

9484.1987(11)

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

AUG 7 1987

MEMORANDUM

Subject: Thermex Energy/Radian's request for guidance on the compliance dates for submitting a Part B permit application, issuing or denying a RCRA permit, and complying with the minimum technological requirements for surface impoundments.

To: Michael J. Sanderson, Chief
RCRA Branch
EPA Region VII

From: Suzanne Rudzinski, Chief
Assistance Branch
EPA Headquarters

On July 2, 1987 and July 10, 1987 Thermex Energy/Radian requested guidance on the regulatory status (i.e., permitting requirements) of Thermex's manufacturing and laboratory facilities located in Hallowell, Kansas from both the Kansas Department of Health and Environment and EPA, respectively. Specifically, Thermex/Radian has asked us to identify (1) the minimum technology requirements (MTR) compliance date for the three surface impoundments at the Hallowell manufacturing facility; (2) the date Thermax must submit a Part B application for the three surface impoundments and tank at the laboratory in order to prevent the loss of interim status; (3) the date that the Kansas Department of Health and Environment must issue a final permit for final permit denial; and (4) the date closure of the three surface impoundments must begin if a closure plan is submitted by November 8, 1987.

In response to their first question, Section 3005(j)(1) of the Resource Conservation and Recovery Act (RCA) requires that all surface impoundments either meet the minimum technological requirements (MTR) of section 3004(o)(1)(a) of RCRA by November 8, 1988 or stop receiving hazardous wastes. Section 3005(j)(6) of RCRA, however, specifies that any surface impoundment brought into the hazardous waste management

system, as a result of the promulgation of additional hazardous waste listings or characteristics, shall have four years from the date of promulgation of a new hazardous waste listing or characteristic to either meet the MTR or stop receiving hazardous wastes. The revocation of Thermex's temporary exclusion was promulgated on July 17, 1986 (see 51 FR 25887). As a result of the revocation of Thermex's temporary exclusion, Thermex's waste was brought back into the hazardous waste management system. We agree with Thermex/Radian's interpretation of Section 3005(j)(6) that revocation of a temporary exclusion has the same impact as bringing a waste into the system by a new listing. As a result, Thermex should have four years from the promulgation date of the revocation of its temporary exclusion and final denial of its delisting petition to either comply with the MTR or to stop receiving hazardous wastes. The date by which Thermex must either comply with the MTR or stop receiving hazardous wastes, therefore, is July 17, 1990.

The second question raised in Thermex/Radian's letter asks by what date must Thermex submit a Part B permit application for the impoundments (at the manufacturing facility) and the tank (at the laboratory facility) to prevent the loss of interim status. RCRA Section 3005(e)(3) does not apply to facilities having temporary exclusions. As long as Thermex had originally filed Part A applications for their three surface impoundments and for their tank and did not modify their Part A applications to delete the units handling the temporarily excluded wastes, the facilities have not lost interim status and no further action is required by the facilities. We note that Part B permit applications for the three surface impoundments and the tank are not required until the State or Region calls in the permit applications, however the facilities are subject to interim status standards until the permit is issued.

Their third question asks by what date must the Kansas Department of Health and Environment (KDHE) issue a final permit or final permit denial if Thermex submits a permit application for the Hallowell surface impoundments by November 8, 1987. As indicated above, Thermex is not required to submit a Part B permit application unless a Part B permit application is called in by the State or Region. Should Thermex, however, submit an application on November 8, 1987, KDHE is not required to process the Part B permit application for the hallowell surface impoundments by November 8, 1988.

Thermex/Radian's fourth question asks us to identify the date implementation of closure of the three surface impoundments must begin after the submittal of a closure plan on November 8, 1987. Again, as stated in response number two, Thermex does not have to submit a closure plan or implement closure. If Thermex voluntarily submitted a closure plan or stopped receiving hazardous waste, they would, under federal regulations, be required to initiate Part 265 closure within either 90 days after the surface impoundments stop receiving wastes or the closure plan is approved by the State Director or Regional Administrator, whichever is later. Closure would then have to be completed within 180 days (see 40 CFR Part 265.113). We note that the State Director or Regional Administrator may extend the time period in which closure must be implemented or completed if Thermex were to demonstrate the requirements of 40 CFR Part 265.113(a) or (b), respectively.

We are not planning on responding directly to Thermex on their substantive issues, rather we are directing them back to the Kansas DHE. I trust you will be conveying our guidance on this issue to the Kansas Bureau of Waste Management so that they can respond to Thermex.