UNITED STATES ENVIRONMENTAL PROTECTI
REGION IV
345 COURTLAND STREET
ATLANTA, GEORGIA 30365

4WD-RM

FEB 7 1985

Mr. Bobby Joe Davis, Chief
Environmental Protection Branch
Safety and Environmental Control Division
Department of Energy
Oak Ridge Operations
P. O. Box E
Oak Ridge, Tennessee 37831

Re: Proposed Dual Purpose Incinerator

Dear Mr. Davis:

In your January 10, 1985, letter to Betty Willis, you requested confirmation of two regulatory interpretations. In short the interpretations were: (1) that the RCRA reauthorization amendments provided authority to allow construction of dual purpose (RCRA/TSCA) incinerators without having received a RCRA permit prior to beginning construction, and (2) a RCRA permit was not required for the performance testing of the incinerator if hazardous wastes were not burned.

Section 211 of the Hazardous and Solid Waste Amendments of 1984 (HSWA) states:

> "No permit shall be required under this section (RCRA §3005) in order to construct a facility if such facility is constructed pursuant to an approval issued by the Administrator under Section 6(e) of the Toxic Substances Control Act for the incineration of polychlorinated biphenyls..."

The purpose of this exemption is to remove an inconsistency between the RCRA and TSCA regulations affecting construction of incinerators. As discussed previously, under RCRA no construction may occur prior to receipt of a final permit. However, under TSCA, construction may occur prior to final approval.

In enacting this amendment, Congress stated that:

> "where an incinerator has been constructed and approved pursuant to TSCA for the burning of PCBs, the owner or operator shall not be precluded from applying for a RCRA permit solely because a RCRA permit was not obtained prior to construction. The EPA regulation being codified by this amendment was designed to assure that the permitting agency would not face a choice between approving an incinerator or 'forcing the abandonment or devaluation of the premature investment.' Here, however, if a company proceeded with construction, obtained TSCA approval and then sought a RCRA permit, the company

would not have to abandon or suffer a devaluation of its investment if it was ultimately denied a RCRA permit for the incinerator. The company would still have a PCB incinerator." (Congressional Record §9175, (daily edition, July 25, 1984)).

Your attention is called to the fact that this exemption only applies to incinerators and not to storage units. Prior to construction of a storage unit, the unit would have to be covered under a RCRA permit or be approved as a change during interim status.

You also asked about burning of commerical chemicals as part of your contractor's performance testing. Since these materials have not been discarded and do not meet the definition of solid waste (40 CFR §261.2), they are not regulated under Subtitle C of RCRA. Based on the information you and your staff presented, the contractor would not be considered the owner/operator of a RCRA incinerator during the performance testing.

Depending on the commerical chemicals you use for your performance testing, you may be releasing a hazardous substance into the environment. If that is the case, and if your release is of a reportable quantity, you will have to comply with the notice of requirements of Section 103a of CERCLA (42 U.S.C. §9603(a)).

If you have any questions, please contact Rita Ford at FTS 257-7654.

Sincerely yours,

James H. Scarbrough

James H. Scarbrough, P. E., Chief
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cc: Robert C. Sleeman, DOE
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