

PPC 9484.1986(08)

SURFACE IMPOUNDMENT RECEIVING NON-HAZARDOUS  
WASTE AFTER HAZARDOUS WASTE RETROFITTING

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

SEP 5 1986

Honorable Arch A. Moore, Jr.  
Governor of West Virginia  
Charleston, West Virginia 25303

Dear Governor Moore:

This is in response to your letter of August 15, 1986, regarding the regulation of hazardous waste management facilities. You expressed concern that the "Holz Pond" surface impoundment will be affected by the Environmental Protection Agency's (EPA) May 2, 1986, regulation.

EPA has received a number of comments since the regulation was promulgated. The matter is currently in litigation. Please be assured that we will consider your concerns in our analysis of this issue. However, EPA disagrees with the legal view contained in your letter that Congress specifically provided that hazardous waste surface impoundments could remain open indefinitely, without retrofitting, to receive non-hazardous wastes. In fact, the 1984 amendments to RCRA do not address this question. A single colloquy between Senators Chafee and Randolph constitutes the sole reference to this issue in the legislative history. We read this colloquy to state that the 1984 amendments do not in themselves establish a requirement that mandates closure of such impoundments, provided that the impoundments are operated in a manner that is protective of human health and the environment. Nor, however, do those amendments mandate the continued operation of such facilities. EPA has thus been left to decide whether a facility should be allowed to remain open after it ceases to receive hazardous wastes; the May 2, 1986, rule contains EPA's decision and the preamble to the rule sets forth EPA's environmental rationale.

For your information, an administrative record (prepared for the court) containing pre-promulgation comments and background information on the regulation's development, will be available in the Office of Solid Waste's public docket as of September 9, 1986.

RO 12730

-2-

If I can be of further assistance, please let me know.

Sincerely,

Original Document signed

J. Winston Porter  
Assistant Administrator