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

In the Matter of:)
Huntington Mass-Burn Incinerator) PSD Appeal No. 89-2
Applicant)
)

ORDER DENYING REVIEW

By letter dated July 9, 1989, Citizens for a Livable Environment and Recycling, Inc. requested review of an amended Prevention of Significant Deterioration (PSD) permit that authorizes construction of a mass-burn municipal waste incinerator for the Town of Huntington, New York. The New York State Department of Environmental Conservation (DEC) issued the amended permit on June 9, 1989, pursuant to a delegation of authority from EPA Region II, New York, New York. Because of the delegation, DEC's

permit determination is subject to the review provisions of 40 CFR 124.19, and any permit it issues will be an EPA-issued permit for purposes of federal law. 40 CFR 124.41; 45 Fed. Reg. 33,413 (May 19, 1980).

Petitioner objects to the issuance of the permit because it believes the permit is deficient in several respects. Petitioner claims, inter alia, that the permit will allow the facility to emit excessive quantities of NOx; that it fails to require the facility to use the best available control technology (BACT) for control of NOx emissions; and that the BACT analysis is deficient because it does not contain a comparative analysis of recycling and mass-burn incineration.

Under the rules governing this proceeding, there is no appeal as of right from the permit determination. 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 [state] level * * *." 45 Fed. Reg. 33,412 (May 19, 1980). The burden of demonstrating that the permit conditions should be reviewed is therefore on the petitioner. Petitioner has not met its burden.

Petitioner's claims with respect to NOx emissions are groundless and are based on a misunderstanding of the applicable legal requirements. In claiming that predicted emissions of NOx (565 tons per year, according to petitioner) will exceed federal requirements, petitioner has confused the actual requirements (for which there are no specific tonnage limitations) with a "de

minimis" emissions rate -- 40 tons per year -- which determines whether a facility's NOx emissions are "significant" and therefore subject to BACT and other PSD requirements. See 40 CFR 52.21(b)(23)(i) and 52.21(j)(2). Because the facility's predicted NOx emissions will exceed that threshold rate, a BACT analysis was performed for the proposed facility, with DEC determining BACT to be "selective noncatalytic reduction." DEC's BACT determination is reflected in the permit, and petitioner has not shown it to be erroneous in any respect. With respect to recycling, Petitioner's assertions that the BACT analysis is deficient are unconvincing because petitioner has not shown, as it must, that recycling is an "available" technology, which -- in combination with emission control equipment already proposed for the facility -- will demonstrably reduce emissions of regulated pollutants such as NOx or will otherwise represent BACT. Without such a showing, the petition fails to establish grounds for including recycling in the BACT analysis. See Spokane Regional Waste-to-Energy Project, PSD Appeal No. 88-12 at 22 (EPA June 9, 1989). Accordingly, review of DEC's permit determination is denied.

So ordered.

Dated: [August 2, 1989]

William K. Reilly
Administrator

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Order Denying Review, PSD Appeal No. 89-2, were mailed to the following in the manner indicated.

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