J. Kevin Stitt
Office of the Governor
State of Oklahoma

July 22, 2020

Andrew Wheeler, Administrator
Environmental Protection Agency
Mail Code: 1101A
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

Re: The State of Oklahoma's Request to Administer EPA Approved Environmental Programs in Areas of the State that are in Indian Country

Dear Administrator Wheeler:

Consistent with the extent to which the State of Oklahoma implemented environmental programs throughout the State prior to the U.S. Supreme Court's recent decision in *McGirt v. Oklahoma*, 591 U.S. ___ (2020), the State of Oklahoma requests approval to administer all U.S. Environmental Protection Agency ("EPA") approved environmental programs in areas of the State that are in Indian Country (except as outlined below under "Exceptions to Request") pursuant to § 10211(a) of the Safe, Accountable, Flexible, Efficient Transportation Equity Act of 2005 ("SAFETEA"), Public Law 109-59, 119 Stat. 1144 (Aug. 10, 2005).[1] This request includes all Oklahoma environmental programs approved by EPA, and specifically includes but is not limited to the following programs:

Oklahoma Department of Environmental Quality:

Land Protection Division -

- Resource Conservation and Recovery Act ("RCRA") Programs
    - Subpart C hazardous waste program, 40 C.F.R. Part 262, Subpart LL

[1] This request is only seeking approval to the extent that such approval is necessary for the State to administer a program in light of *Oklahoma Dept. of Environmental Quality v. EPA*, 740 F.3d 185 (D.C. Cir. 2014) and the Stigler Act, 25 U.S.C. §§ 331 *et seq.*

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- Subpart D permit program, 59 Fed. Reg. (Aug. 16, 1994)
- Coal Combustion Residual ("CCR") State Program: program approval, 83 Fed. Reg. 30356 (June 28, 2018)

- **Safe Drinking Water Act, 42 U.S.C. § 300h *et seq.*, Underground Injection Control Programs –**

  - Underground Injection Control ("UIC") for Classes I, III, IV and V wells, 40 C.F.R. Part 147, Subpart LL, § 147.1850

Air Quality Division -

- **Clean Air Act Programs –**

  - State Implementation Plan (40 C.F.R. Part 52, Subpart LL, §§ 52.1920 – 52.1960)
  - State Operating Permits Program ("Title V Program"), 40 C.F.R. Appendix A-2, Part 70 (State of Oklahoma)
  - Standards of Performance for New Stationary Sources ("NSPS"), 40 C.F.R. Part 60, Subpart A, § 60.4(b)(38)
  - National Emission Standards for Hazardous Air Pollutants ("NESHAP"), 40 C.F.R. Part 61, Subpart A, §§ 61.04(b)(38) and 61.04(c)(6)(iv)
  - Approval and Promulgation of State Plans for Designated Facilities and Pollutants, 40 C.F.R. Part 62, Subpart LL, §§ 62.9100 *et seq.*
  - National Emission Standards for Hazardous Air Pollutants ("NESHAP"), Delegation Status for Part 63 Standards - State of Oklahoma, 40 C.F.R. Part 63, Subpart A, § 63.99(a)(37)
  - Lead-Based Paint Activities in Target Housing and Child-Occupied Facilities ("Lead-Based Paint Program"), 63 Fed. Reg. 49574 (Sept. 16, 1998)
  - Lead-Based Paint Renovation, Repair and Painting, and Pre-Renovation Education Activities in Target Housing and Child Occupied Facilities ("RRP Program"), 79 Fed. Reg. 1799 (Jan. 10, 2014)
  - Ambient Air Monitoring Reference and Equivalent Methods, 40 C.F.R. Part 53 and Ambient Air Quality Surveillance, 40 C.F.R. Part 58

Water Quality Division -

- **Clean Water Act, 33 U.S.C. §1251 *et seq.*, Delegated Programs -**

  - Water Quality Related Effluent Limitations, 33 U.S.C. § 1312
  - Effluent Limits, 33 U.S.C. § 1311
  - National Performance Standards, 33 U.S.C. § 1316
  - Toxic and Pretreatment, 33 U.S.C. § 1317
  - National Pollutant Discharge Elimination System, 33 U.S.C. § 1342

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- Disposal of Sewage Sludge, 33 U.S.C. § 1345

- **Safe Drinking Water Act, 42 U.S.C. § 300f, *et seq.*, Primacy Programs -**

  - Interim Enhanced Surface Water Treatment Rule
  - Stage 1 Disinfection Byproducts Rule
  - Consumer Confidence Rule
  - Administrative Penalty Authority
  - Arsenic Rule
  - Public Notification Rule
  - Radionuclide Rule
  - Filter Backwash Recycling Rule
  - Long Term 1 Surface Water Treatment Rule
  - New PWS Definition
  - Lead and Copper Rule
  - Stage 2 Disinfection Byproducts Rule
  - Long Term 2 Surface Water Treatment Rule
  - Ground Water Rule
  - Revised Total Coliform Rule
  - Variance and Exception Rule

Oklahoma Department of Agriculture, Food and Forestry:

- **Clean Water Act, 33 U.S.C. §1251 *et seq.*, Delegated Programs –**

  - National Pollutant Discharge Elimination System, 33 U.S.C. § 1342 (includes Concentrated Animal Feeding Operations, Pesticides, and Storm water from agricultural construction)

Oklahoma Water Resources Board:

- **Clean Water Act, 33 U.S.C. §1251 *et seq.* –**

  - Water Quality Standards and Implementation plans, 33 U.S.C. § 1313

Oklahoma Corporation Commission:

- State Underground Storage Tank Prevention Detection and Compliance (2 C.F.R. § 200; 2 C.F.R. § 1500; 40 C.F.R. § 33; 40 C.F.R. § 35(a))

- Leaking Underground Storage Tank Trust Fund Program (Corrective Action) (2 C.F.R. § 200; 2 C.F.R. § 1500; 40 C.F.R. § 33)

- State & Tribal Response Program (2 C.F.R. § 200; 2 C.F.R. § 1500; 40 C.F.R. § 33; 40 C.F.R. § 35(a))

- State Underground Water Source Protections (2 C.F.R. § 200; 2 C.F.R. § 1500; 40 C.F.R. § 33; 40 C.F.R. § 35(a); 40 C.F.R. § 147.1851)

EXCEPTIONS TO REQUEST

This request does not seek approval to administer any programs in Indian country on lands, including rights-of-way running through the same, that -

(A) Qualify as Indian allotments, the Indian titles to which have not been extinguished, under 18 U.S.C. § 1151(c);

(B) Are held in trust by the United States on behalf of an individual Indian or Tribe; or

(C) Are owned in fee by a Tribe, if the Tribe –

(i) acquired that fee title to such land, or an area that included such land, in accordance with a treaty with the United States to which such Tribe was a party; and

(ii) never allotted the land to a member or citizen of the Tribe.

Furthermore, this request does not seek approval to administer the Oklahoma Corporation Commission ("OCC")'s UIC Program for Class II wells (40 C.F.R. Part 147, Subpart LL, § 147.1851) in Osage County, Oklahoma.

The environmental programs covered by this request include but are not limited to programs administered by the following State agencies: the Oklahoma Department of Environmental Quality; the Oklahoma Department of Agriculture, Food and Forestry; the Oklahoma Water Resources Board; and the OCC. The State of Oklahoma reserves the right to amend this request or make future requests for approval pursuant to SAFETEA.

Thank you for your consideration and action on this request. If you have any questions or need further information, please contact Kenneth E. Wagner, Oklahoma Secretary of Energy & Environment, at Kenneth.Wagner@ee.ok.gov or (405) 522-7099.

Sincerely,

Kevin Stitt
Governor of the State of Oklahoma

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