BEFORE THE ADMINISTRATOR
U.S. ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C.

In the Matter of:	)	
Colmac Energy, Inc. (Riverside County, CA)	)	PSD Appeal No. 88-9
Applicant	)	

ORDER DENYING REVIEW

In a petition filed pursuant to 40 CFR 124.19 (1987), the County of Riverside and the Coachella Valley Association of Governments requested review of a Prevention of Significant Deterioration (PSD) permit issued to Colmac Energy, Inc. for the construction of a 49 megawatt biomass-fueled electrical power plant on the Cabazon Indian Reservation in Riverside County, California. The permit determination was made by EPA Region IX, San Francisco, California, on July 28, 1988.

Under the rules governing this proceeding, there is no appeal as of right from the permit decision. Ordinarily, a petition for review of a PSD permit determination is not granted unless it is based on a clearly erroneous finding of fact or conclusion of law, or involves an important matter of policy or exercise of discretion that warrants review. The preamble to the regulations states that "this power of review should be only sparingly exercised," and that "most permit conditions should be finally determined at the Regional level * * *." 45 Fed. Reg. 33,412 (May 19, 1980). The burden of demonstrating that the permit conditions should be reviewed is therefore on the petitioners. Petitioners have not satisfied that burden in this instance.

Petitioners have raised twelve different objections to the issuance of the permit, which can be grouped into three major categories. First, petitioners contend the South Coast Air Quality Management District of California (the "District") and the Riverside County Waste Management Director (the "Director") should receive notifications from the facility and have the same rights of access and inspection as the EPA, and the District's new source rules should specifically apply to the project. Second, petitioners contend Region IX failed to analyze unregulated pollutants properly and did not consider the environmental problems of odor and vector control. Third, petitioners complain that certain conditions are vague or inadequate and should be clarified.

These objections do not persuade me to review the permit.

The first category fails to recognize the District's and the Director's lack of jurisdiction over the facility under the PSD program. It is located on Indian land and therefore jurisdiction resides with the appropriate federal agencies and the tribe, not with the state and local agencies. Region IX has indicated, however, that it is likely at some point in the future to designate the District to act as EPA's representative in this matter. In the meantime, EPA is the exclusive permitting, inspecting, and enforcing authority for the Colmac facility with respect to Clean Air Act issues.

The second category of objections must fail because the record shows that emissions of unregulated pollutants from the facility were considered in accordance with applicable EPA policy and legal interpretations, as set forth in North County Resource Recovery Associates, PSD Appeal No. 85-2 (June 3, 1986). Nothing further was required of the permit applicant under federal law. EPA concluded that the emission controls proposed as best available control technology (BACT) for the Colmac facility (baghouse with teflon laminated bags, limestone injection, ammonia injection, and a circulating fluidized bed combustor with a minimum temperature of 1,600 F and with a residence time of 3 to 5 seconds) would be among the most effective for reducing toxic air emissions. As to odor and vector concerns expressed by the petitioners, they were given appropriate consideration under the circumstances, for EPA looked at other biomass power plants in operation in California, but none demonstrated any such problems. The fuel to be used is baled straw and wood chips; the facility will not burn garbage or other food sources. Petitioners have not established that their concerns are anything other than speculative, which is not a sufficient basis to justify exercise of the review powers under the applicable regulations.

The third category of objections concerns allegedly vague or inadequate matters requiring clarification. The Region has addressed these concerns by, for example, stating that it interprets the provision for a "wind enclosed" fuel hog as meaning "completely enclosed"; that it believes the requirement for watering of the fuel storage pile during 12 mph+ winds is sufficient to control any dust problems that might arise; and that the expression of the NOx emission limit in terms of pounds per hour (lb/hr) and parts per million (ppm) provides ample protection for the environment, thereby obviating any need to express the limit in other terms. In conclusion, none of the objections in this last category raises any concerns about the validity of the Region's permit determination.

For the reasons stated above, it is my conclusion that review of Region IX's permit determination is not warranted. The Region factored in all necessary requirements of federal law and EPA does not have the authority to impose state or local requirements in the permit in the absence of the permit applicant's consent. I note in this latter respect that the applicant in a number of instances has agreed to inclusion of provisions in the permit that reach well beyond the bare minimum requirements of the PSD provisions of the Clean Air Act. These additional requirements include, for example, provisions for offsets of all emissions in accordance with ARB/CAPCOA procedures; and measurement of non-regulated pollutants such as polycyclic organic matter, dioxins and furans, and metals. The fact that some or all of these additional undertakings may fall short of petitioners' expectations under state law is legally irrelevant to the federally issued permit. Therefore, the petition for review is denied. In accordance with 40 CFR 124.19(f)(2), the Regional Administrator or his delegatee shall publish notice of this final action in the Federal Register.

So ordered.

/s/
Lee M. Thomas

Administrator

Dated: 12/12/88