

9553.1990(01)

CONOCO PART B PERMITS

OFFICE OF SOLID WASTE AND EMERGENCY RESPONSE

MAY 11 1990

C. Michael Swindoll
Conoco Inc.
P.O. Box 1267
Ponca City, OK 74603

Dear Mr. Swindoll:

This is in response to your letter of February 5, 1990 in which you presented your interpretations of the RCRA Part B permits at Conoco's three land treatment facilities located at Conoco refineries in Ponca City, Oklahoma; Billings, Montana; and Lake Charles, Louisiana. Specifically, you have interpreted these permits to mean that (1) continued operation of the landfarms for the application of non-hazardous waste can occur after August 8, 1990 and (2) permit modifications for delay of closure and closure are not required until the no-migration petition is denied. In response to your specific issues we have described below procedures pursuant to Federal rules and regulations. Since Conoco's facilities are located in authorized States and those States may have their own additional requirements, the Federal procedures may or may not apply. Therefore, we recommend that you work closely with these States to ensure applicable requirements are met.

On August 8, 1990 the current two year national capacity variance for the continued land disposal of petroleum refinery hazardous wastes (K048-K052) is scheduled to expire. However, on May 8, 1990 the Administrator signed the Third Third Land Disposal Restrictions Rule. The rule provides for an extension, until November 8, 1990, of the national capacity variance for the K048-K052 wastes.

At the expiration of the revised national capacity variance, in order for a facility to continue the land disposal of these restricted hazardous wastes final approval must be obtained for either a no-migration petition, a case-by-case extension or a treatability variance. Pending a decision on a no-migration petition for a land disposal unit, Federal regulations allow owners and operators to continue to dispose of non-hazardous waste in that unit after the expiration of the variance under the provisions of 40 CFR 264.113(b) and 265.113(b). These regulations state that the owner or

operator must complete partial and final closure activities in accordance with the approved closure plan within 180 days after receiving the final volume of hazardous waste at the unit of facility. However, they further state that the Regional Administrator may approve an extension of the closure period if the owner or operator complies with all applicable requirements for requesting a modification to the permit and that he makes certain demonstrations. For example, if the owner or operator can demonstrate that the hazardous waste management unit or facility has the capacity to receive additional hazardous waste; and that there is a reasonable likelihood that he or another person will recommence operation of the hazardous waste management unit or facility within one year; and the closure of the unit or facility would be incompatible with continued operation of the site; and he continues to comply with all applicable permit requirements, just cause exists for extension of the closure period. See 40 CFR 264.113(b)(1)(ii) and 265.113(b)(1)(ii). Procedures for making these demonstrations are addressed in 40 CFR 264.113(c) and 265.113(c). Procedures for modifying the closure plan are addressed in 40 CFR 264.112 and 265.112. Therefore, if the State in which the unit is located has procedures equivalent to the Federal requirements at 40 CFR 264.113 (b) and 265.113(b) then closure can be extended as discussed above. Please note, however, that States can be more stringent or impose additional requirements.

If the no-migration petition is approved, the owner or operator can resume the receipt of the restricted hazardous waste (K048-K052). If the petition is denied, demonstrations made under 40 CFR 264.113(b)(1)(ii) and 265.113(b)(1)(ii) would no longer apply (e.g., there no longer exists a reasonable likelihood that the owner or operator will recommence operation of the hazardous waste management unit or facility) and the owner or operator must proceed with closure unless they are eligible to continue to receive non-hazardous waste under the "delay of closure" regulations.

These Federal "delay of closure" provisions as set forth in 40 CFR 264.113(d) and 265.113(d) allow the owner or operator to receive only non-hazardous waste in a landfill, land treatment unit or surface impoundment after the final receipt of hazardous waste if certain conditions are met. See enclosed copy of 54 FR 33376, August 14, 1989.

Since the "delay of closure" final rule was promulgated pursuant to RCRA, it is effective only in those States that do not have interim or final authorization (i.e., Alaska, California, Connecticut, Hawaii, Iowa, Puerto Rico, Virgin Islands, Wyoming, American Samoa and the Northern Marianas Islands) and in those authorized States that have modified their programs to reflect this regulation. In addition States may choose to adopt "delay of closure" provisions more stringent than the Federal. In order to determine the

applicability of the "delay of closure" provisions, you should contact the States in which your refineries are located.

If the "delay of closure" is available you should carefully note any deadlines for submission of permit modification request and required demonstrations. For example, under the Federal "delay of closure" provisions the request to modify the permit and the demonstrations referred to in 40 CFR 264.113(d)(1) and (2) and 265.113(d)(1) and (2) are required to be submitted to the Regional Administrator no later than 120 days prior to the date on which the owner or operator of the facility receives the known final volume of hazardous waste or no later than 90 days after the effective date of the "delay of closure" rule in the State in which the unit is located, whichever is later. Under the Federal program, denial of the petition would constitute date certain after which hazardous waste would not be applied to the facility.

If you have any further questions regarding the above information please call Jim Michael of my staff at (202) 382-2231.

Sincerely,

Sylvia K. Lowrance, Director
Office of Solid Waste

Enclosure

cc: William K. Honker, Region VI
Karen Dhrberg, Oklahoma State Department of Health
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