

ATTORNEY GENERAL'S CERTIFICATION STATEMENT

I, W.A. Drew Edmondson, am the Attorney General of the State of Oklahoma. My office has reviewed the Oklahoma Department of Environmental Quality's (hereinafter "ODEQ") application and supporting documentation to the United States Environmental Protection Agency for the approval of electronic reporting for the ODEQ Electronic Document Receiving System, and I hereby certify:

- (1) that the ODEQ has sufficient legal authority provided by lawfully enacted or promulgated statutes and/or regulations to implement the electronic reporting component of its authorized programs consistent with 40 CFR § 3.2000 and with this application;
- (2) that such statutes or regulations are in full force and effect on the date of this certification; and
- (3) that the ODEQ has authority to enforce the affected programs using electronic documents collected under these programs.

To assist EPA's review of this application, I have included a description prepared by the ODEQ which specifically links applicable provisions of 40 C.F.R. Part 3 with relevant portions of the Oklahoma statutes and ODEQ regulations. The description shows ODEQ's authority to implement electronic reporting. I have also included with this certification descriptions and copies of all State statutes and regulations relevant to this application. These statutes and regulations demonstrate the ODEQ's authority to enforce the affected authorized programs using electronic documents.

W.A. Drew Edmondson
Attorney General of the State of Oklahoma
January 19, 2007

**I. ODEQ LEGAL AUTHORITY TO IMPLEMENT ELECTRONIC REPORTING
IN CONFORMANCE WITH 40 CFR § 3.2000**

FEDERAL RULE	RELEVANT STATE STATUTE OR RULE
40 CFR 3.2000(a)(2) – “valid electronic signature” is required if a person would have been required to sign the paper document	OAC 252:4-17-3(b)
40 CFR 3.2000(a)(2) – verify that State electronic reporting system produces electronic signatures that will satisfy the “beyond a reasonable doubt” standard when criminal sanctions are possible (e.g., individual signatory is uniquely authorized to use the signature device assigned to him/her)	OAC 252:4-17-5(b)
40 CFR 3.2000 (a)(2) – verify that the method used to create electronic signatures satisfies the definition of “valid electronic signature” in 40 CFR 3.3	OAC 252:4-17-5(b) 12A O.S. § 15-109(a)
40 CFR 3.2000(b)(5)(iv) – verify that each signatory will have the opportunity, at the time of signing, to review the content or meaning of the required certification statement, including any applicable provisions that false certification carries criminal penalties	OAC 252:4-17-5 OAC 252:4 Appendix E – Electronic Signature Agreement
40 CFR 3.2000(b)(5)(vii) – verify that for each electronic signature device used to create an electronic signature, the identity of the individual uniquely entitled to use the device and his/her relation to the entity has been determined with legal certainty (e.g., identity-proofing method is sufficiently robust to meet the “beyond a reasonable doubt” evidentiary standard)	OAC 252:4-17-5 OAC 252:4 Appendix E – Electronic Signature Agreement
40 CFR 3.2000(c) – verify that a person is subject to all appropriate civil, criminal penalties or other remedies for failure to comply with a reporting requirement if the person fails to comply with the applicable federal regulation	OAC 252:4-17-7 27A O.S. §§ 2-3-502 and 2-3-504 21 O.S. § 463
40 CFR 3.2000(c) – verify that where an electronic document submitted to satisfy a reporting requirement bears an electronic	OAC 252:4-17-6(b) 12A O.S. § 15-107

signature, the electronic signature legally binds or obligates the signatory or makes the signatory responsible to the same extent as the signatory's handwritten signature on a paper document	
40 CFR 3.2000(c) – verify that the signatory will be uniquely entitled to use the electronic signature device at the time of signature	OAC 252:4-17-5(b)
40 CFR 3.2000(c) – verify that nothing in the state program limits the use of electronic documents or information derived from electronic documents as evidence in enforcement proceedings	OAC 252:4-17-7(b) 12A O.S. § 15-113

II. GENERAL AUTHORITY OF ODEQ AS “STATE AGENCY” FOR PURPOSES OF 40 CFR § 3.2000:

Sections 15-117 and -118 of the Uniform Electronic Transactions Act (12A O.S. §§ 15-101 et seq.) (hereinafter “UETA”) provides that each government agency of the State of Oklahoma shall determine whether, and the extent to which, it will create and retain electronic records, and the extent to which it will send and accept electronic records and electronic signatures to and from other persons.

The ODEQ is created in § 2-3-101(A)(1) of the **Oklahoma Environmental Quality Code (hereinafter “Code”)** and identified as a “state environmental agency” in § 1-1-201(13) of the **Oklahoma Environmental Quality Act (27A O.S. §§ 1-1-101 et seq.) (hereinafter “Act”)**.

Section 15-107 of the UETA provides legal recognition of electronic records, electronic signatures, and electronic contracts; if a law requires a record to be in writing or if the law requires a signature, an electronic writing or an electronic signature satisfies the law.

Section 15-109(a) of the UETA provides that an electronic record or signature is attributable to a person if it was the act of the person, which may be shown in any feasible manner including a showing of the efficacy of any security procedure applied to determine the person to which the electronic record or electronic signature was attributable.

Section 15-113 of the UETA provides that, in a proceeding, evidence of a record or signature may not be excluded solely because it is in electronic form.

III. GENERAL REGULATORY AND ENFORCEMENT AUTHORITY OF ODEQ

The ODEQ has the power and duty to require the establishment and maintenance of records and reports. **27A O.S. §§ 2-3-202(A)(8) and 2-3-501(C)**

Section 2-3-502 of the Code provides that the ODEQ, upon determining that there are reasonable grounds to believe that any person is in violation of the Code or any rule promulgated thereunder or of an order, permit or license issued pursuant to the Code, may issue a notice of violation and, afterward, a compliance order requiring the violator to correct the violation. Additionally, the ODEQ may assess an administrative penalty or initiate other appropriate remedies in order to compel compliance with the requirements of the Code.

Section 2-3-504(A) of the Code provides that any person who violates any of the provisions of or who fails to perform any duty imposed by the Code or who violates any order, permit or license issued by the ODEQ or rule promulgated by the Board shall be guilty of a misdemeanor and may be punished in civil proceedings in district court by assessment of a civil penalty.

The ODEQ has authority to bring an action for injunctive relief to redress or restrain a violation by any person of the Code or of any rule promulgated thereunder, or order, license, or permit issued pursuant thereto or for recovery of any administrative or civil penalty assessed pursuant to the Code. **27A § 2-3-504(A)(4) and (F)**

IV. SPECIFIC AUTHORITY OF ODEQ TO ENFORCE THE AFFECTED AUTHORIZED PROGRAMS USING ELECTRONIC DOCUMENTS

- **Air Quality:** *The Oklahoma Clean Air Act* (27A O.S. §§ 2-5-101 *et seq.*, including enforcement provisions at § 2-5-110; § 2-5-114; § 2-5-116; and § 2-5-117); Oklahoma Administrative Code (“OAC”) 252:100, *Air Pollution Control Rules* (incorporates federal Air Quality reporting rules by reference)
- **Water Quality:** The Oklahoma Water Quality provisions of the Code (27A O.S. §§ 2-6-101 *et seq.*, including enforcement provisions at § 2-6-206; § 2-6-308; § 2-6-901); OAC 252:631, *Public Water Supply Operation Rules* (incorporates federal PWS reporting rules by reference); OAC 252:606, *Oklahoma Pollutant Discharge Elimination System Standards* (incorporates federal NPDES reporting rules by reference); OAC 252:652, *Underground Injection Control Rules* (incorporates federal UIC reporting rules by reference)
- **Land Protection:** The Oklahoma Hazardous Waste Management Act (27A O.S. §§ 2-7-101 *et seq.*, including enforcement provisions at § 2-7-126; § 2-7-129; § 2-7-130); OAC 252:205, *Hazardous Waste Management Rules* (incorporates federal hazardous waste reporting rules by reference)
- **Hazardous Materials Reporting:** The Oklahoma Hazardous Materials Planning and Notification Act (27A O.S. §§ 4-1-101 *et seq.*); OAC 252:020, *Emergency Planning and Community Right-to-Know Rules* (incorporates federal Tier II reporting rules by reference)