

9433.1987(23)

SURFACE IMPOUNDMENTS HOLDING ONLY K-WASTES GENERATED UNDER A TEMPORARY EXCLUSION

OCT 5 1987

Ms. Nancy Stein
Radian Corporation
8501 Mo-Pac Blvd.
P.O. Box 9948
Austin, Texas 78766-0948

Dear Ms. Stein:

This letter is in response to your August 14, 1987 inquiry regarding the regulatory status of Thermex Energy Corporation's surface impoundments located at their Brooksville, FL; McCleansville, NC; and Casper, WY facilities. In that letter you requested an interpretation of the regulatory status of the surface impoundments at these facilities which contain K044 wastes that had been temporarily excluded. This response addresses only the regulatory status of these units under the Federal hazardous waste management system but does not address whether the units have met the closure requirements of 40 CFR Part 265.

Based on the information provided by Thermex and reiterated in your letter, the subject surface impoundments, which contain wastes that were generated prior to and during the time that the temporary exclusion was in effect, stopped receiving these wastes while the temporary exclusion was still in effect. Since the impoundments at all three facilities stopped receiving wastes prior to the effective date of the final denial decision, which was November 8, 1986 (see 51 FR 25887, July 17, 1986), the surface impoundments at these facilities are not subject to hazardous waste regulation other than would typically apply to solid waste management units. The waste in these units, however, are now considered hazardous and must be handled in accordance with Subtitle C requirements if they are ever managed in such a way as to trigger Subtitle C regulation (i.e., they are removed, excavated, shipped off-site, mixed with other wastes, or receive further on-site treatment).

The States of North Carolina and Florida are authorized by

RO 13057

EPA to administer and enforce hazardous waste management programs pursuant to Section 3006 of RCRA, 42 U.S.C. §6926. The closure requirements of Thermex's impoundments at the facilities in these states, therefore, should be determined by the appropriate State authorities. The State of Wyoming, however, is not authorized under the aforementioned statute and therefore, the disposal unit at Thermex's Wyoming facility should comply with the applicable Federal hazardous waste closure requirements of 40 CFR Part 265.

I hope that this explanation has addressed your concerns regarding the regulatory status of Thermex's petitioned wastes and the on-site units in which they are contained. Should you have any further questions, please feel free to contact me at (202) 382-4206.

Sincerely,

Original Document signed

Suzanne Rudzinski, Chief
Assistance Branch
Office of Solid Waste

cc: Doug McCurry, Region IV
Allan Antley, Region IV
Mike Gansecki, Region VIII
Diana Shannon, Region VIII