

US EPA ARCHIVE DOCUMENT



## RCRA Permit Appeal Fact Sheet

1987

**FACILITY:** Interstate Lead Company, Inc. (ILCO)  
Leeds, Alabama  
ALD 041 906 173  
RCRA Appeal No. 87-16

**PETITIONER:** ILCO

**PETITION FILED:** September 30, 1987

**STATUS OF PETITION:** See Permit Appeal Status Report

**ISSUE:** Miscellaneous other issues (compliance with liability requirements)

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### Summary of Petition:

ILCO's operating permit for its Leeds, Alabama, facility, a secondary smelting operation, was denied, because ILCO was unable to demonstrate in its Part B submission compliance with the liability requirements found at 40 CFR Section 270.14(b)(17). These regulations state that documentation of financial assurance for liability must be included in the Part B permit application. After its permit was denied, ILCO submitted a new certificate of coverage for sudden liability insurance in the requisite amounts and established an amended trust fund agreement for closure and post-closure care of its regulated units. To date, ILCO still is not in compliance with financial assurance requirements for nonsudden liability coverage.

ILCO asserted in its petition that the availability of insurance for secondary lead smelters is an important policy consideration necessitating the Administrator's review, given the contribution that such operations make to resource conservation and recovery. ILCO did not dispute the fact that it failed to demonstrate compliance with the requirement, nor did ILCO assert that the decision to deny the permit was clearly erroneous or that it involved an exercise of discretion requiring review (based on Sections 124.19(a)(1) and (2) criteria for permit review).

Although not raised in its petition, ILCO submitted a variance request to the Alabama Department of Environmental Management (ADEM) for liability coverage for nonsudden accidental occurrences, based on the "unavailability" of nonsudden insurance for secondary smelters. This request was made at the close of the public comment period, too late for consideration with the permit application. In addition, ILCO at one point had claimed that each of its regulated units was a waste pile, and that these waste piles were not subject to liability coverage for nonsudden accidental occurrences, as indicated by 40 CFR Section 264.147(b).

*Extra*

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

In the Matter of: )  
Interstate Lead Company, Inc. )  
RCRA Permit No. ALD 041906173 )

RCRA Appeal No. 87-16

ORDER DENYING PETITION FOR REVIEW

By petition dated September 28, 1987, Interstate Lead Co., Inc., seeks review under 40 CFR §§124.15 and .19 of a decision by U.S. EPA Region IV to deny Interstate's application for a hazardous waste management permit under the Resource Conservation and Recovery Act (RCRA), 42 U.S.C.A. §§6901-6991i. The application was for Interstate's secondary lead smelting facility located in Leeds, Alabama. As requested by EPA's Chief Judicial Officer, Region IV submitted a response to the petition on December 11, 1987.

Under the rules governing this proceeding, there is no appeal as of right from the Region's permit decision. Ordinarily, a RCRA permit determination will not be reviewed 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. See 40 CFR §124.19. 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 (1980). The burden of demonstrating  
that review is warranted is on the petitioner.

Based on the petition and the Region's response, I believe  
that Interstate has failed to meet its burden under 40 CFR  
§124.19 in this case. Accordingly, its petition is denied.

So ordered.



Lee M. Thomas  
Administrator

Dated: 9-15-88

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Order Denying Petition for Review in the Matter of Interstate Lead Company, Inc., RCRA Appeal No. 87-16, have been served on the following persons in the manner indicated:

By First Class Mail,  
Postage pre-paid:

Nil V. Toulme  
Alston & Bird  
1200 Citizens & Southern  
National Bank Building  
35 Broad Street  
Atlanta, GA 30335

Elizabeth L. Osheim  
Assistant Regional Counsel  
Hazardous Waste Law Branch  
U.S. EPA, Region IV  
345 Courtland Street, NE  
Atlanta, GA 30365

Patrick Tobin, Director  
Waste Management Division  
U.S. EPA, Region IV  
345 Courtland Street, NE  
Atlanta, GA 30365

Dated: September 16, 1988

*Brenda H. Selden*  
Brenda H. Selden, Secretary  
to the Chief Judicial Officer