within the exterior boundaries of Indian country. Though the State has made no demonstration of jurisdiction over Indian country, the State may at a later time make an adequate demonstration of authority. Title V sources located within the exterior boundaries of Indian country in the State of Oklahoma will be subject to the Federal operating permit program, to be promulgated at 40 CFR part 71, unless a tribe is delegated a part 70 program. Regulations for delegation of tribal programs are being developed pursuant to section 301(d) of the Act. Tribes may also have inherent sovereign authority to regulate air pollutants from sources on Indian country

The Oklahoma submittal addresses the program description as required at 40 CFR 70.4(b)(1) by describing how ODEQ intends to carry out its responsibilities under the part 70 regulations. The program description is addressed in the following areas: (I) Complete Program Description, (II) State Permitting Regulations, Guidelines, Policies, and Procedures, (III) Attorney General's Opinion, (IV) Permitting Program Documentation, (V) Provisions for Implementing the Operating Permits Program, (VI) Permit Fee Demonstration, (VII) Compliance Tracking and Enforcement, and (VIII) Provisions Implementing the Requirement of Other Titles of the Act (40 CFR 70.4(b)(3) (i) and (v)). The program description has been deemed to be appropriate for meeting the requirement of 40 CFR

70.4(b)(1).

Pursuant to 40 CFR 70.4(b)(3), the Governor is required to submit a legal opinion from the Attorney General (or the attorney for the State air pollution control agency that has independent legal counsel, hereafter AG) demonstrating adequate authority to carry out all aspects of a title V operating permits program. The State of Oklahoma submitted an AG's Opinion in section III of the "Program Description" and a Supplemental AG's Opinion on February 28, 1994, demonstrating adequate legal authority as required by Federal law and regulation. The Supplemental AG's Opinion addresses the delegation of authority for signature from the