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RCRA Permit Appeal Fact Sheet

1991

FACILITY: Occidental Chemical Corporation (Occidental)
Niagara Falls, New York
NYO 002 103 216
RCRA Appeal No. 91-13

PETITIONER: Occidental

PETITION FILED: May 7, 1991

STATUS OF PETITION: See Permit Appeal Status Report

ISSUE: Procedural issues

Summary of Petition:

The petitioner contends that requirements contained in the final permit regarding air emission standards for process vents (Module VI-Subpart AA) and air emission standards for equipment leaks (Module VI-Subpart BB) were not contained in the draft permit. Although the facility has no equipment subject to Subpart AA requirements, it does have equipment subject to Subpart BB requirements. The permit is currently effective as of May 8, 1991. The petitioner requests that the permit be modified to contain a compliance schedule for meeting the Subpart BB requirements.

BEFORE THE ENVIRONMENTAL APPEALS BOARD
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C.

In the Matter of:	)	
	)	
Occidental Chemical Corp.	)	RCRA Appeal 91-13
	)	
Permit No. NYD 002103216	)	
	)	

REMAND ORDER

On May 7, 1991, Occidental Chemical Corporation (petitioner) filed a petition under 40 C.F.R. §124.19 requesting review of a permit issued to it pursuant to the Resource Conservation and Recovery Act of 1976 (RCRA), as amended, 42 U.S.C.A. §§6901-6992k. The petition relates to the incorporation into the final permit of a "Module VI" (Air Emissions from Process Vents and Equipment Leaks). At the request of Region II, consideration of the appeal was stayed so that the parties could engage in settlement negotiations.

On November 1, 1991, the parties executed a settlement agreement resolving all issues on appeal. See Letter from Alexandra Callum, Assistant Regional Counsel, to Timothy J. Dowling, Judicial Officer (November 6, 1991). The agreement outlines a procedure by which a Module VI will be incorporated into the permit after public notice and comment. The settlement agreement contemplates that once the Region carries out its obligations under the settlement agreement, this appeal will be withdrawn.

According to the Region, petitioner has satisfied its obligations under the agreement and the Region must now issue a public notice regarding the Module. See Letter from Alexandra Callum, Assistant Regional Counsel, to Timothy J. Dowling, Judicial Officer (February 25, 1992). As of the present date, however, the Region has not publicly noticed the Module to be incorporated into the permit.

There has been no visible progress in implementing the November 1991 agreement since the February 1992 status report. In an attempt to encourage a final resolution of this matter, the Board is hereby remanding the case to Region II for purposes of carrying out its obligations under the settlement agreement. It is hoped that this remand will prompt the Region to accelerate implementation of the settlement agreement. A remand will also relieve the Board of the time-consuming task of continuing to monitor the appeal.

Today's order is strictly a procedural mechanism for shifting responsibility for this proceeding back to Region II. It has no substantive effect on the petitioner's current obligations or on the settlement agreement. Any permit condition in effect during the pendency of the appeal shall remain in effect on remand, and any conditions that were stayed on appeal shall remain stayed on remand. In addition, the remand is without prejudice to petitioner.

For the reasons set forth above, the case is hereby remanded to Region II for further proceedings consistent with this order.

So ordered.

Dated:

AUG 7 1992

ENVIRONMENTAL APPEALS BOARD

By: 

Edward E. Reich
Environmental Appeals Judge

CERTIFICATE OF SERVICE

I hereby certify that copies of the forgoing Remand Order in the Matter of Occidental Chemical Corporation, RCRA Appeal No. 91-13, were sent to the following persons in the manner indicated:

First Class Mail
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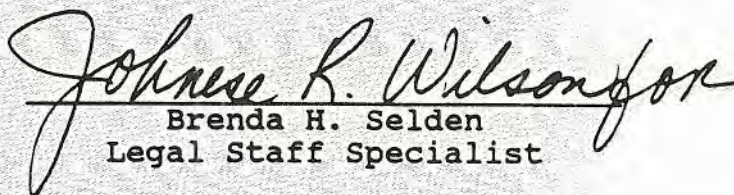
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Dated: AUG 7 1992


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