

US EPA ARCHIVE DOCUMENT



RCRA Permit Appeal Fact Sheet

1989

FACILITY: Amoco Performance Products, Inc. (APPI)
Marietta, Ohio
OHD 981 529 688
RCRA Appeal No. 89-1

PETITIONER: Marilyn Ortt

PETITION FILED: January 5, 1989

STATUS OF PETITION: See Permit Appeal Status Report

ISSUES:

- Corrective action issues (management of waste residues generated by the previous facility)
- Miscellaneous other issues (location standards; contingency planning for highway emergencies)

Summary of Petition:

The petitioner requests review of the hazardous waste land disposal permit issued to APPI. Ms. Ortt states that hazardous waste facilities should not be sited in this location because the area overlies a productive aquifer and is located in a floodplain. In addition, the petitioner questions whether the past facility operations will be addressed in the permit, and whether the permit details emergency procedures that will be followed in case of a highway accident.

- **Management of Waste Residues Generated by the Previous Facility.** The petitioner states that hazardous waste residues generated by the previous facility are located under the liners at the existing facility, and requests that this material be removed before any additional use of the facility is made. The petitioner also questions whether and how often APPI is required to test for the presence of these residues in leachate.
- **Location Standards.** The petitioner contests the height and structural integrity of the facility's dike, as well as EPA's decision to locate a hazardous waste facility in a floodplain overlying an aquifer, in an area characterized by seismic activity.
 - The petitioner contends that the height of the floodplain dike at this facility is inadequate, given that: (1) the 100-year flood level has been topped four times in this century; and (2) these toppings occurred even when most of the Muskingum Watershed Conservancy dams were in place. Consequently, the petitioner believes that the permit can not rely on these dams as providing added safety factors during major storms, and that the height of



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the dike should be raised to 627 feet. In addition, the petitioner questions whether an earthen dike can withstand the force of the Ohio River during a major flood.

- The petitioner contends that the permit was issued based on an incorrect assumption that Ohio has had no seismic activity. The petitioner states that Ohio has a known fault, that there have been tremors in the area of the facility, and that there have been predictions of future major earthquake activity.
 - The petitioner states that the facility is located directly in the flood plain over an extremely productive aquifer capable of producing over 500 gallons of water a minute. The petitioner contends that there is no rationale to place a hazardous waste facility in a flood plain over an aquifer that is so essential to the human and economic health of the area. In addition, the petitioner questions the adequacy of the monitoring wells, given that the underlying soil is unconsolidated material.
- **Contingency Planning for Highway Emergencies.** Given that there are a number of chemical and petroleum product distribution plants in this section of the Ohio valley, the petitioner questions whether the permit acknowledges the increased risk of having additional hazardous waste trucks on State highways. Specifically, Ms. Ortt questions the "acceptable" casualty levels in the event of a spill of containerized wastes from trucks crossing the overpass over State Route 7. In addition, Ms. Ortt questions whether communication channels between the main Amoco plant and its hazardous waste facility would remain intact during a highway emergency.

y. 11/4/88

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

In the Matter of:)

Amoco Performance Products, Inc.)

RCRA Appeal No. 89-1

Docket No. OHD 981 529 688)

ORDER DENYING REVIEW

Before me is a petition, filed by Marilyn Ortt, requesting review of a RCRA permit issued by Region V. The permit authorizes continued operation of a hazardous waste management facility owned and operated by Amoco Performance Products, Inc. Region V has submitted a response to the petition as requested by the Agency's Chief Judicial Officer.

Under the rules governing this proceeding, a RCRA permit ordinarily 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 burden of demonstrating that review is warranted is thus on the petitioner. In this case, the petitioner has not met that burden.

The petitioner has raised the following seven issues:

(1) Will the flood control dike required by the permit be high enough to prevent flooding of the facility? (2) Did the Agency improperly fail to consider seismic activity in granting the permit? (3) Is the communications system at the facility adequate to handle an emergency caused by an accidental spill during transportation of hazardous materials on internal plant roads or on State Road 7? (4) Do the permit conditions provide assurance that the flood control dike will be properly engineered and constructed to withstand a 100-year flood? (5) Does the permit adequately protect the aquifer underlying the facility? (6) Should the residue of hazardous waste beneath the liners be removed before the facility is allowed to operate? (7) Is the facility's emergency response plan adequate to handle an accidental spill that might occur near State Road 7?

The review provisions of EPA's regulations authorize me to review permit determinations upon receipt of a petition, if, among other things, certain requirements are met by the petitioner. One such requirement is that the petition contain a statement demonstrating "that any issues being raised were raised during the public comment period (including any public hearing) to the extent required by these regulations * * *." Id. The "regulations" thus referred to require participants in the permit proceedings to "raise all reasonably ascertainable issues and to submit all reasonably available arguments supporting their position by the close of the public comment period * * *." 40

CFR §124.13 (1989). An examination of the petitioner's appeal discloses that two of the issues raised in the petition (reasons 4 and 6 above) were not raised during the public comment period. The petitioner has not asserted that these two issues were not "reasonably ascertainable issues," although the petitioner does say that she did not find out about the residue under the liners (reason 4) until after she had submitted comments during the public comment period. Thus, with respect to those two issues, the petitioner has not met all of the preliminary appeal requirements.

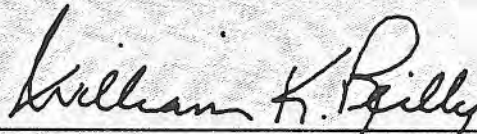
Even if the petitioner had met those requirements, I would still deny review of those two issues, as well as the other issues raised in the petition, because the petitioner has identified neither a clear error of fact or law nor an important policy or exercise of discretion that warrants review. In its response to the petition, the Region has demonstrated that it considered all of the issues raised by the petitioner and that it fashioned the permit to address those issues. The Region has represented that: (1) the facility's flood control dike will be high enough to withstand a 100-year flood, in compliance with the rule governing the placement of facilities in floodplains; (2) the facility is not subject to 40 CFR §264.18(a), which prohibits the placement of new facilities with 200 feet of certain geological faults; (3) the facility's communications system includes use of an FM frequency, a beeper system, and a paging system, as well as traditional switchboards, all of which ensure

that communications will not break down during an emergency; (4) the groundwater protection measures imposed by the permit are adequate to protect the underlying aquifer; (5) the flood control dike will be strong enough to protect against a serious flood, because it will be built in accordance with certain permit conditions governing construction and in accordance with a "Construction Quality Assurance Plan;" (6) the presence of a residue of hazardous waste beneath the liners of the facility has been addressed in the permit through groundwater protection measures and through corrective action requirements; and (7) the facility's Contingency Plan will enable Amoco to respond appropriately to an accidental spill of hazardous waste near the public road that runs through the Marietta complex. I am persuaded by the reasons given in the Region's response, and I adopt those reasons as the basis for this decision.

Because the petitioner has not met all the preliminary appeal requirements and because the petitioner has identified neither a clear error of fact or law nor an important policy or exercise of discretion that warrants review, the petition for review is hereby denied.

So ordered.

Dated: NOV 7 1990



William K. Reilly
Administrator

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Order Denying Review in the Matter of Amoco Performance Products, Inc. were sent to the following persons by first class mail, postage prepaid.

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Dated:

NOV - 8 1990



Brenda H. Selden, Secretary
to the Chief Judicial Officer