

US EPA ARCHIVE DOCUMENT



RCRA Permit Appeal Fact Sheet

1988

FACILITY:

Waste Tech Services and BP Chemicals America, Inc.
Lima, Ohio
OHD 042 157 644
RCRA Appeal No. 88-8

PETITIONERS:

- Clementina DePalma
- Kenneth Watt
- Noreen Christoff
- James Carpenter

PETITION FILED:

May 5, 1988

STATUS OF PETITION:

See Permit Appeal Status Report

ISSUES:

- Due process
- Miscellaneous other issues (level and effectiveness of monitoring; health effects/hazards associated with current facility operations and demonstration; hazardous waste storage, transport, and volume; insurance; conflict of interest)

Summary of Petition:

Effective March 31, 1988, Waste Tech Services was granted a research, development, and demonstration (RD&D) permit for a one-time demonstration of "fluidized bed combustion" at its Lima, Ohio, facility. Four citizens from Lima jointly filed an undated petition requesting the Administrator to review Region 5's permit determination in this case. The petitioners presented their comments in two sections: those concerning procedural errors and denial of due process inherent in the existing permitting process; and those questioning substantive issues in the permit itself. The petition (submitted with attached responses by the petitioners to EPA's comments on the draft permit) did not reference specific permit conditions under appeal, nor did it indicate whether the conditions under appeal were part of the Regional or State permit.

- **Due Process.** The petitioners object to the way in which EPA and Ohio conducted the permit proceedings for this facility, and suggest that the entire permit process of notice, hearing, review, decisionmaking, and appeal operates to deny citizens due process and equal protection of law.



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- Specifically, the petitioners argue that EPA and State Public notices on the fact of a public hearing and on the issuance of the draft permit: (1) were "vague, ambiguous, and confusing" in content; (2) failed to inform the public adequately about the substance of the draft permit and the public hearing in question, or about opportunities for public comment; and (3) provided conflicting information on the duration of the public comment period.
- In addition, the petitioners state that the Ohio public hearing was "prejudicial," because the public was not allowed to ask questions of either BP Chemicals officials or the Ohio EPA officials in attendance, and public comments were limited to five minutes. For these reasons, the petitioners suggest that the public hearings for this facility were "sham proceedings."
- **Level and Effectiveness of Monitoring.** The petitioners believe that EPA and Ohio do not adequately (and can not effectively) monitor air, water, and soil contamination based on existing operations (deep-well injection) at the facility, and note that scientific studies are not planned to assess existing and current human health effects or health hazards resulting from proposed incinerator operations at the facility. In addition, the petitioners question whether EPA's technical judgment in issues relating to the permit can withstand scientific scrutiny.
- **Health Effects/Hazards Associated with Current Facility Operations and Demonstration.** Neither the permittee, EPA, the State of Ohio, or the Allen County Health Department plan to test or monitor the short- and long-term health effects associated with the proposed one-time demonstration at the facility.
- **Hazardous Waste Storage, Transport, and Volume.** There is no adequate warning system to alert the public of major accidents during the transport of hazardous waste to and from the facility. The petitioners also raise questions about the routes that will be used in transporting these wastes, and the times at which these wastes will be transported. The petitioners are concerned over drum and container storage of hazardous materials at the facility before and after incineration. In addition, the petitioners are concerned about the amount of waste that the facility will need to handle to run the incinerator in a cost-effective manner.
- **Insurance.** The petitioners believe that insurance coverage is inadequate. The petitioners question how BP Chemicals America, as a multinational corporation, will be held accountable to the public, the State, and EPA.
- **Conflict of Interest.** The petitioners also raise possible conflict of interest issues.

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

In the Matter of:

Waste-Tech Services and
BP Chemicals America, Inc.

RCRA Permit No. OHD 042157644

RCRA Appeal No. 88-8

ORDER DENYING PETITION FOR REVIEW

By petition filed May 4, 1988, under 40 CFR §124.19, Clementina DePalma, Kenneth E. Watt, Noreen Christoff, and James M. Carpenter seek review of a permit issued by EPA Region V to Waste-Tech Services and BP Chemicals America, Inc. The permit is a research, development, and demonstration (RD&D) permit issued under Section 3005(g) of the Resource Conservation and Recovery Act (RCRA), 42 U.S.C.A. §6925(g), for temporary pilot-scale testing of a mobile incineration unit in Lima, Ohio. Petitioners are residents of Lima and members of Allen County Citizens for the Environment. On July 20, 1988, Region V responded to the petition as requested by EPA's Chief Judicial Officer. Also before me is an August 24, 1988 supplement filed by Petitioners, and a July 20, 1988 letter from BP Chemicals International opposing review.

Under the rules governing this proceeding, there is no appeal as of right from the Region's permit decision. See 40 CFR §124.19. Ordinarily, a RCRA permit determination will not be reviewed unless it is based on a clearly erroneous finding of fact or conclusion

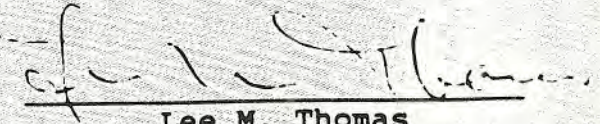
of law, or involves an important matter of policy or exercise of discretion that warrants review. ^{1/} The preamble to the regulations states that "this power of review should be only sparingly exercised," and that "most permit conditions should be finally determined at the Regional level * * *." 45 Fed. Reg. 33,412 (1980). The burden of demonstrating that review is warranted is therefore on the petitioners.

Petitioners set forth twenty-five separate reasons supporting their request for review. Briefly put, they express concern about the permit-issuing process; the health effects of the proposed incinerator, existing underground injection wells, and other aspects of the facility; the transportation of waste to the facility; the adequacy of the permittees' liability insurance; and the permittees' past conduct and accountability. Serious consideration has been paid to each of Petitioners' contentions, but none warrants review. Some of their arguments are simply irrelevant to the RD&D permit at issue and thus beyond the scope of this proceeding (e.g., allegations regarding the Ohio EPA or monitoring of the injection wells). As to the other issues, Petitioners have failed to make the requisite showing that the permit decision is clearly erroneous

^{1/} See, e.g., In re Highway 36 Land Dev. Co., RCRA Appeal No. 87-5, at 2 (Sept. 2, 1987); In re Ogden Environmental Services, Inc., RCRA Appeal No. 87-3, at 1-2 (July 24, 1987); In re Bryant Waste Management, Inc., RCRA Appeal No. 85-2, at 2 (June 23, 1986).

or otherwise warrants review. Accordingly, the petition for review is denied. 2/

So ordered.



Lee M. Thomas
Administrator

Dated: 

2/ David A. Little, an attorney and member of Allen County Citizens for the Environment, suggested by letter dated August 3, 1988, that a petition for review should be treated like a notice of appeal and found sufficient if it merely identifies issues to be briefed later on appeal. Petitioners in their supplement likewise argue that Region V has taken an unduly narrow view of appeals under 40 CFR §124.19. Although a full briefing schedule may be established once review is granted, this possibility does not render the petition for review a mere procedural formality. As noted above, under longstanding Agency policy, discretion to review a permit decision is to be "sparingly exercised." 45 Fed. Reg. 33,412 (1980). As a request for the exercise of this sparingly-used discretion, a petition for review must not only identify disputed issues, but demonstrate that special and important reasons necessitate review, e.g., a conflict between the permit decision and an applicable statute or regulation, or a conflict between Regions regarding an important policy matter that requires uniformity. Petitions filed by citizens proceeding pro se are, of course, liberally construed, but such petitions must still make the basic showing under Section 124.19 that review is warranted.

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Order Denying Petition for Review in the matter of Waste-Tech Services and BP Chemicals America, Inc., RCRA Appeal No. 88-8, were sent to the following in the manner indicated:

By first class mail
postage prepaid:

Clementina DePalma
2215 Reinell
Lima, OH 45805

Kenneth E. Watt
1424 Wilson Avenue
Lima, OH 45805

Noreen Christoff
1123 Rice Avenue
Lima, OH 45805

James M. Carpenter
607 West High Street
Lima, OH 45801

David A. Little
3156 Clement Drive
Lima, OH 45806

James Walpole, Plant Manager
B.P. Chemicals America, Inc.
Fort Amanda & Adgate Roads
Lima, OH 45802

Robert B. Schaefer
Regional Counsel
U.S. EPA, Region V
230 South Dearborn Street
Chicago, IL 60604

Dated: Sept. 23, 1988


Brenda H. Selden, Secretary
to the Chief Judicial Officer