

US EPA ARCHIVE DOCUMENT



RCRA Permit Appeal Fact Sheet

1988

FACILITY: Hughes Aircraft Company, Air Force Plant 44
Tuscon, Arizona
AZD 009 005 422
RCRA Appeal No. 88-29

PETITIONERS:

- Tusconans for a Clean Environment
- Toxic Waste Investigative Group

PETITIONS FILED: November 4, 1988

STATUS OF PETITIONS: See Permit Appeal Status Report

ISSUES:

- Miscellaneous other issues (inadequate groundwater monitoring; permitting a closed unit)

Summary of Petitions:

Both petitioners have requested that EPA rescind Hughes Aircraft's hazardous waste permit. Tusconans for a Clean Environment points to inadequate groundwater monitoring and evidence of contamination as grounds for rescinding the permit. Toxic Waste Investigative Group claims that the permit includes a unit that was to have been closed in May 1987.

- **Inadequate Groundwater Monitoring.** Tusconans for a Clean Environment requests that Hughes Aircraft identify the extent and source of contamination at the site. In particular, the petitioner is concerned about possible radioactive contamination as detected by EPA's Ground Water Task Force (GWTF) in April 1988. The petitioner requests that EPA require Hughes Aircraft to cap sources of contamination to prevent further pollution, and to take immediate remedial action. The petitioner also cites the GWTF report to show the facility's non-compliance with groundwater monitoring requirements.
- **Permitting a Closed Unit.** The Toxic Waste Investigative Group asserts that the permit includes a treatment system that was to have been closed by May 1987. The petitioner was led to believe that the system was closed according to applicable regulations.

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

In the Matter of:)

Hughes Aircraft Company)
Air Force Plant #44)

RCRA Permit No. AZD 009 005 422)
_____)

RCRA Appeal No. 88-29

ORDER DENYING REVIEW

Before me are two petitions filed under 40 CFR §124.19 requesting review of a permit issued to the U.S. Air Force and Hughes Aircraft Company under the Resource Conservation and Recovery Act (RCRA), as amended, 42 U.S.C.A. §§6901-6991i (1983 and West Supp. 1988), for Air Force Plant No. 44 in Tucson, Arizona. The permit was issued jointly by U.S. EPA Region IX and the Department of Environmental Quality of the State of Arizona, an authorized state under RCRA §3006(b). The federal portion of the permit imposes corrective action and other requirements under the 1984 Hazardous and Solid Waste Amendments, Pub. L. No. 98-616, 98 Stat. 3221. Two citizen groups -- Tucsonans for a Clean Environment (TCE) and Toxic Waste Investigative Group (TWIG) -- now seek review of the permit.

Under the rules governing this proceeding, there is no appeal as of right from the Region's permit decision. Ordinarily, a Regional 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; 45 Fed. Reg. 33,412 (May 19, 1980). The preamble to Section 124.19 states that "this power of review should be only sparingly exercised," and that "most permit conditions should be finally determined at the Regional level * * *." Id.

The Agency shares Petitioners' concerns regarding the need to eliminate any threat to human health or the environment caused by contamination at the site and to ensure that the permittees' hazardous waste management is conducted in an environmentally protective manner. As the Region explained in its response to the petitions, however, the most effective way to achieve these goals is to go forward with corrective action and to impose the regulatory protections afforded by the rules that implement RCRA. This is precisely what the permit at issue is designed to do.

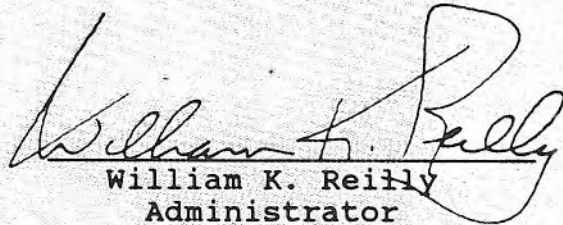
To the extent TCE and TWIG challenge the state portion of the permit, the issues raised are not subject to federal administrative review. ^{1/} Region IX has adequately addressed each of Petitioners' specific concerns regarding the federal portion of the permit ~~both~~ in its response to comments on the draft permit and in its response to the petitions for review. Its permit decision is not clearly erroneous and does not otherwise warrant

^{1/} See, e.g., In re Highway 36 Land Development Co., RCRA Appeal No. 87-5 (September 2, 1987) (only federal portion of a RCRA permit is subject to review under §124.19).

review. For the reasons set forth above and in the Region's response to the petitions, and based on the record before me, review is denied.

The federal portion of the permit (Section II.C.) provides for further public notice of the specific corrective action measures to be implemented under the permit. Petitioners are encouraged to continue to make their views known to Region IX at that time to ensure that any future concerns they might have are adequately addressed. ^{2/}

So ordered.



William K. Reilly
Administrator

Dated: JUN 27 1989

^{2/} In its petition, TWIG requests certain documents regarding the facility. The Region is directed to address this request under the standards set forth in the federal Freedom of Information Act.

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Order Denying Review in the matter of Hughes Aircraft Company (Air Force Plant #44), RCRA Appeal No. 88-29, were sent to the following in the manner indicated:

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Dated: JUN 23 1989


Brenda H. Selden, Secretary
to the Chief Judicial Officer