US EPA ARCHIVE DOCUMENT

RCRA Permit Appeal Fact Sheet **1991**

FACILITY: Georgetown Steel Corporation (GSC)
Georgetown County, South Carolina
SCD 982 120 107
RCRA Appeal No. 91-1

PETITIONER: GSC

PETITION FILED: January 11, 1991

STATUS OF PETITION: See Permit Appeal Status Report

ISSUES:
- RFI conditions are not justified
- Procedural issues

Summary of Petition:

Region 4 issued a permit to GSC's closed hazardous waste management facility in September 1990. Due to internal distribution problems, however, GSC first learned in December 1990 that its final permit had been issued. GSC submitted a petition for review in January 1991, within 30 days of first discovery of the permit in GSC's files. In March 1991, Region 4 filed a Motion to Dismiss the permit appeal based on the untimely filing of GSC's action. GSC submitted a reply later that month, requesting that the Administrator deny Region 4's Motion to Dismiss and proceed with reviewing GSC's permit appeal. The petitioner argued that the 30 day time frame (from the date of permit issuance) for filing a petition for review was not jurisdictional, that it had demonstrated good cause requiring an extension of time to file, and that the petition raised significant national policy issues that should be reviewed by the Administrator.

- **RFI Conditions are not Justified.** The petitioner maintains that GSC's permit requires it to investigate an entire municipal landfill on which GSC only operated one, discrete baghouse dust unit. GSC contends that it does not control, operate, or own any portion of the landfill beyond the baghouse dust unit, and that there is no evidence of release from that unit. The petitioner argues that this type of investigation raises substantial policy issues on how the RCRA Subtitle C permit program should address persons who operate only one small portion of a solid waste landfill owned by someone else. In addition, GSC notes that municipal landfills are regulated under another set of RCRA requirements.

- **Procedural Issues.** The petitioner argues that GSC's permit appeal should have been accepted for review on the following grounds:

  - GSC maintains that since the 30 day time frame established by 40 CFR Section 124.19(a) has been subject to change or extension in numerous circumstances, it is not jurisdictional and, therefore, the Administrator has the authority to waive, extend, or alter the filing period when he deems it appropriate. The petitioner contends that allowing review of the permit will not delay the majority of the permit conditions.

  - The petitioner contends that Region 4 has stated that when a deadline is not jurisdictional, the administrative body handling the appeal has the authority to waive the deadline with a showing of good cause. GSC maintains that it has demonstrated good cause by the fact it was unaware that any permit documents had been received or even issued. A temporary employee mistakenly filed the unopened permit package so that no GSC employee ever saw the package contents. Moreover, GSC was not expecting the permit package to arrive, because its consultant had received affirmative representations that Region 4 would be willing to hold a meeting with GSC prior to issuing a final permit.

  - Since the regulations allow the Regional Administrator to specify a "later date" for commencement of the appeal period, GSC contends that the Regional Administrator could have made a determination to change the date that the permit appeal was due.

James Michael

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

In the Matter of:	)	
Georgetown Steel Corporation	)	RCRA Appeal No. 91-1
Docket No. SCD 982 120 107	)	

ORDER DISMISSING PETITION FOR REVIEW

Georgetown Steel Corporation ("GSC") has submitted a Petition for Review of the federal portion of a permit issued by Region IV to GSC and Georgetown County, South Carolina, under Section 3005 of the Resource Conservation and Recovery Act of 1976 (RCRA), as amended, 42 U.S.C. §6925. The federal portion of the permit imposes corrective action and other requirements under the 1984 Hazardous and Solid Waste Amendments. The balance of the permit was issued by the State of South Carolina, an authorized state under RCRA §3006.

Region IV has moved to dismiss the Petition as untimely. The EPA Judicial Officer requested GSC to submit a response to the motion, and GSC did so on March 15, 1991. For the reasons set forth below, I agree that the Petition is untimely and that GSC has failed to justify acceptance of the appeal. The Petition is therefore dismissed.

Background

Region IV served notice of its permit decision by certified mail on September 28, 1990. [1/] GSC received the notice and the permit on October 4, 1990. The Agency's rules establish a thirty-day filing period for a Petition for Review of a Regional permit decision. See 40 CFR §124.19(a). The filing period "begins with the service of notice of the Regional Administrator's action unless a later date is specified in that notice." Id. Here, a later date was so specified as the trigger for the filing period: the date of GSC's receipt of the notice.

The rules further provide that "[a]ny time period scheduled to begin on the occurrence of an act or event shall begin on the day after the act or event." 40 CFR §124.20(a). The first day of the filing period was therefore October 5, 1990, the day after GSC received the notice. The thirtieth day of the filing period was November 3, 1990, a Saturday. Under §124.20(c), the filing period was automatically extended to the next working day, Monday, November 5, 1990. [2/]

[1/] Service of the notice of a permit decision by mail is complete upon mailing. See In re Amoco Oil Co., RCRA Appeal No. 84-5, at 3 (May 17, 1985).

[2/] Section 124.20(d) adds three days to the filing period where the period commences with the Region's service by mail of the notice of the permit decision, but here three days are not added because the filing period began upon GSC's receipt (not service) of the notice.

EPA Headquarters received GSC's Petition on January 15, 1991, seventy-one days after the close of the filing period. [3/] GSC represents that an inadvertent error by a temporary GSC employee delayed the filing of its Petition. This employee served as secretary to GSC's Chief Engineer and Environmental Manager, to whom the Region directed its notice of the permit decision. The temporary secretary evidently filed the notice and permit without apprising anyone of its receipt. GSC's consultant learned that the Region had issued the permit during a December 1990 meeting with Regional staff regarding an unrelated matter. GSC then directed its attorneys to file an appeal within thirty days of its discovery that the permit had been issued.

Analysis

Region IV argues that I lack jurisdiction to consider the appeal because it is untimely. The thirty-day filing period is established by rule, not by statute. Although an administrative agency is generally bound to adhere to its own regulations, it

---

[3/] The Agency has interpreted §124.19(a) as requiring receipt of a Petition for Review by EPA Headquarters within the appropriate filing period. See In re BASF Corporation (Chemicals Division), UIC Appeal Nos. 86-10 & 86-11, at 2-3 & n.3 (October 3, 1989); In re Tecroney, Inc., UIC Appeal No. 87-4, at 4 n.5 (November 2, 1988); cf. RCRA Permit Appeals Guidance Manual, at 7 (Office of Solid Waste, September 1990). The notice of the Region's permit decision incorrectly states that a Petition for Review is timely if mailed within the filing period. See Letter from Patrick Tobin, Region IV Waste Management Division Director, to William Dobinski, GSC (September 28, 1990). Even assuming arguendo that filing was effected when GSC mailed its Petition (January 11, 1991), the appeal is untimely by a considerable margin.

has the discretion to relax its procedural requirements absent substantial prejudice to any party where justice so requires. [4/]

Nevertheless, the Agency has made clear that generally a petition will be granted only if it "is in strict compliance with regulatory requirements." [5/] Proper filing is more than a mere procedural formality. A request for review under §124.19 affects the effective date of the permit (see §§124.15(b)(2)), and the Agency requires scrupulous compliance with filing procedures so that it may readily determine whether and when a permit is effective and enforceable. Moreover, the Agency's limited resources are best reserved for addressing the concerns of petitioners who are diligent enough to adhere to the filing requirements, particularly given the large number of permit appeals filed annually under §124.19 (including the greatly increased number of RCRA permit appeals generated by the statutory permitting deadlines in RCRA §3005(c)(2)). Requiring conscientious compliance with the Agency's appeal procedures is also consistent with EPA's oft-expressed policy that its review authority is to be "sparingly exercised" and that permit conditions will ordinarily be established at the Regional level. 45 Fed. Reg. 33412 (May 19, 1980).

[4/] See American Farm Lines v. Black Ball Freight Service, 397 U.S. 532, 537 (1970).

[5/] Tecroney, supra note 3, at 2; see also In re Gelman Science, Inc., UIC Appeal No. 86-14, at 3 (November 6, 1987) (two petitions dismissed for failing to meet the filing deadline); Amoco Oil Co., supra note 1, at 3 (petition denied because, among other things, it was filed three days after the filing deadline).

In view of these considerations, relaxation of the filing requirements under §124.19 should be reserved for only the most extraordinary or compelling circumstances. [6/] In this case, GSC missed the filing deadline due mainly to an inadvertent error by a temporary GSC employee. In my view, the reasons proffered by

---

[6/] I reject GSC's suggestion that the filing deadline in §124.19 should be waived upon a showing of mere cause or excusable neglect, the standards used for an extension of a deadline under Rule 6(b) of the Federal Rules of Civil Procedure. The Federal Rules are not binding in EPA permit proceedings. Although certain parallels exist between the Federal Rules and the Agency's Part 124 procedures, a provision comparable to Fed. R. Civ. P. 6 for deadline extension is conspicuously absent from Part 124. As noted above, considerations unique to EPA permit appeals warrant the imposition of a higher standard -- extraordinary or compelling cause -- for a waiver of the filing deadline under §124.19(a).

GSC relies upon §§124.20(c) & (d) to argue that the §124.19 filing deadline is inherently flexible. These provisions do not allow for the waiver of such deadlines, but rather merely provide for the calculation of deadlines. Indeed, the detailed nature of the rules governing deadline calculation suggests that potential petitioners should take these deadlines seriously.

GSC cites only two permit appeals in which the Agency relaxed the filing deadline. Both cases involved inaccurate statements by the EPA Regions regarding such deadlines, thereby raising the specter of estoppel against the Agency. See In re BASF Corporation, supra note 3, at 2 n.3; Tecroney, supra note 3, at 4 n.5. Today's decision reaffirms that permit appeal deadlines will not be waived absent evidence of similarly compelling circumstances.

GSC for its untimeliness do not warrant a waiver of the filing requirements. [7] Region IV's motion to dismiss GSC's Petition for Review is therefore granted. [8]

So ordered.

Dated: JUN 10 1991

William K. Reilly
Administrator

---

[7] GSC represents that prior to the issuance of the final permit, Region IV staff and GSC's consultant discussed the possibility of meeting to review GSC's comments on the draft permit. GSC asserts that its consultant believed that a meeting would occur prior to final permit issuance, and that therefore GSC had no reason to anticipate issuance of the final permit. Regardless of these alleged discussions and understandings, however, the fact remains that Region IV properly served notice of the permit decision upon GSC and that the delay in filing the appeal is directly attributable to internal errors by GSC. Any alleged statement by Regional staff regarding the possibility of a meeting with GSC prior to permit issuance is far removed from the kind of misinformation regarding the appeals process itself that has justified a waiver of the filing deadline in previous cases. See note 6, supra.

[8] The Region's March 25 and April 4, 1991 motions to reply to GSC's opposition to the motion to dismiss are denied.

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Order Dismissing Petition for Review in the matter of Georgetown Steel Corporation, RCRA Appeal No. 91-1, were sent to the following persons in the manner indicated:

By First Class Mail, Postage Prepaid:

William L. Brown
Parker, Poe, Adams & Bernstein
2600 Charlotte Plaza
Charlotte, NC 28244

Ramiro Llado
Assistant Regional Counsel
U.S. EPA, Region IV
345 Courtland Street, NE
Atlanta, GA 30365

By hand delivery:

Bessie Hammiel
Headquarters Hearing Clerk
A-110 Room 3708

Dated: JUN 13 1991

Brenda H. Selden
Legal Staff Assistant