risks to infants and children is not necessary. The established endpoints for abamectin in the CF–1 mouse and the neonatal rat have been shown by Merck to be overly conservative. Similar endpoints for ivermectin are not used by the Food and Drug Administration to support the allowable daily intake for ivermectin residues in food from treated animals.

No evidence of toxicity was observed in neonatal rhesus monkeys after 14 days of repeated administration of 0.1 mg/kg/day (highest dose tested) and in juvenile rhesus monkeys after repeated administration of 1.0 mg/kg/day (highest dose tested). The comparative data on abamectin and ivermectin in primates also clearly demonstrate the dose response for exposure to either compound is much less steep than that seen in the neonatal rat. Single doses as high as 24 mg/kg of either abamectin or ivermectin in rhesus monkeys did not result in mortality; however, this dose was more than two times the LD_{50} in the adult rat and more than 20 times the LD_{50} in the neonatal rat. The absence of a steep dose-response curve in primates provides a further margin of safety regarding the probability of toxicity occurring in infants or children exposed to avermectin compounds. The significant human clinical experience and widespread animal drug uses of ivermectin without systemically toxic, developmental, or postnatal effects supports the safety of abamectin to infants and children.''

II. Administrative Matters

A record has been established for this notice of filing under docket number PF–677 (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4:00 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 1132 of the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Electronic comments can be sent directly to EPA at:

opp-docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this notice of filing, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into printed, paper form as they are received and will place the paper copies in the official record which will also include all comments submitted directly in writing. The official record is the paper record maintained at the address in ''ADDRESSES'' at the beginning of this document.

List of Subjects

Environmental protection, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping.

Authority: 7 U.S.C. 136a.

Dated: December 3, 1996.

Stephen L. Johnson,
Acting Director, Office of Pesticide Programs.

[FR Doc. 96–31303 Filed 12–09–96; 8:45 am]
BILLING CODE 6560–50–F

[FRL–5655–4]

State Program Requirements; Approval of Application by Oklahoma to Administer the National Pollutant Discharge Elimination System (NPDES) Program

AGENCY: Environmental Protection Agency.

ACTION: Final approval of the Oklahoma Pollutant Discharge Elimination System under the Clean Water Act.

SUMMARY: On November 19, 1996, the Regional Administrator for the Environmental Protection Agency (EPA), Region 6, approved the application by the State of Oklahoma to administer and enforce the National Pollutant Discharge Elimination System (NPDES) program for regulating discharges of pollutants into waters of the State. The authority to approve state programs is provided to EPA in Section 402(b) of the Clean Water Act (CWA). The approved state program i.e., the Oklahoma Pollutant Discharge Elimination System (OPDES) program is a partial program to the extent described in this Notice (see section titled ''Scope of the OPDES program), which will operate *in lieu* of the EPA administered NPDES program pursuant to Section 402 of the CWA. The OPDES program will be administered by the Oklahoma Department of Environmental Quality (ODEQ). In making its decision, EPA has considered all comments and issues raised during the publicly noticed comment period. Summaries of the comments and EPA responses are contained in this notice. The comments and public hearing record are contained in the administrative record supporting this notice.

EFFECTIVE DATE: November 19, 1996. Because CWA section 301(a) prohibits new discharges until they are authorized by an NPDES permit, this action is immediately effective to avoid further suspension of permitting actions in Oklahoma and the unnecessary burden such a suspension would impose on new dischargers.

FOR FURTHER INFORMATION CONTACT: Ms. Ellen Caldwell at U.S. EPA, Region 6, Water Quality Protection Division, 1445 Ross Avenue, Dallas, Texas 75202, or by calling (214) 665–7513, or electronically at

CALDWELL.ELLEN@EPAMAIL.EPA.GOV

or Norma Aldridge, Department of Environmental Quality, Water Quality Division, 1000 N.E. 10th Street, Oklahoma City, Oklahoma 73117–1212, or by calling (405) 271–5205.

SUPPLEMENTARY INFORMATION: Oklahoma's application for OPDES program approval was submitted on June 10, 1996, and final supplements were received on August 20, 1996. The documents were described in the Federal Register Notice of August 29, 1996, (61 FR 45420) in which EPA requested comments and gave notice of public hearing. Further notice was also provided by way of publication published on August 28, 1996, in The Lawton Constitution, the Daily Oklahoman, the Tulsa World, the McAlester News Capital & Democrat, the Guymon Daily Herald, and the Woodward News. Copies of the application were made available at the addresses below and could also be purchased from the State for the cost of $358.65 (the cost of the principal documents, i.e the Attorney General's Statement, Memorandum of Agreement, Program Description, and the Enforcement Management System all without their associated appendices is $163.35). An electronic copy of the documents stored on computer disk was provided at no cost to interested parties which supply disks to ODEQ for that purpose. (Citizens may still request a disc copy and should supply 3 new, 3.5'' high density/double sided microdisk. The documents will be in WordPerfect 6.0.) EPA provided copies of the public notice to permitted facilities, Indian tribes, and other federal and state agencies.

As a part of the public participation process, both a public meeting and hearing were held in MidWest City, Oklahoma, on September 30, 1996. The public meeting provided as an informal question and answer session, and began

at 2 pm ending at 4:30 pm. The hearing started at 7 pm and lasted until 7:30 pm. Oral comments were recorded during the hearing and are contained in the administrative record supporting this action. Written comments were accepted by EPA through October 21, 1996. All comments presented during the public comment process, either at the hearing or in writing, were considered by EPA in its decision. EPA's responses to the issues raised during the comment period are contained in the Responsiveness Summary provided in this notice. A copy of EPA's decision and its Responsiveness Summary has been sent to all commenters and interested parties (those persons requesting to be on the mailing list for EPA actions in Oklahoma).

Copies of the final program documents for the OPDES program are available to the public during normal business hours, Monday through Friday, excluding holidays, at:

EPA Region 6, 12th Floor Library, 1446 Ross Avenue, Dallas, Texas 75202, (214) 665–7513;

ODEQ Headquarters, Department of Environmental Quality, Water Quality Division, 1000 N.E. 10th Street, Oklahoma City, Oklahoma 73117–1212.

The Regional Administrator notified the State of the program approval decision by letter dated November 19, 1996, and notice of EPA's final decision has been published in the newspapers in which the public notice of the proposed program appeared (listed above). As of November 19, 1996, EPA suspended issuance of NPDES permits in Oklahoma (except for those permits which EPA retained jurisdiction as specified below in the section titled ''Scope of the OPDES Program''). The State's OPDES program will implement federal law and operate *in lieu* of the EPA-administered NPDES program. EPA does, however, retain the right to object to OPDES permits proposed by ODEQ, and if the objections are not resolved, to issue the permit itself.

On May 8, 1996, EPA issued a final rule amending minimum State program requirements. The amendment explicitly requires that all states that seek to administer an NPDES program must provide an opportunity for judicial review in state court of final permit decisions that is sufficient to provide for, encourage, and assist public participation in the permitting process. The Attorney General Statement submitted by Oklahoma addresses the issue of judicial standing, asserting that Oklahoma complies with the review criteria expressed in 61 FR 20972 (May 8, 1996). Based on a review of Oklahoma legal authority, the explanation provided in the State's AG Statement and discussions with ODEQ attorneys, it appears that Oklahoma law meets the amended State NPDES program requirement.

Changes to the OPDES Proposed Documents

No changes were made to the proposed OPDES program documents based on information obtained in the public comments received, however, EPA has requested two changes to the Memorandum of Agreement (MOA) clarifying how the OPDES program will be consistent with federal requirements and policy. These changes are minor and do not require additional public notice. No commenter noted these portions of the MOA or issues in any submitted comments.

1. Section C of the Oklahoma/EPA MOA (Jurisdiction over Permits) has been revised to clarify that EPA is retaining authority for the administration of EPA issued general permits, and *not* NPDES program authority over those classes of discharges which are covered by those general permits (See below ''Scope of the OPDES Program'' A.6.). This would include the general permit for discharges from UST remediation water discharges and the following storm water general permits: Baseline construction storm water general permit (57 FR 41209), NPDES permit numbers OKR10*###; Baseline non-construction storm water general permit (57 FR 41297), NPDES permit numbers OKR00*###; and Multi-sector storm water general permit (60 FR 51108), NPDES permit numbers OKR05*###. (For an individual facility's permit number, the * is a letter and the #'s are numbers—e.g. OKR00Z999). The revised language is as follows:

EPA will temporarily retain authority to administer general permits for:

—All existing discharges of storm water associated with industrial or construction activity (40 CFR 122.26(b)(14)), including allowable non-storm water, authorized to discharge under an NPDES storm water general permit as of the date of program assumption.

—New discharges of storm water associated with industrial or construction activity, including allowable non-storm water, eligible for coverage under an NPDES storm water general permits, excluding new discharges subject to a new source performance standard.

—All existing and new discharges resulting from implementing corrective action plans, as required by 40 CFR 280, for cleanup of groundwater contaminated by releases from Petroleum Underground Storage Tank Systems (UST).

Case-by-case transfers for individual storm water and UST dischargers will be made using the following procedures:

—ODEQ may request early transfer of an individual facility or a class of storm water dischargers at any time. All requests will be in writing and will include a brief rationale.

—If ODEQ and EPA agree to provide an individual permit *in lieu* of general permit coverage, the State will include outfalls for the affected discharges in a draft OPDES permit and the public notice of the draft permit will concurrently notice the transfer of authority for the facility's discharges to ODEQ.

—A permittee with a wastewater discharge or storm water discharge that is not eligible for coverage under an EPA storm water general permit must apply to DEQ for an individual permit.

Final transfer of general permitting authority for storm water and UST discharges will be made using the following procedures:

—No later than three years from the date of program assumption, the State will make the necessary changes to State statutes in order to qualify for general permitting authority.

—Within 90 days of the effective date of the new statutes, the State will submit a supplemental Attorney General's statement, along with a copy of the relevant statutes, certifying that the Executive Director has the authority to issue general permits.

—If EPA concurs with the Attorney General's statement, the Agency will publish notice of the transfer of general permits for the remaining storm water and UST discharges to ODEQ and send a copy to the appropriate mailing list.

—Once the Executive Director of ODEQ assumes authority in accordance with a promulgated final rule to issue general permits, the State will become the permitting authority (subject to EPA oversight) for all discharges of storm water associated with industrial and construction activity, UST remediation discharges. EPA storm water general permits and any effective general permits for UST remediation discharges will then be transferred to ODEQ for administration. Within 30 days of the transfer of authority, EPA will provide

ODEQ with a list of all facilities authorized to discharge under these general permits.

2. Oklahoma proposed a regulation for consideration for self-reporting of noncompliance (Title 252:2–117). At the time of this authorization the regulation is not finalized. As agreed by EPA and ODEQ, language has been added to page 39 of the MOA ensuring that the final regulation will be consistent with NPDES program requirements. The new language is as follows:

''The DEQ's proposed audit rule and any associated policy and/or guidance which may be used to mitigate penalties for delegated facilities under the OPDES program, must receive final EPA concurrence prior to implementation by the State.''

Once the regulation is finalized, ODEQ will send a revised Program Description and/or Enforcement Management System explaining the rule's implementation with regard to the OPDES program. The State will also send a supplemental Attorney General's Statement to ensure the regulation will be consistent with NPDES requirements. To the extent EPA finds that a final rule modifies or supplements the OPDES program and constitutes a program revision, in accordance with 40 CFR 123.62 these revisions of the original OPDES program will be publicly noticed in the Federal Register and major newspapers in the State to provide for public comment on the revision.

Scope of the OPDES Program and Clarifications on EPA Authority and Oversight

All NPDES files under the jurisdiction of ODEQ will be transferred from EPA to the state within 30 days. NPDES permits under ODEQ's jurisdiction will become state administered OPDES permits and will be reissued (upon expiration) or modified by the ODEQ. All permits brought to public notice by ODEQ after this authorization and under its OPDES authority will be OPDES permits providing NPDES authorization to those dischargers.

A. EPA Authority

Oklahoma's OPDES program is a partial program, which conforms to the requirements of section 402(n)(3) of the Clean Water Act. The OPDES program applies to all discharges covered by the authority of ODEQ. This includes most discharges of pollutants subject to the federal NPDES program (e.g. municipal wastewater discharges, pretreatment, and most industrial point source discharges, and point source discharges from federal facilities), including the disposal of sewage sludge (in accordance with section 405 of the Act and 40 CFR part 503). ODEQ does not have regulatory authority over facilities regulated by other agencies in the State of Oklahoma, therefore EPA will remain the NPDES regulatory authority for the following discharges:

1. Agricultural industries regulated by the Oklahoma Department of Agriculture including concentrated animal feeding operations and silviculture. EPA will remain the NPDES permitting authority for all point source discharges associated with agricultural production, services, silviculture, feed yards, livestock markets and animal wastes.

2. Oil and Gas exploration and production related industries and pipeline operations regulated by the Oklahoma Corporation Commission. EPA will retain NPDES authority over these industries and their discharges to surface waters of the state.

3. Discharges in Indian Country. The State of Oklahoma does not seek jurisdiction over Indian Country. EPA will retain NPDES authority to regulate discharges in Indian Country (as defined in 18 U.S.C. 1151). The state of Oklahoma has undertaken steps to revise regulation 252:605–1–3(c) clarifying ODEQ does not seek to issue authorized OPDES permits to discharges in Indian Country. EPA and ODEQ will work together with tribal authorities to resolve questions of permitting authority for individual discharges.

4. Discharges of radioactive materials regulated by the federal government (i.e. those radioactive materials covered by the Atomic Energy Act of 1954, as amended (42 U.S.C. 2011 et. seq.)). EPA does not have the authority to approve the OPDES program to regulate radioactive wastes governed by the Atomic Energy Act. The regulatory authority for radioactive materials will remain under the jurisdiction of the U.S. Department of Energy and the Nuclear Regulatory Commission. (Some industrial discharges which contain very low level radioactive wastes (e.g. manufacturers of watches may discharge trace amounts of radium, and hospital wastes sometimes contain iodine isotopes) which are not regulated under the Atomic Energy Act and may be regulated by EPA; upon authorization of the OPDES program, the authority to regulate those discharges may become the responsibility of ODEQ.)

5. Oklahoma Ordinance Works Authority (OOWA). EPA will retain enforcement authority for OOWA (NPDES permit No. OK0034568), located in Pryor, Oklahoma, and all industries served by this facility. ODEQ is legally responsible for implementing the pretreatment program at OOWA.

6. Authority over EPA issued general permits: EPA will retain authority to administer general permits in accordance with 40 CFR 123.1. As explained in the Federal Register Notice proposing approval of the OPDES program, Oklahoma is revising its statutes and regulations to provide the Executive Director of the Oklahoma Department of Environmental Quality with the full authority to issue general permits under the OPDES program. This revision of Oklahoma Law is to ensure that the Oklahoma general permitting program is consistent with the requirements of 40 CFR 123.25(c). In the Federal Register Notice concerning the proposal of the OPDES program, EPA asserted that ''Until the state completes this transfer of authority, EPA will retain full permitting and enforcement authority for those discharges which are covered, or proposed to be covered by EPA issued general permits.'' EPA provided that it would transfer this authority and the administration of the general permits to the State once ODEQ has revised its program to include general permitting authority. EPA now wishes to clarify that the State has program authority over all classes of discharges (except as listed above). EPA will not retain program authority over those discharges except to the extent it will continue to administer EPA issued general permits.

This clarification will translate into only minor changes for permittees in the State of Oklahoma. Until the transfer of general permit authority to ODEQ, EPA will continue to administer those general permits it has issued or proposed in Oklahoma. Until otherwise notified by EPA or the State, permittees covered by those general permits will continue to report all compliance information to EPA Region 6. Also, any facility eligible for coverage under these permits will send its notice of intent to EPA rather than ODEQ. Until otherwise notified by the State or EPA, all Notices of Intent and Termination (NOIs and NOTs) for coverage under EPA's general permits for storm water (only) should continue to be sent to the EPA NOI Processing Center (mail code 4203), 401 M Street, SW, Washington, DC 20460. The only variation from the proposed program will be authority to reissue the general permits. ODEQ is the permitting authority, and as such, will reissue the general permits once that authority has been transferred to ODEQ. EPA may not reissue the general permits once they have expired. If ODEQ has not been able to revise its program to include general permitting authority prior to the

expiration of a general permit, it could issue individual permits instead. In the interim, any discharger covered by an EPA general permit may request that its discharge be covered by an individual permit issued by the State as described in the MOA language quoted above (Changes to the OPDES Proposed Documents #1).

The Federal Register Notice of August 29, 1996, proposing approval of the OPDES program (61 FR 45420–45426), at page 45422, paragraph 2 refers to ''Phased Program Authority.'' To eliminate any confusion that EPA meant that Oklahoma's NPDES Program is a ''partial and phased'' program in the context of Section 402(n)(4) of the Clean Water Act, 33 USC 1342(n)(4), EPA is clarifying that the word ''phased'' was used in a generic sense and not the statutory meaning of a ''phased program'' as that term is used in 402(n)(4). A phased program in accordance with CWA section 402(n)(4) provides a state up to 5 years to assume administration for categories of dischargers considered ''point sources'' by the CWA. ODEQ has the legal authority to administer the program to include those discharges covered by EPA's general permits using individual permits, thus, EPA considers the OPDES program as covering all discharges under the jurisdiction of the ODEQ in Oklahoma. Therefore, Oklahoma's program is not a ''phased'' program as that term is used in section 402(n)(4) of the Clean Water Act.

7. Status of applications, proposed permits, contested permit actions, and unresolved EPA enforcement actions: Except for the files listed below, all pending NPDES permit applications and issued NPDES permits under jurisdiction of ODEQ will be transferred to Oklahoma within 30 days of the approval of the OPDES program. In accordance with the signed MOA, EPA will retain temporary authority for all proposed permits until final issuance; permits contested under evidentiary hearing proceedings until those are resolved; and compliance files and authority for all open enforcement orders until such time as ODEQ has issued parallel orders or EPA has resolved the enforcement action.

Proposed Permits: EPA shall retain permit decision-making authority over permits which have been publicly noticed until they are issued and effective. Once these permits are effective, they will be transferred to ODEQ unless contested. The permit files will be transferred to the state as the permits become effective.

Contested Permit Actions: EPA will retain permits for which variances or evidentiary hearings have been requested until such time as they are resolved. As each request is resolved, EPA will notify ODEQ and transfer jurisdiction of the permit to ODEQ. EPA shall also maintain enforcement lead over discharge permits with a pending evidentiary hearing request; these will be transferred to the state upon resolution of the issue for which the hearing was requested.

Enforcement Actions: EPA Region 6 will retain primary enforcement authority after the date the OPDES program is approved for a number of facilities which have unresolved compliance issues. These permittees will continue to report to EPA on all compliance issues including regular submittals of Discharge Monitoring Reports for their NPDES permits. Authority for these permits can subsequently be transferred to the State one of two ways: (1) The outstanding compliance issue can be resolved and the permittee has returned to compliance, or, (2) the State can issue a parallel administrative action to address the outstanding compliance issue. As a practical consideration, enforcement authority for municipal or county facilities that are operated by the same governmental entity will not be transferred to the State as long as one of its major facilities has an unresolved compliance issue. NOTE: EPA in coordination with ODEQ will inform *all* permittees in writing of their reporting responsibilities. Permittees should continue to report as specified by both their State and Federal permits until otherwise notified.

B. Status of Regulation Changes and Corrections

1. Indian Country. Amendments to regulation OAC 252:605–1 will be presented to ODEQ's Environmental Quality Board (EQB) in March for approval.

2. General Permitting Authority. This change of authority will be proposed to the 1997 Legislative session as an amendment to 27A O.S. Section 2–14–181 et seq.

3. Finalization of Audit Privilege Regulation. This proposed regulation will be before the EQB on November 26, 1996, and will be codified as OAC 252:2–11–7 once the rulemaking process is completed.

Responsiveness Summary

The following is a summary of the issues raised by persons commenting on EPA's proposed approval and EPA's responses to those issues.

1. Issue: EPA received many comments from industry, businesses, associations, and municipalities supporting authorization of the OPDES program. These commenters cite examples of good working relationships with the ODEQ and confidence in the technical skill and ethics of the staff and management of that agency. These commenters also point out the benefits of having a system run at the state level that is more readily accessible and cost effective than the system of having both a state and federal permitting program.

Response: EPA is pleased with the apparent confidence the citizens of Oklahoma have in their Department Of Environmental Quality. EPA believes that approval of the OPDES program will provide both an environmentally protective permitting program, as well as one which will be responsive to the needs of citizens and businesses in Oklahoma.

2. Issue: Some municipalities expressed concern about the need to raise fees to support the OPDES program. These commenters support EPA approval of the program, while calling for more proportional fee system or financial support for municipalities. Only one municipality supported the authorization of the OPDES program conditioned upon no additional cost to ''mandated participants'' of the program.

Response: States applying to administer the NPDES program must establish that they have the financial ability and structure to run the program which EPA would approve (40 CFR 123.21). In the sources of funding identified by ODEQ for the OPDES program there is a fee system for permittees. The structure and necessity for the fee system was researched by ODEQ, reviewed by EPA, and reevaluated by an independent, third party study. EPA is satisfied the fee system outlined in the OPDES program is appropriate.

3. Issue: A national trade association sent comments objecting to EPA's assertion that authorization of a state program under NPDES was a ''federal action'' requiring consultation under section 7 of the Endangered Species Act (ESA). The association draws the conclusion from the ESA that EPA is not authorized nor is under any obligation to consult on any action that would not jeopardize a species. The association asserted that EPA approval of a state program is no more of a ''federal'' action than its review of state-issued permits; that EPA's authorization is not a ''discretionary'' action and therefore is not subject to the requirements of ESA. The commenters added that EPA is under no obligation to initiate formal consultation where the action is not

likely to adversely affect listed species. The commenters believe that because the state must administer the same program EPA does, there is no change to the ''environmental baseline,'' and therefore jeopardy '' * * * is not remotely likely.'' The commenters object to the conditions of the agreements reached by EPA, ODEQ and FWS during informal consultation, and believes them to be equivalent to ''reasonable and prudent measures'' more appropriate to a formal consultation. The commenter does not believe EPA has the authority to object to state issued permits for their potential effects on listed or proposed species. Additionally, the commenter does not agree with EPA, ODEQ, and FWS to include proposed species or habitat in the consultation agreements.

Response: The commenters refer to ''EPA's review and approval of a state permitting program'' and compares it to EPA's review of state issued permits. It is from this comparison that some confusion for the commenters may arise. The approval of a state program under section 402 of the CWA is a federal authorization and not simply a review of the state's documents. EPA views the approval as ''discretionary'' in that it must work with the state to develop mutual agreements in the MOA which is then signed by both agencies.

The regulations implementing the ESA includes in the term ''action * * * all activities or *programs* of any kind *authorized,* funded, carried out, in whole or in part, by Federal agencies in the U.S. or on the high seas.'' (50 CFR 402.02) When an action is determined by the agency to have the potential to ''affect'' listed species or critical habitat, the agency must consult or confer with the FWS (and for marine species National Marine Fisheries Service) to determine if species will be adversely effected. The agencies involved may elect to start with informal consultation. During this optional process the FWS '' * * * may suggest modifications to the action that the Federal agency and any applicant could implement to avoid the likelihood of adverse effects to listed species or critical habitat.'' (50 CFR 402.13) This process may also be applied to avoid jeopardy of a species which have been proposed for listing (50 CFR 402.10). Including agency ''conferences'' on proposed species and their habitat helps avoid the need for reinitiation of consultation after proposed species have been formally listed.

The consultation conducted by Region 6, ODEQ, and FWS applies to future actions by the state which could jeopardize listed or proposed species. No environmental baseline exists for the proposed state run program. If any ''programmatic'' environmental baseline exists, it applies only to past permitting actions issued by EPA and not future actions that may be issued by the State. A state program is operated *in lieu* of the federally administered NPDES program. The program is based not on CWA and its implementing regulations, but instead on state regulations and statutes. A state program cannot be judged on the baseline of the federal system that preceded it.

While it may not be clear that the section 7 consultation is specifically required for a program authorization, ESA and its implementing regulations do not restrict any agency from voluntarily consulting and conferring with Fish and Wildlife Service on actions it believes may affect listed species. The commenter for the association himself stated that '' * * * whether EPA was required to consult with FWS is not the issue * * *.'' EPA working cooperatively with ODEQ and FWS did informally confer and consult on species and habitat protection in the State of Oklahoma. This cooperation resulted in the agreements cited by the commenters. Region 6 believes consultation conducted on the authorization of a state NPDES program is consistent with the intent, definitions and the requirements of the ESA and CWA. The conditions of the agreements were placed in the EPA/ODEQ MOA to ensure that EPA and ODEQ had clear responsibilities with regard to carrying out the agreements.

EPA's authority to object to state issued permits is outlined in 40 CFR 123.44 which provides that EPA may object to the issuance of a permit which does not comply with the CWA, regulations, or the MOA; or, would in any other respect be outside the requirements of the CWA or its implementing regulations. CWA section 301(b)(1)(C) incorporates in the Act's protection any more stringent requirements required by any other Federal law or regulation. Region 6 does not believe that the conditions of the consultation agreements go beyond the authority of EPA to object to state issued NPDES permits.

4. Issue: A citizens group located in Grove, Oklahoma expressed concern that they had not been satisfied with ODEQ response to complaints they had made regarding the water quality of Cave Springs and Honey Creek, and the discharge of wastewater from Simmons Industries in Missouri. These citizens were bothered that the tone of the notices proposing this program were ''pro-industry.'' These citizens ask DEQ why it feels competent to take responsibility for the NPDES program; and ask EPA if it is not an important link in the protection of environmental resources. These citizens also express concern regarding agricultural industries.

Response: While the commenters may have a legitimate concern about the impacts of Simmons Industries on the water quality of Cave Springs and Honey Creek, the wastewater discharges cited by the citizens are regulated by the Missouri Department of Natural Resources (MDNR), not ODEQ. ODEQ may comment on the issuance of permits outside its jurisdiction which may impact water quality in Oklahoma, and may appeal to EPA if permits issued in Missouri do not meet water quality standards for that stream segment in Oklahoma. However ODEQ is not authorized to take enforcement action against dischargers in neighboring states. It is the understanding of Region 6 that ODEQ has communicated its concerns and those of the citizens to MDNR and EPA, requesting action to protect the water quality in these streams. Recently ODEQ has been communicating with Missouri's authorized agency recommending more stringent limits in the permit which MDNR is currently drafting.

While ODEQ does not have the authority to address pollutants from agricultural industries, ODEQ is working to address all point and non-point sources of pollutants within its jurisdiction. Authorization of the OPDES program under the CWA may help Oklahoma develop more comprehensive programs to improve water quality in the State. However, EPA's specific authorization of the OPDES program does not extend to programs regulating air and solid wastes, nor does it include point sources which are not within the jurisdiction of ODEQ or the CWA (see Scope of the OPDES Program and Clarifications on EPA Authority and Oversight. A.1. above).

The written agreements of this authorization process will formalize the partnership which has existed between EPA and ODEQ since the Oklahoma agency's formation, and will provide the structure for the side-by-side relationship between the two agencies. Region 6 will continue to be ready and available to work with ODEQ and the citizens of Oklahoma to ensure the environment is protected.

The OPDES program, the 43rd state program to be authorized under section 402 of the CWA, includes pretreatment, federal facilities and sewage sludge.

STATE NPDES PROGRAM STATUS

	Approved state NPDES permit program	Approved to regulate federal facilities	Approved state pretreatment program	Approved general permits program
Alabama	10/19/79	10/19/79	10/19/79	06/26/91
Arkansas	11/01/86	11/01/86	11/01/86	11/01/86
California	05/14/73	05/05/78	09/22/89	09/22/89
Colorado	03/27/75	—	—	03/04/82
Connecticut	09/26/73	01/09/89	06/03/81	03/10/92
Delaware	04/01/74	—	—	10/23/92
Florida	05/01/95	—	05/01/95	05/01/95*
Georgia	06/28/74	12/08/80	03/12/81	01/28/91
Hawaii	11/28/74	06/01/79	08/12/83	09/30/91
Illinois	10/23/77	09/20/79	—	01/04/84
Indiana	01/01/75	12/09/78	—	04/02/91
Iowa	08/10/78	08/10/78	06/03/81	08/12/92
Kansas	06/28/74	08/28/85	—	11/24/93
Kentucky	09/30/83	09/30/83	09/30/83	09/30/83
Louisiana	08/27/96	08/27/96	08/27/96	08/27/96
Maryland	09/05/74	11/10/87	09/30/85	09/30/91
Michigan	10/17/73	12/09/78	04/16/85	11/29/93
Minnesota	06/30/74	12/09/78	07/16/79	12/15/87
Mississippi	05/01/74	01/28/83	05/13/82	09/27/91
Missouri	10/30/74	06/26/79	06/03/81	12/12/85
Montana	06/10/74	06/23/81	—	04/29/83
Nebraska	06/12/74	11/02/79	09/07/84	07/20/89
Nevada	09/19/75	08/31/78	—	07/27/92
New Jersey	04/13/82	04/13/82	04/13/82	04/13/82
New York	10/28/75	06/13/80	—	10/15/92
North Carolina	10/19/75	09/28/84	06/14/82	09/06/91
North Dakota	06/13/75	01/22/90	—	01/22/90
Ohio	03/11/74	01/28/83	07/27/83	08/17/92
Oregon	09/26/73	03/02/79	03/12/81	02/23/82
Pennsylvania	06/30/78	06/30/78	—	08/02/91
Rhode Island	09/17/84	09/17/84	09/17/84	09/17/84
South Carolina	06/10/75	09/26/80	04/09/82	09/03/92
South Dakota	12/30/93	12/30/93	12/30/93	12/30/93
Tennessee	12/28/77	09/30/86	08/10/83	04/18/91
Utah—(06/14/96 Approved Sludge Prgm)	07/07/87	07/07/87	07/07/87	07/07/87
Vermont	03/11/74	—	03/16/82	08/26/93
Virgin Islands	06/30/76	—	—	—
Virginia	03/31/75	02/09/82	04/14/89	04/20/91
Washington	11/14/73	—	09/30/86	09/26/89
West Virginia	05/10/82	05/10/82	05/10/82	05/10/82
Wisconsin	02/04/74	11/26/79	12/24/80	12/19/86
Wyoming	01/30/75	05/18/81	—	09/24/91
Totals	42	36	30	31

Number of Fully Authorized Programs (Federal Facilities, Pretreatment, General Permits) = 27.
Number of Fully Authorized Programs, Including Sludge = 1.
*: Phased Federal facilities & storm water programs by 2000.

Other Federal Statutes

A. National Historic Preservation Act

Section 106 of the National Historic Preservation Act (NHPA) requires that all federal agencies must consult with the State Historic Preservation Officer (SHPO) and the Advisory Council on Historic Preservation (ACHP) on all federal undertakings which may affect historic properties or sites listed or eligible for listing in the National Register of Historic Places. Regulations outlining the requirements of a section 106 consultation on a federal undertaking are found at 36 CFR part 800. EPA's approval of the State NPDES permitting program under section 402 of the Clean Water Act is a federal undertaking subject to this requirement, but the State's subsequent issuance of OPDES permits may not be. EPA has thus consulted in accordance with section 106 of the NHPA to assure protection of eligible properties will be provided in connection with State permit actions. In the consultation, EPA, the SHPO and ODEQ outlined procedures by which ODEQ and the SHPO will confer on permit actions likely to affect historic properties. These processes are reflected in a memorandum of understanding signed by EPA and the SHPO on EPA's oversight role and objection procedures on permits when the two state agencies can not agree on the protection of historic properties. The EPA/ODEQ MOA includes conditions for EPA and ODEQ to follow to ensure that the requirements of the consultation with the SHPO are met.

B. Endangered Species Act

Section 7 of the Endangered Species Act (ESA) requires that all federal agencies consult on federal actions which may affect federally listed species to insure they are unlikely to jeopardize the continued existence of those species or adversely modify their critical

habitat. Regulations controlling consultation under ESA section 7 are codified at 50 CFR part 402. EPA's approval of the State permitting program under section 402 of the Clean Water Act is a federal action subject to this requirement, but the State's subsequent OPDES permit actions are not. EPA completed informal consultation with the U.S. Fish and Wildlife Service (FWS or the Service). In the consultation, EPA, the Service, and ODEQ outlined procedures by which ODEQ and FWS, will confer on permits which are likely to affect federally listed species. These processes are reflected in a Memorandum of Understanding between the State and FWS. In addition, a consultation agreement has been reached between EPA and FWS on EPA's oversight role and objection procedures when ODEQ and FWS cannot agree on the protection of species in an individual State permit action. These conditions are reflected in the EPA/ODEQ MOA.

I hereby authorize the OPDES program in accordance with 40 CFR part 123.

Dated: November 19, 1996.

Jane N. Saginaw,

Regional Administrator.

[FR Doc. 96–31274 Filed 12–9–96; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collections Approved by Office of Management and Budget

December 3, 1996.

The Federal Communications Commission (FCC) has received Office of Management and Budget (OMB) approval for the following public information collections pursuant to the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid control number. For further information contact Shoko B. Hair, Federal Communications Commission, (202) 418–1379.

OMB Number: 3060–0704.

Expiration Date: 05/31/97.

Title: Policy and Rules Concerning the Interstate, Interexchange Marketplace; Implementation of Section 254(g) of the Communications Act of 1934, as amended, CC Docket No. 96–61.

Form Number: N/A.

Estimated Annual Burden: 138,175.5 total annual hours; 266.2 hours per respondent (avg.); 519 respondents.

Estimated Annual Reporting and Recordkeeping Cost Burden: $435,000.

Description: In the Second Report and Order (Order), adopted in CC Docket No. 96–61, the Commission eliminated the requirement that nondominant interexchange carriers file tariffs for interstate, domestic interexchange telecommunications services. In order to facilitate enforcement of such carriers' statutory obligation to geographically average and integrate their rates, and to make it easier for customers to compare carriers' service offerings, the Order requires affected carriers to maintain, and to make available to the public in at least one location, information concerning their rates, terms and conditions for all of their interstate, domestic interexchange services.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 96–31257 Filed 12–9–96; 8:45 am]

BILLING CODE 6712–01–F

FEDERAL DEPOSIT INSURANCE CORPORATION

Statement of Policy Regarding the Payment of State and Local Property Taxes

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Revision and Reissuance of Policy Statement.

SUMMARY: The Statement of Policy revises and reissues the FDIC's ''Statement of Policy Regarding the Payment of State and Local Property Taxes'' issued on June 4, 1991. As required by section 303(a) of the Riegle Community Development and Regulatory Improvement Act of 1994 (''the RCDRIA''), the FDIC is conducting a systematic review of its regulations and statements of policy that might be inefficient, cause unnecessary burden, or contain outmoded, duplicative, or inconsistent provisions (see 60 FR 62345 (Dec. 6, 1995)). The FDIC has reviewed its 1991 Policy Statement and has concluded that it should be revised and reissued. This revised Statement of Policy would replace the 1991 Policy Statement.

The revised Statement of Policy would reflect (1) the statutory ''sunset'' of the Resolution Trust Corporation (''RTC'') on December 31, 1995, resulting in the FDIC's succession to the RTC's remaining responsibilities; and (2) the developing caselaw in the area.

EFFECTIVE DATE: January 9, 1997.

FOR FURTHER INFORMATION CONTACT: William P. Stewart, Real Estate Specialist, ORE, FDIC (202) 416–4229; David N. Wall, Senior Counsel, FDIC Legal Division (202) 736–0115; or David Fisher, Counsel, FDIC Legal Division (202) 736–3103.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The Statement of Policy does not require any collections of paperwork pursuant to section 3504(h) of the Paperwork Reduction Act, 44 U.S.C. 3501, et seq. Accordingly, no information has been submitted to the Office of Management and Budget for review.

Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 601, et seq., it is certified that the Statement of Policy will not have a significant economic impact on a substantial number of small entities. In addition, the Statement of Policy will not impose regulatory compliance requirements on depository institutions of any size.

DISCUSSION

I. Introduction

Section 15 of the Federal Deposit Insurance Act (''FDIA''), 12 U.S.C. 1825, provides immunity from all taxation imposed by any state, county, municipal, or local taxing authority, except for ad valorem real property taxation. This immunity from taxation, and its limited exception for real property taxation, apply to the FDIC both in its corporate capacity and when it is acting as a receiver for a failed financial institution. 12 U.S.C. 1825 (a) and (b),[1] respectively. See also 12 U.S.C. 1823(d)(3)(A).

On June 4, 1991, the FDIC and the RTC each issued a ''Statement of Policy Regarding the Payment of State and Local Property Taxes.'' The two policy statements were essentially identical. The RTC statement was published at 56 FR 28426 (June 20, 1991); the FDIC statement was not published in the Federal Register but was made publicly available in FDIC's Law, Regulations, and Related Acts. Since their issuance, several cases involving the FDIC's and RTC's tax immunity and the Corporations' implementation of their policy statements have been litigated to conclusion. Moreover, on December 31, 1995, the RTC terminated and the FDIC

[1] Section 219 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (''FIRREA'') added subsection (b) to clarify that the FDIC's immunity extends to receiverships.