

US EPA ARCHIVE DOCUMENT



RCRA Permit Appeal Fact Sheet

1991

FACILITY: Penberthy Electromelt International, Inc. (PEI)
Seattle, Washington
WAD 061 669 644
RCRA Appeal No. 91-12

PETITIONER: PEI

PETITION FILED: May 1, 1991

STATUS OF PETITION: See Permit Appeal Status Report

ISSUES:

- Procedural issues
- Miscellaneous other issues (operating under a Part A permit; subversion of national policy to promote innovative technologies; stifling of fair trade practices; personality conflicts during permitting)

Summary of Petition:

PEI is petitioning for review of the denial of its Part B permit application. Region 10 issued the final denial notice on March 27. The petitioner contends that EPA failed to grant reasonable time for PEI to complete its Part B permit application. In addition, PEI objects to EPA's position that the facility must also cease operations under its Part A permit, arguing that ceasing operations will affect competition in the area of hazardous waste management. PEI also believes that the Region's decision is inconsistent with EPA's national policy of promoting the use of innovative technologies, and that personality conflicts were inappropriately considered in EPA's decision.

- **Procedural Issues.** The petitioner argues that PEI was not allowed adequate time to complete its Part B permit application (6.5 months from first notice of intent to deny). The petitioner disagrees with EPA's "finding of fact" that there was adequate opportunity to correct deficiencies in the initial application. PEI states that the average time required from call-in to issuance for Region 10 Part B permits is 4.5 years.
- **Operating Under a Part A Permit.** The petitioner objects to EPA's position that PEI must have a Part B permit or cease operations under its Part A permit. PEI argues that there is no statutory ending of the Part A permit. The petitioner cites 40 CFR Section 270.30(h), which states



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that EPA is obligated to allow the permittee reasonable time to furnish the Director with any relevant information for the Part B application. The petitioner contends it may continue operating under its Part A permit during this time.

- **Subversion of National Policy.** In 1989, the facility initiated a demonstration process known as the Penberthy Molten Glass Detoxifier Furnace Process. The petitioner contends that EPA's denial of PEI's Part B application for this process is subversive of the national policy to encourage the development and application of innovative technologies for the management of hazardous wastes.
- **Fair Trade Practices.** The petitioner contends that EPA's order to cease RCRA operations at PEI will ultimately stifle competition between incineration/thermal destruction facilities, leaving generators in the Region subject to monopoly pricing.
- **Personality Conflict.** Larry Penberthy patented the Molten Glass Detoxifier Furnace Process for hazardous waste treatment. In the past, he has made negative statements concerning in-situ vitrification, a process that PEI claims is advocated by Regional personnel. He has also been vocally critical of the Part B permitting process. PEI sees the denial case as a way for the Region to strike out at Penberthy's process and retaliate against his critical statements.

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

In the Matter of:

Penberthy Electromelt International,
Inc.

Permit No. WAD 061 669 644

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) RCRA Appeal No. 91-12
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ORDER DENYING PETITION FOR REVIEW

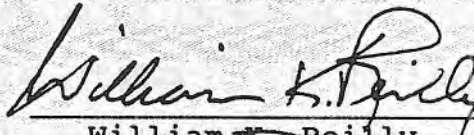
Penberthy Electromelt International, Inc. ("PEI") has petitioned for review of Region X's denial of PEI's application for a permit under Section 3005 of the Resource Conservation and Recovery Act of 1976 ("RCRA"), 42 U.S.C. §6925. The permit would have authorized continued operation of a hazardous waste thermal treatment unit known as the Penberthy Pyro-Converter Furnace. PEI represents that this electric molten glass furnace converts hazardous waste into non-hazardous compounds through high temperatures maintained by resistance heating. Region X denied the permit based on its determination that PEI's application remained seriously deficient despite several opportunities to complete it.

The Agency remains committed to the development of new and innovative technologies for the safe and effective treatment of hazardous waste. At the same time, the Agency must preserve the integrity of the RCRA permitting process, through which applicants demonstrate that their hazardous waste facilities can be operated in a manner that protects human health and the environment.

PEI has failed to show that the Region's permit determination is clearly erroneous or otherwise warrants review as required by 40 CFR §124.19. The Petition for Review is denied for the reasons set forth in Region X's June 19, 1991 response to the Petition (which reasons are hereby adopted and incorporated by reference as if fully set forth herein). ^{1/} This denial, however, is made without prejudice to PEI's ability to submit another permit application for this unit in the future once it is able to do so in accordance with the Agency's rules.

So ordered.

Dated: OCT 10 1991


William K. Reilly
Administrator

^{1/} Although the Region's Response asserts that the Petition for Review was filed one day late, it does not rely on untimeliness as a ground for denial of the Petition. Today's order similarly does not rest on the Region's assertion regarding untimeliness.

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Order Denying Petition for Review in the matter of Penberthy Electromelt International, Inc., RCRA Appeal No. 91-12, were sent to the following persons in the manner indicated:

By First Class Mail,
Postage Prepaid:

Larry Penberthy
Penberthy Electromelt
International, Inc.
631 South 96th Street
Seattle, WA 98108, USA

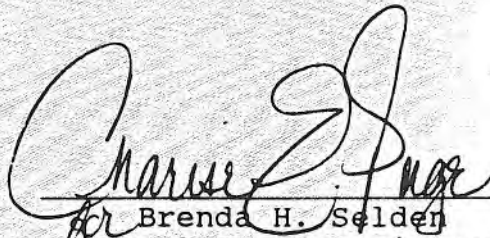
Dean Ingemansen
Assistant Regional Counsel
U.S. EPA, Region X
1200 Sixth Avenue
Seattle, WA 98101

By Hand:

Bessie Hammel
Headquarters Hearing Clerk
Room M3708

Dated:

OCT 17 1991


for Brenda H. Selden
Legal Staff Assistant