

US EPA ARCHIVE DOCUMENT



RCRA Permit Appeal Fact Sheet

1989

FACILITY: Waste Management of Illinois, Inc. (WMI)
Elwood, Illinois
ILD 074 411 745
RCRA Appeal No. 89-27

PETITIONER: WMI

PETITION FILED: October 30, 1989

STATUS OF PETITION: See Permit Appeal Status Report

ISSUES:

- RFI conditions are too vague
- Due process

Summary of Petition:

WMI is appealing corrective action conditions in the HSWA permit issued to its Environmental Sanitary Landfill. The petitioner challenges those conditions that allow EPA to modify the permit unilaterally.

- **RFI Conditions are too Vague.** WMI states that the permit contains unduly vague language with respect to EPA's authority to impose additional obligations on the facility. The petitioner contends that the permit as written provides the procedural framework for corrective action, but is devoid of significant substantive requirements. In addition, the permit refers to undertaking "such necessary corrective action," without defining specific standards that such actions must meet.
- **Due Process.** The petitioner contends that the permit improperly allows EPA to modify corrective action submissions and make the modified documents binding without providing the facility with a hearing or an opportunity for judicial review, and without complying with EPA's regulations governing permit modifications. Thus, WMI argues that the permit denies WMI its constitutional right to due process.

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

In the Matter of:

Waste Management of Illinois, Inc.

RCRA Permit No. ILD 074 411 745

RCRA Appeal No. 89-27

ORDER DENYING REVIEW

Waste Management of Illinois, Inc. (WMI) has petitioned for review of a RCRA permit issued by Region V for WMI's landfill in Elwood, Illinois. The permit requires corrective action under RCRA §3004(u) for releases at the facility. As requested by the Agency's Chief Judicial Officer, the Region submitted a response to the Petition on May 1, 1990.

The main issue raised by the Petition involves permit conditions that give the Region authority to revise, or to require WMI to revise, certain interim proposals and reports to be prepared by WMI during the corrective action process. The permit provides that upon review, revision (if necessary), and approval by the Region, WMI must comply with any obligations or requirements set forth in these submittals. WMI argues that these permit conditions violate the Agency's rules governing permit modification and deprive WMI of rights to judicial review and due process.

Under the rules that govern 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. 33412 (May 19, 1980). WMI's petition is largely a verbatim transcription of a petition filed in another RCRA permit appeal, in which review has been denied. See In re W.R. Grace & Company, RCRA Appeal No. 89-28 (Order on Petition for Review). For the reasons set forth in the Grace order,^{1/} in the Agency's recent Subpart S rulemaking

^{1/} As noted in Grace, the Agency recognizes the significance of this issue to the regulated community and other interested parties, and it will continue to consider the matter in the ongoing Subpart S rulemaking. In the interim, it is expected that the Regions will apply the relevant permit terms in a manner that assures, where necessary, that the permittee receives an adequate opportunity to be informed of, and to respond to, any Regional revisions to the interim submissions prior to approval of such submissions by the Region.

One difference between the WMI and Grace petitions concerns terms in the WMI permit under which the Region would prepare a Scope of Work for the Corrective Measures Study (SOW). The SOW "will specify * * * the target performance objectives that any corrective measures would be expected to meet." WMI Permit Condition II.D. WMI would then prepare a Corrective Measures Study (CMS) to identify measures that "will satisfy the performance objectives specified by the Regional Administrator." Id. The CMS would then be subject to Regional review, revision (if necessary), and approval. Id. Upon approval of the CMS, the permit would then be formally modified to incorporate specific corrective measures. (Under the Grace permit, Grace specifies Media Protection Standards, which are then subject to review, revision, and approval by the Region). The WMI permit is not fatally flawed merely because it gives the Region the first opportunity to express its views as to appropriate performance objectives. These objectives do not immediately become binding, enforceable permit terms, but are mere "targets" against which WMI's CMS will be evaluated. It is expected that the Region will remain open to differing views by WMI as to proper performance objectives while reviewing the CMS.

Finally, WMI also challenges Permit Condition II.A as being "impermissibly vague." Petition at 21-22. This condition simply recites in general terms WMI's obligation under RCRA §3004(u) to undertake corrective action where necessary. Review is denied on this issue for the reasons set forth in the Region's Response.

proposal (see 55 Fed. Reg. 30798 (July 27, 1990)), and in the Region's response to WMI's Petition, review is denied. ^{2/}

So ordered.

Dated: MAR 23 1991



William K. Reilly
Administrator

^{2/} Because I reject WMI's position on the merits, I need not address Region V's argument that certain issues raised by WMI's Petition were not preserved for review.

CERTIFICATE OF SERVICE

I hereby certify that copies of the Order Denying Review in the matter of Waste Management of Illinois, Inc., RCRA Appeal No. 89-27, were mailed to the following in the manner indicated:

First Class Mail
Postage Prepaid:

Mary E. Butler
Assistant Regional Counsel
U.S. EPA, Region V
230 South Dearborn Street
Chicago, Illinois 60604

Angus Macbeth
Christopher L. Bell
Sidley & Austin
1722 Eye Street, N.W.
Washington, D.C. 20006

Dated: March 27, 1991


Brenda H. Selden
Legal Staff Assistant