UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

SEP 23 1988

MEMORANDUM

OFFICE OF
SOLID WASTE AND EMERGENCY RESPONSE

SUBJECT: RCRA Permit Appeals

FROM: Joseph S. Carra, Director
Permits and State Programs Division (OS-340)

TO: RCRA Branch Chiefs
Regions I - X

Attached is the first in a series of documents being developed by my office in order to summarize information on RCRA permit appeals and to provide guidance on the permit appeals process. Included today are three documents: (1) an index of RCRA permit appeals; (2) permit appeal fact sheets for individual facilities; and (3) a summary matrix of RCRA permit appeal issues.

Attachment 1 is the index of RCRA Permit Appeals which identifies all RCRA permit appeals filed from January 1, 1986 to August 1, 1988. The January 1, 1986 start date was chosen because it reflects the earliest active permit appeal (petition). During this time 39 appeals were filed with the Administrator. In the future, we will also provide you with a document which will identify the status of each of these permit appeals.

Attachment 2 is a compilation of fact sheets on those RCRA permit appeals which are currently active or which have been recently settled. These fact sheets were designed to summarize the issues that were appealed and to present information in a format useful to the Regions. We anticipate that the fact sheets will serve as vehicles for communications and foster interaction among Regions in their efforts to resolve the appeals. The attached fact sheets, which were distributed in draft in New Orleans at the Corrective Action Workshop on June 13, 1988, reflect all Regional comments received by the Assistance Branch.

Finally, Attachment 3 is a matrix of RCRA permit appeal issues as summarized in the fact sheets. The matrix provides a "quick look" at the issues presented in the fact sheets. You will note that the majority of the RCRA permit appeals are concerned with corrective action issues (e.g., RFI conditions, definition of solid waste management units (SWMUs) and dispute resolution).

I hope this information and future Permits and State Programs Division (PSPD) efforts will provide the information, guidance and support necessary to help expedite efforts in addressing these appeals. In addition to information and guidance, PSPD is also available for direct assistance in the management of specific permit appeals. Please contact Jim Michael, Chief, Disposal and Remediation Section, Assistance Branch at FTS 382-2231 with any questions you may have on RCRA permit appeals.

Attachments

cc: RCRA Permit Section Chiefs
Regions I-X
ORC RCRA Contacts
Regions I-X
Suzanne Rudzinski
Matt Hale
George Garland
Elizabeth Cotsworth
Frank McAlister
Dave Fagan
Fred Chanania, OGC
Tim Dowling, CJO
Jackie Tenusak, OWPE
DRS Staff
ATSS Staff

ATTACHMENT 3

SUMMARY OF RCRA PERMIT APPEAL ISSUES

8/30/88

Facility and Appeal Number	Region	Corrective Action Issues: RFI Conditions: Too Vague	RFI Conditions: Not Justified	RFI Conditions: Technically Inappropriate	Def. of SWMU	Due Process	Other Corrective Action Issues	Other RCRA Issues: Procedural Issues	Level of Detail	Joint Permitting	Miscellaneous Other
DuPont 86-1	III		X		X		(compliance schedule)				(recordkeeping and reporting)
Allied-Baltimore 86-4	III	X			X	X	(previous submittal of remedial investigation, risk assessment, gwm plans; financial assurance demonstration)			X	
American Cyanamid-Willow Island 86-4A	III				X						
Texaco Research Center Beacon 86-5	II	X	X			X				X	(definition of facility boundaries; other specific conditions)
Vulcan Materials 87-1	VII					X	(use of existing data and reports; compliance schedule; submittal of bi-monthly progress reports)			X	(permitting of incinerators under TSCA; other PCB-related issues; storage of off-site wastes; clarification of waste streams)
Heritage Environ. Services 87-4	V							X	X	X	(inspection of and liquid removal from secondary leachate collection system; soil thickness of final cover)
Allied-Metropolis 87-6	V	X	X		X	X	(sampling requirements)	X			(surface impoundment requirements)
Sandoz Chemicals 87-7	IV	X	X			X	(corrective action for newly-discovered SWMUs)				(duration of permit; definition of "solid waste")
3M 87-8	V	X	X	X		X	(RFI work plan provisions; NPDES discharges; definition of "facility")			X	
Mobay-Kansas City 87-9	VII					X					
Mobay-Bushy Park 87-10	IV					X					

8/30/88

Facility and Appeal Number	Region	Corrective Action Issues: RFI Conditions: Too Vague	RFI Conditions: Not Justified	RFI Conditions: Technically Inappropriate	Def. of SWMU	Due Process	Other Corrective Action Issues	Other RCRA Issues: Procedural Issues	Level of Detail	Joint Permitting	Miscellaneous Other
Erieway 87-11	V									X	(compliance with Part 264 standards)
CWM-Emelle 87-12	IV							X	X		(compliance with RCRA and NEPA; specific unit design and operating standards)
Hoechst Celanese 87-13	IV	X	X		X	X	(definition of "contamination")	X	X		
Ecolotec 87-14	V										(facility location; ground-water monitoring and sampling requirements)
Interstate Lead 87-16	IV										(compliance with liability requirements)
Pacific Gas & Electric 87-18	IX						(parameters for gwm; ground-water terminology)	X			(surface impoundment retrofitting)
Shell Oil 87-19	VI										(surface impoundment retrofitting variance)
Monsanto Agricultural 88-1	VI		X		X	X	(use of term "disposal areas;" format of draft report; detail in RFI work plan)	X		X	
Utah Power & Light 88-2	X		X								(force majeure provision; non-compliance situations; incorporation of applicable standards; ground-water monitoring)
Navajo Refining 88-3	VI	X	X				(submittal of preliminary report)			X	
CWM-Kettleman Hills 88-4	IX					X		X	X		(closure schedule; vague language; use of MCLs)
CID 88-5	V	X	X	X		X	(off-site monitoring; trigger levels)	X	X	X	(manifests; testing waste shipments)

8/30/88

SUMMARY OF RCRA PERMIT APPEAL ISSUES (CONT'D)

Facility and Appeal Number	Region	Corrective Action Issues: RFI Conditions: Too Vague	RFI Conditions: Not Justified	RFI Conditions: Technically Inappropriate	Corrective Action Issues: Def. of SWMU	Corrective Action Issues: Due Process	Corrective Action Issues: Other Corrective Action Issues	Other RCRA Issues: Procedural Issues	Other RCRA Issues: Level of Detail	Other RCRA Issues: Joint Permitting	Other RCRA Issues: Miscellaneous Other
Chem-Security Systems 88-6	X			X			(modification of cost estimates)	X	X		("harmless" condition; record of wastes)
Eli Lilly 88-7	V								X		(storage for recovery of Part 268-restricted wastes; waiver from storage prohibition; storage of PCBs)
Waste Tech Services 88-8	V							X			(level and effectiveness of monitoring; health effects/hazards associated with current facility operations and demonstration; hazardous waste storage, transport, and volume; insurance; conflict of interest)
Pearl Harbor Public Works Center 88-9	X										(location; additional safety considerations)
Amerada Hess (Port Reading) 88-10	II		X		X		(financial assurance)				(legal name of permittee)
American Cyanamid-Westwego 88-11	VI		X		X			X	X	X	(submittal of plans; gw protection standards; closure of surface impoundments; tank treatment)
L-TEC Company 88-12	IV		X		X						
USX Corporation 88-13	V									X	(permit denial)
Environ. Waste Control 88-14	V							X			(bases for permit denial)

SUMMARY OF RCRA PERMIT APPEAL ISSUES (CONT'D)

Facility and Appeal Number	Region	Corrective Action Issues						Other RCRA Issues			
		RFI Conditions			Def. of SWMU	Due Process	Other Corrective Action Issues	Procedural Issues	Level of Detail	Joint Permitting	Miscellaneous Other
		Too Vague	Not Justified	Technically Inappropriate							
Ross Incineration Services 88-15	V							X			(storage or treatment at new or modified units; incinerator test performance requirements; emission plans; typographical error)
CWM-Emelle 88-16	IV							X			(omnibus provision; carbon monoxide limitations; feed rate of metals)

ATTACHMENT 1

INDEX OF RCRA PERMIT APPEALS
(1/1/86 - 8/1/88)

8/30/88

ATTACHMENT 1
INDEX OF RCRA PERMIT APPEALS
(1/1/86 - 8/1/88)

1. E.I. DuPont, Martinsville, Virginia
   RCRA Appeal No. 86-1

2. Solvents Recovery Service of New England, Inc., Southington, Connecticut
   RCRA Appeal No. 86-2

3. Monsanto Company, Anniston, Alabama
   RCRA Appeal No. 86-3

4. Allied Corporation, Baltimore, Maryland
   RCRA Appeal No. 86-4

5. American Cyanamid Company, Willow Island, West Virginia
   RCRA Appeal No. 86-4A

6. Texaco Inc., Texaco Research Center Beacon, Glenham, New York
   RCRA Appeal No. 86-5

7. Vulcan Materials Company, Wichita, Kansas
   RCRA Appeal No. 87-1

8. Ogden Environmental Services, Inc., San Diego, California
   RCRA Appeal No. 87-3

9. Heritage Environmental Services, Putnam County, Indiana
   RCRA Appeal No. 87-4

10. Highway 36 Land Development Corporation, Adams County, Colorado
    RCRA Appeal No. 87-5

11. Allied Corporation, Metropolis, Illinois
    RCRA Appeal No. 87-6

12. Sandoz Chemicals Corporation, Mt. Holly, North Carolina
    RCRA Appeal No. 87-7

13. 3M Company, Cordova, Illinois
    RCRA Appeal No. 87-8

14. Mobay Corporation, Kansas City, Missouri
    RCRA Appeal No. 87-9

15. Mobay Corporation, Bushy Park, South Carolina
    RCRA Appeal No. 87-10

16. Erieway, Inc., Bedford, Ohio
    RCRA Appeal No. 87-11

8/30/88

INDEX OF RCRA PERMIT APPEALS (CONT'D)
(1/1/86 - 8/1/88)

17. Chemical Waste Management Inc., Emelle, Alabama
    RCRA Appeal No. 87-12

18. Hoechst Celanese Corporation, Greer, South Carolina
    RCRA Appeal No. 87-13

19. Ecolotec, Inc., Dayton, Ohio
    RCRA Appeal No. 87-14

20. Interstate Lead Company, Inc., Leeds, Alabama
    RCRA Appeal No. 87-16

21. Ashland Oil Company, Inc., (Calgon Carbon Corporation), South Point, Ohio
    RCRA Appeal No. 87-17

22. Pacific Gas & Electric Company, Pittsburg, California
    RCRA Appeal No. 87-18

23. Shell Oil Company, Deer Park, Texas
    RCRA Appeal No. 87-19

24. Monsanto Agricultural Company, Luling, Louisiana
    RCRA Appeal No. 88-1

25. Utah Power & Light, Idaho Falls, Idaho
    RCRA Appeal No. 88-2

26. Navajo Refining Company, Artesia, New Mexico
    RCRA Appeal No. 88-3

27. Chemical Waste Management Inc., Kettleman Hills, California
    RCRA Appeal No. 88-4

28. CID, Calumet City, Illinois
    RCRA Appeal No. 88-5

29. Chem-Security Systems, Inc., Arlington, Oregon
    RCRA Appeal No. 88-6

30. Eli Lilly and Co., Tippecanoe Laboratories, Shadeland, Indiana
    RCRA Appeal No. 88-7

31. Waste Tech Services and BP Chemicals America, Inc., Lima, Ohio
    RCRA Appeal No. 88-8

INDEX OF RCRA PERMIT APPEALS (CONT'D)
(1/1/86 - 8/1/88)

32. Pearl Harbor Public Works Center, Mahalapa, Hawaii
RCRA Appeal No. 88-9

33. Amerada Hess, Port Reading, New Jersey
RCRA Appeal No. 88-10

34. American Cyanamid Company, Westwego, Louisiana
RCRA Appeal No. 88-11

35. L-TEC Company, d/b/a L-TEC Welding and Cutting Systems,
Florence, South Carolina
RCRA Appeal No. 88-12

36. USX Corporation, Gary, Indiana
RCRA Appeal No. 88-13

37. Environmental Waste Control, Inc., d/b/a Four County Landfill,
Fulton County, Indiana
RCRA Appeal No. 88-14

38. Ross Incineration Services, Inc., Grafton, Ohio
RCRA Appeal No. 88-15

39. Chemical Waste Management, Inc., Emelle, Alabama
RCRA Appeal No. 88-16

ATTACHMENT 2

RCRA PERMIT APPEAL FACT SHEETS

8/30/88

ATTACHMENT 2
INDEX OF RCRA PERMIT APPEAL FACT SHEETS

1. E.I. DuPont, Martinsville, Virginia
   RCRA Appeal No. 86-1

2. Allied Corporation, Baltimore, Maryland
   RCRA Appeal No. 86-4

3. American Cyanamid Company, Willow Island, West Virginia
   RCRA Appeal No. 86-4A

5. Texaco Inc., Texaco Research Center Beacon, Glenham, New York
   RCRA Appeal No. 86-5

6. Vulcan Materials Company, Wichita, Kansas
   RCRA Appeal No. 87-1

7. Heritage Environmental Services, Putnam County, Indiana
   RCRA Appeal No. 87-4

8. Allied Corporation, Metropolis, Illinois
   RCRA Appeal No. 87-6

9. Sandoz Chemicals Corporation, Mt. Holly, North Carolina
   RCRA Appeal No. 87-7

10. 3M Company, Cordova, Illinois
    RCRA Appeal No. 87-8

11. Mobay Corporation, Kansas City, Missouri
    RCRA Appeal No. 87-9

12. Mobay Corporation, Bushy Park, South Carolina
    RCRA Appeal No. 87-10

13. Erieway, Inc., Bedford, Ohio
    RCRA Appeal No. 87-11

14. Chemical Waste Management Inc., Emelle, Alabama
    RCRA Appeal No. 87-12

15. Hoechst Celanese Corporation, Greer, South Carolina
    RCRA Appeal No. 87-13

16. Ecolotec, Inc., Dayton, Ohio
    RCRA Appeal No. 87-14

17. Interstate Lead Company, Inc., Leeds, Alabama
    RCRA Appeal No. 87-16

INDEX OF RCRA PERMIT APPEAL FACT SHEETS (CONT'D)

INDEX OF RCRA PERMIT APPEAL FACT SHEETS (CONT'D)

33. Environmental Waste Control, Inc., d/b/a Four County Landfill, Fulton County, Indiana
RCRA Appeal No. 88-14

34. Ross Incineration Services, Inc., Grafton, Ohio
RCRA Appeal No. 88-15

35. Chemical Waste Management, Inc., Emelle, Alabama
RCRA Appeal No. 88-16

PERMIT APPEAL FACT SHEET

Facility: E. I. Du Pont
Martinsville, Virginia
VAD 003 114 865
RCRA Appeal No. 86-1

Petitioner: E. I. Du Pont

Petition Filed: March 5, 1986

Status of Petition: Region response postponed pending settlement negotiations

Issues: RFI conditions are not justified
Definition of solid waste management unit
Other corrective action issues (compliance schedule)
Miscellaneous other issues (recordkeeping and reporting)

Summary of Petition:

The petitioner outlines two groups of issues to be reviewed: general issues concerning the scope of the corrective action section of the permit, and specific issues concerning corrective action provisions of the permit. In addition, the petitioner contests the relevance of a recordkeeping and reporting provision of the permit. Individual issues within each group are summarized below.

- **General Corrective Action Issues.** The petitioner is contesting the definition of SWMU in the permit and the subsequent corrective action requirements based on the identified SWMUs.

  -- The permittee objects to the finding that the permit contains those conditions determined to be necessary to protect human health and the environment. The permittee states that there is no support in the record for such finding and references a 1982 report of EPA's contractor review of the facility which states, "Based on available background information and supported by the fact that the active and inactive disposal areas appeared to be in good condition during the FIT Region III site visit, no further action is recommended for this site."

  -- The petitioner contests the inclusion of pre-1982 solid waste management units in the corrective action section of the permit. The petitioner states that the record clearly demonstrates no possibility for release of hazardous waste or constituents from any solid waste management unit other than Unit I (the only unit at the facility to have received hazardous wastes or constituents).

-- The petitioner states that the corrective action requirements of the permit go beyond EPA's statutory authority under Sections 3004(u) and 3005, since in implementing these Sections, EPA in its July 15, 1985 codification rule, redefined "regulated unit" to mean landfills, surface impoundments, waste piles, or land treatment units that received hazardous wastes after July 26, 1982. Since units B, C, F, H1, H2, and H3 were closed before July 26, 1982, the petitioner recommends that all requirements, as they apply to these units in the permit, be eliminated.

-- The petitioner further states that since the constituents in all units other than Unit I are not "hazardous", then even if the Agency finds that the 1982 cutoff date does not apply to 3004(u) implementation, units other than Unit I are not subject to corrective action requirements because those other units never received hazardous waste or constituents.

- **Specific Corrective Action Provisions.** The petitioner specifies several conditions in the corrective action portion of the permit concerning geographic characteristics and the Hydrogeologic Assessment Plan which it believes are either not justified (given the petitioner's position on the SWMUs at the site), are too broad, or are otherwise inappropriate acts of discretion on the part of EPA.

-- Specific Geographic Characteristics are as follows:

- The petitioner objects to the requirement to identify the populated areas within five miles of the facility on a recent map of the area. The petitioner believes the requirement is burdensome and premature since there is not evidence of any release from the hazardous waste unit on the site.

- The petitioner objects to the requirement to identify specific routing and exposure information on a map. The petitioner believes that the requirement is burdensome and unnecessary in the absence of a finding that a release of hazardous waste or constituent has occurred from a hazardous waste management unit subject to the permit. Further, the petitioner believes that the requirement is unduly duplicative of information provided in a report on the site prepared by EPA's contractor in 1982.

- The petitioner objects to the requirements to provide general climatological features of the area, as specified in the permit, for the same reasons described in the above paragraphs (i.e., that there is no evidence indicating that a release from the hazardous waste management unit has occurred).

-- Specific Hydrogeologic Assessment Plan (HGA) requirements are as follows:

- The petitioner objects to the requirement to include in the HGA plan 1) ground-water sampling, downgradient of Units C and D, to determine if there is off-site migration of hazardous constituents, and 2) an analysis of leachate from Unit G for certain contaminants. The petitioner believes that since Units C, D, and G have never received hazardous waste, the requirements exceed EPA's authority and are based on findings of fact that are erroneous.

- The petitioner objects to the requirement to describe regional and local geology in the HGA plan. The petitioner believes that it is an abuse of discretion to require the permittee to undertake such efforts until such time as a release is identified and there is a need for such information.

- The permittee objects to the requirement to identify specified hydrogeologic characteristics of Units I, B, C, D, F, G, H1, H2, and H3, using a topographic map, isopach and structural contour maps, and at least two cross-sections. The petitioner believes that the requirement should be limited to Unit I, as argued in the "General Issues" section above with regard to which units are properly subject to the corrective action requirements.

- The petitioner believes that the scope of the requirement to provide a description of water level or fluid pressure monitoring should be made more definite. The petitioner would not object to the requirement provided that it relates to activities associated with Unit I. However, the petitioner believes that to require a broader program would involve unnecessary expense and would not be reasonably related to any probability of release of hazardous waste constituents from any other units on the site.

- The petitioner believes that the requirement to "provide a description of manmade influences that may affect the hydrogeology of the site" is very broad and indefinite. The petitioner submits that to investigate manmade influences relating to Unit I that may affect the hydrogeology of the site is relevant, but to undertake a comprehensive hydrogeologic study of the site in view of the record in the permit is unduly burdensome, is not relevant at this time, and is an abuse of the Agency's discretion.

The petitioner objects to the requirement to submit a health assessment of hazardous materials within 90 days of the effective date of the permit. The petitioner believes that there is no need for a health assessment at this time. To do one would require knowledge of the identity and concentration of hazardous materials which are leaking from the unit. However, no such information is available since a release has not yet been confirmed.

The petitioner objects to the establishment of a compliance schedule in the permit. Recognizing that Section 3004(u) of RCRA indicates that permits issued under Section 3005 may contain schedules of compliance for corrective action, the petitioner contends that to date there is no indication in the record that corrective action will be required at the site. The permit clearly indicates that revisions may be necessary should releases be identified in the investigation phase and, therefore, the permittee believes that schedules of compliance should not be established until the nature and extent of such compliance activities are determined. The petitioner believes that in the absence of establishing a need for corrective action, all of the compliance deadlines stated in the permit are arbitrary, capricious, and an abuse of the Administrator's discretion. Specifically the petitioner objects to the following requirements:

- to implement the HGA plan within 90 days after EPA's approval of the plan
- to submit an HGA report to EPA and to the Virginia Department of Health within 90 days after the permittee implements its HGA plan
- to develop and submit to EPA and to the Virginia Department of Health a plan for the design and installation of a monitoring well network within 30 days of EPA's approval of the submitted HGA report, if the HGA report confirms contamination
- to submit a sampling and analysis plan capable of yielding representative samples for a comparison of upgradient and downgradient wells, within 30 days of EPA's approval of the submitted HGA report, if the HGA report confirms contamination
- to complete the installation of the well network no later than 90 days after EPA approval of the well network plan and the sampling and analysis plan

- to implement the sampling and analysis plan, collect samples, analyze results, and submit results to EPA for review no later than 60 days after installation of the well monitoring network

- to submit to EPA and the Virginia Department of Health a sludge sampling plan for Unit D within 30 days of the effective date of the permit. (In addition to the reasons stated at the beginning of the objection to a compliance schedule, the petitioner objects to this last deadline because Unit D does not contain hazardous waste. Furthermore, the petitioner objects to two other deadlines that are contingent on the completion of this deadline.)

- **Recordkeeping and Reporting**. The petitioner objects to the requirement to maintain a written operating record at the facility in accordance with 40 CFR 264.73(b)(9) (Waste Minimization). The petitioner believes that this requirement has little, if anything, to do with the subject matter of the permit.

PERMIT APPEAL FACT SHEET

Facility: Allied Corporation (Baltimore Chrome Ore Works)
Baltimore, Maryland
MDD 069 396 711
RCRA Appeal No. 86-4

Petitioner: Allied Corporation

Petition Filed: December 29, 1986

Status of Petition: Appeal awaiting disposition by the Administrator

Issues: RFI conditions are too vague
Definition of solid waste management unit
Due process
Other corrective action issues (previous submittal of remedial investigation, risk assessment, and ground-water monitoring plans; financial assurance demonstration)
Joint permitting

Summary of Petition:

Allied objects to six specific Regional permit conditions which the petitioner says are based on: (1) a clearly erroneous finding of fact or conclusion of law; or (2) an exercise of discretion or an important policy consideration that the Administrator should review in his discretion. Each of the six specified points of contention is discussed below. The majority of these issues address corrective action requirements in the permit.

- **Scope and Nature of the Remedial Investigation and Risk Assessment.** Allied requests that the Region III permit acknowledge that Allied has already submitted a Remedial Investigation (RI), a Risk Assessment (RA), and a ground-water monitoring plan that are sufficient to satisfy the requirements for initial submissions under Part II.A.1 and C.1 of the final permit.

  -- Region III noted "serious deficiencies" in Allied's RI and RA submittal, but scheduled Allied to submit a revised RI and RA within 30 days after the effective date of the Region III permit. Allied believes that at least six months will be needed to submit these revised reports, which require additional field work.

  -- At the same time, Allied is bound by the Federal District Court's RCRA Consent Order to proceed with a Feasibility Study (FS) for submission to the Maryland Waste Management Administration (WMA) within 16 weeks after WMA approves the RI and RA. WMA was scheduled to decide on the RI and RA on April 15, 1986. Allied argues that for Region III to ignore the obligations imposed by the RCRA Consent Order and to require Allied to undertake a parallel set of studies on different schedules from the one required by the RCRA Consent

Order is an enormous waste of time and money, and delays corrective action at the facility.

- **Multimedia Plan Requirements.** Allied states that the Region III permit gives no guidance on what is to be included in certain multimedia plans specified in the RFI, specifically the facility's surface water control and monitoring plan (SWCMP) and the air control and monitoring plan (ACMP). The difficulties arising out of the vagueness and ambiguity of these Region III permit requirements are compounded by the requirement that Allied initiate SWCMP and ACMP programs no later than 60 days after the Regional Administrator's approval. Allied argues that it has no way of knowing how long it will take to initiate a pair of "undefined" control programs. Subsequently, Allied requests that the requirements in the Region III permit for a SWCMP and an ACMP should be deleted until reasonable guidance on their content can be provided.

- **Designation of Solid Waste Management Units.** Allied objects to the definitions of two of the four SWMUs at the facility: one SWMU for its vertical dimension, and another SWMU for both its horizontal and vertical delineations. Allied argues that information in its Remedial Investigation (RI) report proposed under the RCRA Consent Order does not support Region III's definition of these units.

- **Dispute Resolution.** Allied argues that the procedures established by Part II.E. for dispute resolution and incorporation of the corrective action plan (CAP) into the Region III permit deprive Allied of due process, for they (1) impose no deadlines upon Region III for timely review of documents submitted by Allied; (2) do not specify a mechanism for review of Agency decisions; (3) may force Allied to offer a CAP as its own proposed major permit modification (thus disallowing Allied from challenging the CAP); and (4) rely on Agency assurances of "good faith" instead of procedural due process.

- **Demonstration of Financial Assurance for Corrective Action.** Allied argues that the permit should not require a demonstration of financial assurance at any point before approval of the Corrective Action Plan. Allied requests that the requirement for a demonstration of financial assurance on the CAP should be delayed until the point at which the CAP is incorporated into the permit.

- **Joint Permitting.** Allied requests that Part I, standard conditions, paragraphs H-10, H-12, H-13, and H-14, be deleted from the final Region III permit. Allied argues that these paragraphs, which relate to reporting anticipated noncompliance and releases that may create emergency conditions, duplicate virtually word-for-word corresponding provisions in the facility's base RCRA permit issued by the State of Maryland.

PERMIT APPEAL FACT SHEET

Facility: American Cyanamid Company
Willow Island, West Virginia
WVD 004 341 491
RCRA Appeal No. 86-4A

Petitioner: American Cyanamid

Petition Filed: December 2, 1986

Status of Petition: Appeal awaiting disposition by the Administrator

Issue: Definition of solid waste management unit

Summary of Petition:

American Cyanamid has petitioned for a review of permit item #7, which addresses the need for submitting a sampling and analysis plan and potentially initiating remedial investigations for ash disposal sites.

- **Definition of Solid Waste Management Unit.** American Cyanamid disagrees with Region III's position that a possible release from a unit containing fly ash is regulated pursuant to §3004(u) of RCRA, as amended by HSWA. American Cyanamid bases its argument on the fact that fly ash and bottom ash generated by coal-fired boilers are currently not defined as hazardous wastes under RCRA, and are thus exempt from the scope of Subtitle C.

  -- American Cyanamid argues that it is unfair and unequal treatment that only those fly ash/bottom ash disposal units at facilities seeking a RCRA permit would be investigated. Consequently, American Cyanamid objects to the requirement to submit a sampling and analysis plan for these units and possibly to study these units during a remedial investigation.

  -- American Cyanamid requests that all proposed requirements relating to these units be deleted from the final permit.

PERMIT APPEAL FACT SHEET

Facility: Texaco Inc., Texaco Research Center Beacon
Glenham, New York
NYD 091 894 899
Permit Appeal No. 86-5

Petitioner: Texaco

Petition Filed: June 13, 1986

Status of Petition: Appeal stayed pending settlement negotiations

Issues: RFI conditions are too vague
RFI conditions are not justified
Due process
Joint permitting
Miscellaneous other issues (definition of facility boundaries; other specific conditions)

Summary of Petition:

Texaco is petitioning the Administrator to review the RCRA permit issued on May 28, 1986, to its Texaco Research Center Beacon (TRCB) facility. Texaco contends that a number of the provisions of the permit are contrary to law, are not supported by substantial evidence, and are contrary to a consent agreement previously entered into between Texaco and New York State Department of Environmental Conservation (DEC). The petitioner outlines four groups of issues to be reviewed: (1) issues relating to corrective action provisions of the permit; (2) procedural issues; (3) joint permitting issues; and (4) other miscellaneous issues, including definition of facility boundaries and specific concerns regarding the permit section entitled "Module III-Specific Conditions." Individual issues within each of these four groups are summarized below.

- **Corrective Action Issues**. Texaco is contesting provisions in the final permit relating to specific corrective action conditions. The petitioner suggests that one provision violates due process, while the others need clarification.

  -- Texaco contends that paragraph 15 of the permit violates due process, because it provides the Agency with "unfettered" discretion to require at any time that corrective measures be taken. Also, the paragraph does not specify what action should be accomplished in the event that corrective measures are required.

  -- The petitioner contends that the permit does not provide guidelines for what will be acceptable in formulating a proposal for a Field Investigation and provide a meaningful right of review should Texaco and the Agency be unable to agree on the terms of the investigation.

The requirement that all necessary permits, easements, and rights of way needed to perform the Field Investigation and all other obligations of Texaco under the permit must be obtained unless Texaco can demonstrate "to the Agency's satisfaction" that the permits or other items could not be obtained despite Texaco's best efforts should be modified. Texaco believes that the courts, rather than EPA, should decide whether Texaco has used its best efforts.

-- The petitioner contends that in the portion of the permit entitled "Fact Sheet for Hazardous Waste Storage Permit," the Agency states that it has made a tentative decision that a release has occurred and that a remedial investigation should be conducted. The petitioner contends that the Agency has failed to demonstrate a release, and requests that EPA clarify the nature and location of the purported release.

- **Procedural Issues**. Texaco states that it was denied adequate opportunity to appeal the permit conditions, due to a delay in receiving information from the Region on it final decisions.

- **Joint Permitting Issues**. The petitioner claims that EPA usurped New York's authority to issue the permit, which became effective after New York State became authorized to implement the base RCRA program. In addition, the petitioner contends that Texaco and DEC agreed by consent order to remediate certain closed hazardous waste sites by excavation. According to Texaco, this remediation is complete and each step was approved by DEC. The petitioner argues that the permit should reflect the completion of these activities.

- **Facility Boundary**. Texaco argues that EPA has improperly defined the boundaries of the facility to include the "Recreational Area," which is also owned by the petitioner, but separated from TRCB by a public road, a railroad, and a creek. According to Texaco, this improper definition results in the following:

  -- It subjects units that are outside of the boundary of the facility, as defined by the petitioner, to §3004(u) corrective action requirements.

  -- It purports to regulate seven treatment, storage, or disposal (TSD) units that are not identified in the Part B permit application and are not part of the facility, or "on-site" as defined by RCRA.

- **Errors in Module III - Specific Conditions**. Texaco states that the section of the permit entitled "Module III - Specific Conditions" contains the following errors:

  -- The petitioner contends that the permit should state that its effective date is one month after issuance instead of the date on

which it is signed by the Regional Administrator.

-- Texaco claims that the proper definition of "hazardous wastes" is not employed in the permit. The petitioner requests that the phrase, "any toxic degradation products of such wastes and of such constituents" be deleted from the definition.

-- Texaco argues that the requirement to retain an independent third party private engineer to certify the technical, engineering, and analytical obligations required by the permit should be deleted.

[With regard to the following points, it is unclear from the petition whether the petitioner is referring to Subpart F requirements or to the HSWA mandated ground-water monitoring program for SWMUs.]

-- The petitioner contends that the term "Requisite Technology" should be redefined to provide consideration for cost-effectiveness of the particular technology.

-- The petitioner suggests that the section of the permit entitled "Landfills" should be deleted, since the permit is not intended to apply to these areas. In addition, Texaco claims that DEC and TRCB each took soil samples on several occasions. Therefore, the Agency's concern that all contaminated subsoils were not removed from the landfills because "no soil core samples were taken" is unfounded.

PERMIT APPEAL FACT SHEET

Facility: Vulcan Materials Company
Wichita, Kansas
KSD 007 482 029
RCRA Appeal No. 87-1

Petitioners: 1. Vulcan Materials

2. Donna Hinderliter

3. Lauri Maddy

Petitions Filed: 1. January 28, 1987

2. January 29, 1987

3. February 4, 1987

Status of Petitions: Vulcan Materials withdrew its petition on February 26, 1988, based on modification of the final permit to include a revised dispute resolution provision, and incorporation in the administrative record of EPA's and Vulcan's written understandings of the meaning of Section VI of the permit, addressing HSWA corrective action provisions. The two other petitions await disposition by the Administrator.

Issues: Due process
Other corrective action issues (use of existing data and reports; compliance schedule; submittal of bi-monthly progress reports)
Joint permitting
Miscellaneous other issues (permitting of incinerators under TSCA; other PCB-related issues; storage of off-site wastes; clarification of waste streams)

Summary of Petitions:

Vulcan Materials petitions for review of certain conditions set forth in Section VI of its permit, addressing corrective action requirements for solid waste management units. Ms. Hinderliter and Ms. Maddy object to State-issued portions of the permit and EPA issuance of TSCA approval for incineration at the facility.

- **Use of Existing Corrective Action Data and Reports.** Vulcan Materials believes that EPA has made major modifications to the provisions of the RCRA Facility Investigation (RFI) plan and Corrective Measures Study (CMS) plan which first appeared in the draft permit.

  -- <u>The final permit appears to preclude Vulcan Materials from utilizing investigative data accumulated by the petitioner and EPA over a</u>

period of several years, and studies and reports based on these data. Vulcan Materials wishes to avoid the expense of duplicating such work when complying with the RFI conditions set forth in the permit. Consequently, Vulcan Materials requests that EPA assess the reliability and utility of such data before requiring Vulcan Materials to initiate additional media investigations.

-- Vulcan Materials objects to portions of the CMS requirements which make no allowance for possible utilization of components of the facility's existing ground-water corrective action program.

- **Schedule of Compliance for Corrective Action.** Vulcan Materials seeks review of the timetable set forth in the permit schedule of compliance for corrective action. For example, the final permit requires one final report, six investigation plans, and two programs for the development of a plan be submitted within 60 days of permit issuance, and two additional plans be submitted within 120 days of permit issuance. Vulcan Materials does not believe that it will be able to supply the detail required and still comply with the timetable set forth in the permit. In addition, Vulcan Materials states that these requirements are more than those contained in the draft permit.

- **Submittal of Bi-Monthly Corrective Action Progress Reports.** Vulcan Materials objects to the requirements for bi-monthly progress reports, suggesting that this information will already be contained in the facility's work plans, remediation reports, and corrective action reports.

- **Due Process.** Vulcan Materials seeks review of provisions depriving the facility of the right to appeal or contest any modifications to a plan, schedule, or report which are subsequently ordered by EPA and not concurred with by Vulcan Materials. The petitioner states that it is clearly erroneous for the Regional Administrator to waive appeal rights as a condition for the issuance of the permit.

- **Permitting of Incinerators Under TSCA.** Both Ms. Maddy's and Ms. Hinderliter's appeal concerns issues surrounding the operation of Vulcan Materials' incinerator, which EPA has approved for disposal of polychlorinated biphenyls (PCBs) under TSCA. PCBs are a by-product of the chemical manufacturing process at this facility. These appeals are based on the following issues:

  -- Conditions under which the trial burn was conducted are not those specified in the permit. For example, the PCB concentration in the waste stream used in the trial burn was 100 ppm, whereas the permit allows a concentration of 1,000 ppm. Similarly, the operating permit specifies a waste feed rate greater than 0.8 gpm and a flow rate greater than 1.0 gpm, whereas the trial burn rates were much lower. Ms. Maddy requests that the permit be rewritten as to operate the incinerator at the exact conditions that the incinerator

was tested, or to re-test the incinerator at the exact operating conditions which Vulcan Materials plans to utilize.

-- It has not been demonstrated that the incinerator can meet the destruction and removal efficiency (DRE) as required by law when operating at the permitted conditions.

-- EPA and the State did not accurately consider modification of the feed rate, the fluctuating flow rate characteristics of the hazardous waste stream, etc. and their affects on the characteristics of the stack emission products during burning of the hazardous waste stream. The trial burn did not produce dioxins and furans that posed a significant threat to public health; this may not hold true when the concentration of PCBs in the waste stream is increased to 1,000 ppm.

-- Destruction by incineration of the components in the waste stream may be questionable, due to incompatibility of the waste stream.

-- Ms. Hinderliter was concerned about problems reported during the trial burn tests such as condenser breaking, freezing lines, leaks, and inadvertent introduction of air into samples.

-- The petitioners questioned why Vulcan Materials was able to waive out of a TSCA requirement to test PCB waste stream concentrations every 15 minutes.

- **Other PCB-Related Issues.** Ms. Maddy requests documentation presented during the EPA inspections of the Vulcan Materials facility, indicating the company has not exceeded the allowable concentration of PCB in products leaving the facility. In addition, Ms. Maddy requests that Vulcan Material's products be taken off the shelf and tested for their PCB concentration.

- **Storage of Off-Site Waste.** Ms. Maddy objects to the permit conditions in the State portion of the permit allowing Vulcan Materials to store off-site hazardous waste on the following grounds:

  -- Vulcan Materials is not a commercial storage area;

  -- There is no safe means of disposal for this waste; and

  -- The area will have a greater exposure rate due to the accidental spills, either caused by transportation or leaking barrels.

- **Clarification of Waste Streams.** In the State portion of the permit, waste stream K016 is permitted for incineration and for deep well injection as "ground-water cleanup water." Ms. Maddy believes that the permit should distinguish between K016 for incineration and K016 for deep injection, clarifying that K016 for deep injection is not allowed to be incinerated.

PERMIT APPEAL FACT SHEET

Facility: Heritage Environmental Services (HES)
Putnam County, Indiana
IND 980 503 890
RCRA Appeal No. 87-4

Petitioner: HES

Petition Filed: February 10, 1987

Status of Petition: Petition withdrawn. Permit was modified, effective March 22, 1988.

Issues: Level of detail
Joint permitting
Procedural issues
Miscellaneous other issues (inspection of and liquid removal from secondary leachate collection system; soil thickness of final cover)

Summary of Petition:

The petitioner contests the permit's level of detail, joint permitting issues, and procedural issues. HES also raises issues relating to the inspection of and liquid removal from the secondary leachate collection system and the soil thickness of the final cover.

- **Level of Detail.** The petitioner raised several issues regarding the level of detail in the permit for this hazardous waste landfill facility:

  -- The permit includes an attachment containing technical liner specifications on geotextile/secondary collection media for side slopes. HES asserts that the geotextile manufacturer will only state that the material complies with the physical property listings within normal statistical ranges. Due to differences in laboratory techniques and test methods, HES contends that it is difficult to verify these specifications in the attachment to the permit. The petitioner believes that, at most, the values in the attachment should be established as averages, rather than as minimum, requirements.

  -- The permit specifies certifications that must be obtained from liner manufacturers and installers for each panel of the synthetic liner. The petitioner states that this condition is new to the final permit, that it is uncertain whether a fabricator can provide test results for each liner panel, and that consequently it may not be possible to obtain the required certifications.

  -- The permit requires HES to test the synthetic liner for

compatibility with leachate from the landfill, using a specific EPA test method, unless the material is from the same manufacturer and had been previously found to be compatible. The petitioner contends that there is inadequate time between selection of a liner supplier and construction of the liner to allow for a complete test on the liner material from a different manufacturer.

-- HES asserts that its is inappropriate for EPA to limit compaction equipment to specific models (e.g., D-3 light dozers, D-8 bulldozers).

-- HES believes that the compaction method for the "underdrain" and the leachate collection system should be the same. The permit now specifies the compaction method for the underdrain as requiring a "vibratory hand-held plate compactor," whereas the compaction method for the leachate collection system relies on bulldozers.

- **Joint Permitting Issues.** The permit limits the disposal of any waste except that from the HES Processing Plant without prior approval by the Indiana Department of Environmental Management (IDEM). HES believes that requiring IDEM approval is beyond EPA's authority. The petitioner makes the same point with respect to a condition requiring IDEM approval prior to unloading waste from a source other than the HES Processing Plant.

- **Procedural Issues.** HES objects to a peel adhesion seam requirement of 10 pounds per inch. This requirement was not included in the draft permit (i.e., a procedural issue on development of the final permit), and the petitioner contends that there is no NSF #54 standard for field seams. HES suggests that an appropriate peel adhesion requirement would be 8.5 pounds.

- **Inspection of and Liquid Removal from Secondary Leachate Collection System.** The Federal permit requires inspection of the secondary leachate collection system "daily during the active life of the facility..." The petitioner would substitute "cell" for "facility," contending that otherwise the daily inspections may be required for 50 years of more. The petitioner makes this same point with respect to the frequency of liquid removal from the secondary collection system.

- **Soil Thickness of Final Cover.** The petitioner believes that the soil layer thickness of the final cover should be 18 inches, rather than 18 feet.

PERMIT APPEAL FACT SHEET

Facility: Allied Corporation
Metropolis, Illinois
ILD 006 278 170
Permit Appeal No. 87-6

Petitioner: Allied Corporation

Petition Filed: May 5, 1987

Status of Petition: Region response postponed pending settlement negotiations

Issues: RFI conditions are too vague
RFI conditions are not justified
Definition of solid waste management unit
Due process
Other corrective action issues (sampling requirements)
Procedural issues
Miscellaneous other issues (surface impoundment requirements)

Summary of Petition:

The petitioner outlines three groups of issues to be reviewed: (1) issues relating to corrective action; (2) procedural issues; and (3) surface impoundment requirements. Individual issues within each group of these three groups are summarized below.

- **Corrective Action Issues.** Allied is contesting provisions in the final permit relating to specific corrective action conditions. The petitioner contends that EPA has improperly defined the solid waste management unit (SWMU) to include an old wood treatment facility. Allied objects to the permit provisions, which require RCRA Facility Investigation (RFI) activities at this site. The petitioner objects to other conditions on the grounds that they are unclear, unjustified, and/or inappropriate.

  -- The petitioner argues that the permit conditions requiring corrective action investigations at the site of an wood treatment facility are not within EPA's authority under §3004(u) for two reasons: (1) there is no SWMU at that site; and (2) assuming that there is a SWMU at that site, there is no basis for treating the entire facility as a SWMU. In addition, Allied suggests that the RCRA Facility Assessment (RFA) findings do not support the need for an RFI at the site of the old wood treatment facility. Although EPA did not conduct a sampling visit as part of the RFA, EPA did perform a visual site inspection which found no evidence of contamination on the surface of the old facility. In addition, the Illinois Environmental Protection Agency (IEPA) performed a post-RFA inspection of the wood treatment facility. Subsequently, the

petitioner claims that it is inconsistent to require soil sampling at the old facility before it has been determined that there has been a significant release of a hazardous waste or constituent from this facility. Allied suggests that the permit require ground-water monitoring in the uppermost aquifer prior to soil sampling around the old wood treatment facility.

-- The petitioner suggests that Phase I and Phase II of the Ground-water Monitoring Plan are confusing to the point that it cannot be determined in which phase actions are to be undertaken. Because the permit contains no definition of a "release," the Region has no standard to determine when Phase II sampling can be required. Allied also believes that quality assurance/quality control (QA/QC) requirements for these sampling plans are overly detailed and overly burdensome.

-- Allied claims that aspects of the permit violate due process, because they give the Regional Administrator "unbridled" discretion both to determine whether corrective measures are necessary and to require the performance of testing procedures.

-- Allied claims that the requirement to sample ground water for all Appendix VIII constituents is excessive and not supported in the Administrative Record.

- **Procedural Issues**. Allied claims that Region V did not carry through on its commitment to allow Allied an opportunity to review and comment on the revised permit before issuing the facility a final permit.

- **Surface Impoundment Issues**. Allied argues that it is "premature" and "arbitrary" for EPA to define the surface impoundments' second liner system to include only three feet of the "in situ" clay underlying the units. Also, Allied states that closure requirements should apply only to the surface impoundment for which a retrofitting waiver is denied or revoked.

PERMIT APPEAL FACT SHEET

Facility: Sandoz Chemicals Corporation
Mt. Holly, North Carolina
NCD 001 810 365
RCRA Appeal No. 87-7

Petitioner: Sandoz Chemicals Corporation

Petition Filed: May 6, 1987

Status of Petition: Appeal awaiting disposition by the Administrator

Issues: RFI conditions are too vague
RFI conditions are not justified
Due process
Other corrective action issues (corrective action for newly-discovered solid waste management units (SWMUs))
Miscellaneous other issues (definition of "solid waste;" duration of permit)

Summary of Petition:

The petitioner contests the conditions of the permit in two general areas: corrective action requirements and general facility conditions. Individual issues within each group are summarized below.

- **Corrective Action Requirements.**

  -- The petitioner argues that the permit fails to specify adequately the scope and nature of the RFI plan, which must be prepared for more than half of the units identified in the RCRA Facility Assessment (RFA) as SWMUs.

  -- The petitioner contends that the vast majority of SWMUs identified in the RFA do not require corrective action, because no release has yet been determined from them. Therefore, it is not necessary to implement actions to determine the nature and extent of releases and potential pathways of contaminant releases from these units.

  -- The petitioner argues that the permit fails to provide a mechanism, such as appeals or arbitration, for resolving disputes regarding interpretation of the permit.

  -- The petitioner specifies that the permit includes conditions that are ambiguous and open-ended (in terms of scope and requirements), including the scope of an RFA for any new SWMUs discovered at the facility, the scope of corrective action that may be required, and the standard condition for the retention of records.

- **General Facility Conditions.**

  -- The petitioner contends that the permit defines terms in a manner contrary to, and in excess of, applicable Federal and State statutory and regulatory provisions. The petitioner specifically mentions that "solid waste" is defined in a manner contrary to applicable statutes and rules.

  -- The petitioner contests the establishment of a five-year permit term, rather than the allowable ten-year term.

PERMIT APPEAL FACT SHEET

Facility: 3M Company
Cordova, Illinois
ILD 054 236 443
Permit Appeal No. 87-8

Petitioner: 3M

Petition Filed: May 7, 1987[1]

Status of Petition: Region response postponed pending settlement negotiations

Issues: RFI conditions are too vague
RFI conditions are not justified
RFI conditions are technically inappropriate
Due process
Other corrective action issues (RFI work plan provisions cumbersome, NPDES discharges, definition of "facility")
Joint permitting

Summary of Petition:

3M has petitioned the Administrator to review certain Federal conditions for corrective action contained in a final permit for incineration at the facility. These conditions are found in the "Scope of Work Plan for a RCRA Facility Investigation" section of the permit. 3M petitions the Administrator to review both the general nature of the work plan, which 3M believes to be inflexible, and specific provisions contained in the work plan. Also, the petitioner requests that the Administrator review a joint permitting issue.

- **General Corrective Action Issues.** 3M is contesting specific sampling conditions which the petitioner finds overly burdensome, unreasonable, and/or infeasible. In addition the petitioner seeks review of specific ground-water monitoring conditions. The petitioner suggests these conditions are either overly burdensome, infeasible, or a violation of due process.

  -- 3M objects to the requirement for additional sampling and analysis of soil in the sludge incorporation areas. 3M suggests that extensive metals analysis has already been conducted for a sludge application permit, which indicated that the accumulation or leaching of metals from the sludge incineration area is not of concern. Furthermore, 3M argues that it is unreasonable to require soil sampling before ground-water monitoring indicates a release of hazardous constituents into the ground water.

---

[1] 3M's attorneys submitted minor edits to the petition in a correspondence dated May 8, 1987.

-- 3M claims that provisions regarding implementation of the Phase I and II sampling plans in the RFI are arbitrary and capricious because: (1) it is unclear to 3M when Phase I and II sampling are triggered; (2) the respective time periods provided in the RFI work plan are insufficient to complete the required procedures; and (3) should corrective measures be deemed necessary based on the Phase II final report, the permit does not provide 3M with an opportunity for time extensions in the event problems or changes occur in conducting corrective measures.

-- The petitioner requests the Administrator to review the condition of the work plan that relates to the Phase I ground-water monitoring system for the wastewater treatment plant and the sludge incorporation areas.. 3M argues that the provision, which requires the monitoring system to be capable of detecting immiscible contaminants (i.e., floaters and sinkers), is unnecessary because there will be no "floaters" or "sinkers" entering the ground water. 3M would, however, install a monitoring system capable of detecting immiscible contaminants if interim monitoring demonstrates it is necessary.

-- The petitioner argues that the permit condition that relates to a ground-water monitoring system for the sludge incorporation areas and the wastewater treatment plant is vague and ambiguous, because it provides no detail on how EPA expects 3M to verify a release.

-- The petitioner objects to the provision which provides that the permittee must take certain actions if the Regional Administrator determines, based on the Final RFI Phase I Report, that there has been a release from the sludge incorporation area. 3M argues that the condition provides the Regional Administrator with "unfettered" discretion to require 3M to take remedial action. 3M also objects to the time periods set out in the provision for submitting certain information (e.g., a Draft Phase II sampling plan), because the provision provides no opportunity to extend completion dates.

-- The permit requires 3M to identify any Appendix VIII constituent which may be present in the facility's surface impoundment. The petitioner argues that the constituents in the impoundments cannot be identified and quantified with the accuracy required by the permit conditions, because the profile of hazardous constituents in the impoundments is constantly changing.

- **Specific Corrective Action Issues.** 3M is contesting specific conditions that relate to corrective action. The petitioner seeks review of these conditions which include the use of existing monitoring wells, the term "facility," NPDES permitted discharge, and data submitted.

-- 3M objects to the provisions of the work plan that relate to Phase I and II ground-water monitoring systems for the wastewater treatment

plant and the sludge incorporation areas, respectively. The provisions preclude the use of existing monitoring wells in the surface impoundment area. 3M requests that the permit be modified to allow the use of existing wells under certain circumstances.

-- 3M argues that the term "facility" as it relates to the wastewater treatment plant and the sludge incorporation areas should include only the surface impoundments, since these units would be investigated if contamination were found.

-- The petitioner objects to the permit provision that requires 3M to provide information regarding NPDES permitted discharges to surface water, because such discharges are regulated under the Clean Water Act.

-- 3M believes that the RFI workplan is "rigid" and "inflexible," as demonstrated by specific provisions which mandate the types of procedures 3M must follow and actions it must take under the plan. For example, the workplan specifies submittal of select data in graphic or tabular displays -- 3M argues that this condition precludes the use of its best professional judgment in presenting these required data.

- **Joint Permitting Issues.** 3M objects to the provision that sets forth specific closure requirements for the facility's surface impoundments. 3M argues that the Illinois Environmental Protection Agency (IEPA) has sole authority in Illinois to govern the closure of hazardous waste surface impoundments.

PERMIT APPEAL FACT SHEET

Facility: Mobay Corporation
Kansas City, Missouri
MOD 056 389 828
RCRA Appeal No. 87-9

Petitioner: Mobay Corporation

Petition Filed: May 13, 1987

Status of Petition: Region response postponed pending settlement negotiations

Issue: Due process

Summary of Petition:

The petitioner is appealing Special Condition 3(G) of the Federal portion of the final permit issued to this hazardous waste storage and incineration facility. Special Condition 3(G) provides that in the event of EPA disapproval of any plan, schedule, or report required in this permit, the permittee shall have 30 days to submit a modified plan, report, or schedule to EPA for approval. Should the permittee take exception to EPA's disapproval, the permittee and EPA may attempt to resolve the disagreement. In the event that resolution is not reached within 30 days, however, this condition requires the permittee to modify the plan, schedule, or report as required by EPA. Mobay believes that this condition does not clearly specify the time frame in which a plan, schedule, or report may be negotiated, nor does it describe in detail the procedures for administrative review of disagreements. Mobay argues that this condition is vague and ambiguous and may result in a violation of Mobay's right to due process.

PERMIT APPEAL FACT SHEET

Facility: Mobay Corporation
Bushy Park, South Carolina
SCD 048 373 468
RCRA Appeal No. 87-10

Petitioner: Mobay Corporation

Petition Filed: July 2, 1987

Status of Petition: Appeal stayed pending settlement negotiations

Issue: Due process

Summary of Petition:

- **Corrective Action Requirements.** The petitioner contests the permit on the grounds that due process is denied under the schedule of compliance for corrective action by the incorporation of the following condition:

  > "All plans and schedules shall be subject to approval by the Regional Administrator prior to implementation. The permittee shall revise all submittals as specified by the Regional Administrator."

  -- The petitioner argues that this condition provides for the automatic incorporation of new permit requirements by a procedure which is inconsistent with EPA permit procedures, with EPA policies, with §3005 of RCRA, and with due process requirements under the U.S. Constitution, Amendment 5.

  -- The petitioner suggests adding the following sentence to the condition: "All revisions to plans and schedules will be incorporated by EPA pursuant to 40 CFR 270.41 and Part 124."

PERMIT APPEAL FACT SHEET

Facility: Erieway, Inc.
Bedford, Ohio
OHD 055 552 429
RCRA Appeal No. 87-11

Petitioner: Erieway

Petition Filed: October 23, 1987

Status of Petition: Region response postponed pending settlement negotiations

Issues: Joint permitting
Miscellaneous other issues (compliance with Part 264 Standards)

Summary of Petition:

Erieway raises issues that relate to the joint permitting status of the facility and compliance with Part 264 requirements.

- **Joint Permitting.** Erieway contends that compliance with the Federal permit will cause Erieway to violate State law.

  -- Although Ohio is not authorized for the base RCRA program, Ohio does have its own State statutes and regulations which apply to all hazardous waste management facilities in the State. Specifically, Erieway would have to submit for approval to the Ohio Hazardous Waste Facility Board a permit modification application and revised permit for capital improvements Erieway plans to construct pursuant to its Federal permit.

  -- Initiation of construction activities to comply with the Federal permit prior to State approval would violate State regulations. Delay in initiating construction, however, would cause Erieway to be in violation of it Federal permit. If that occurs, Erieway contends that it would be required to begin closure activities pursuant to 40 CFR §265.112(d) and §265.113.

  -- Erieway requests that in the absence of joint permitting, EPA amend the permit compliance schedule to allow Erieway to operate while awaiting a final decision from the State permitting authorities on its Part B application.

- **Compliance with Part 264 Standards.** Erieway contends that Condition VII (compliance schedule) of the permit does not provide adequate time for Erieway to modify and improve its facility as necessary to bring the facility into compliance with 40 CFR Part 264 standards, particularly those standards resulting from HSWA-mandated changes (e.g., new tank system standards, new closure and corrective action requirements). The

petitioner contends that the permit schedule of compliance should be amended to allow Erieway adequate time to obtain financing necessary to construct $3 million in planned capital improvements over the next two years, and to complete construction of these modifications.

-- Erieway argues that these changes could not be made during interim status, since the value of the changes (i.e., $3 million) is equal to the replacement cost of the entire facility. 40 CFR 270.72 sets a limit of 50 percent of reconstruction costs for allowable changes during interim status.

PERMIT APPEAL FACT SHEET

Facility: Chemical Waste Management, Inc. (CWM)
Emelle, Alabama
ALD 000 622 464
RCRA Appeal No. 87-12

Petitioners:

1. The State of Alabama

2. The Alabama Chapter of the Sierra Club and the Alabama Conservancy

3. The Alabamians for a Clean Environment (ACE), the Sierra Club (Alabama Chapter), the Alabama Conservancy, and Greenpeace U.S.A., Inc.

4. Chemical Waste Management, Inc.

At the request of counsel, petitions #1 and #2 were treated as a single petition.

Petitions Filed: July 10, 1987

Status of Petitions: Case resolved. On May 27, 1988, the EPA Administrator issued an Order which granted the petitions for review, in part, and remanded the proceeding to the Region for further consideration. The Administrator concluded that the petitions for review should be granted to the extent they request the Region to consider adding specific controls for products of incomplete combustion ("PICs") and metal emissions from the incinerator. In all other respects, the petitions were denied.

Issues: Procedural issues
Level of detail
Miscellaneous other issues (compliance with RCRA and NEPA; specific unit design and operating standards)

Summary of Petitions:

- **Issues Contested by the State of Alabama, the Alabama Chapter of the Sierra Club, the Alabama Conservancy, the Alabamians for a Clean Environment, and Greenpeace U.S.A., Inc.** Each of these petitioners specifies areas in which it believes EPA's decision to issue the permit was based on inadequate, insufficient, or inappropriate information. The petitioners contend that the terms of the permit are erroneous. Their arguments are presented below.

-- The petitioners claim that EPA failed to comply with NEPA by deciding not to prepare an Environmental Impact Statement (EIS). The petitioners further argue that the RCRA permitting process is not functionally equivalent an EIS. In addition, the petitioners contend that the contingency plan does not satisfy the requirements of RCRA and that the ground-water monitoring and protection provisions in the permit do not comply with RCRA.

-- The petitioners argue that the landfill design is inadequate to protect ground water and that the Exposure Information Report is inadequate to support a permit decision for the landfill. In addition, the petitioners contend that the decision to prolong the operation of an unlined surface impoundment at the facility and to allow significant concentrations of volatile organics in the impoundment was erroneous. Third the petitioners argue that the decision not to require complete and sufficient monitoring for the proposed incinerator was an erroneous finding of fact.

-- The petitioners contend that the designated permit period of seven years is too long. Further, the petitioners state that the public participation was inadequate and that due process violations occurred in the issuance of the permit.

-- The petitioners assert that EPA's conclusion that the issuance of the permit would have no effect on cultural resources is erroneous. The petitioners believe that EPA ignored CWM's track record of illegalities and violations in issuing the permit and issued the permit despite current violations at the facility. Moreover, the petitioners believe that EPA failed to take important consent decree studies into account in the permit review.

CWM argues against the granting of the other three petitions submitted to EPA in a document entitled, Opposition to Petitions for Review. This opposition states, among other reasons, that these petitions should be denied because they lack specificity, they do not make the requisite "threshold showing" required in the RCRA permitting process to obtain review, and that some of the petitioners lack standing for their requests for review (i.e., the petitioner did not comment, during the public comment period, on the condition for which he now petitions for review).

- **General Issues Contested by Chemical Waste Management, Inc.** This petitioner contests three general areas of the permit: 1) the permit conditions for the incinerator, 2) the shallow well network requirements, and 3) the permit's incorporation of descriptive information, including designs and drawings, provided by CWM in the permit application process. A synopsis of the petitioner's contentions are presented below. A more detailed discussion of the specific conditions for which this petitioner seeks review follows.

-- CWM requests review of a number of the permit conditions for the rotary kiln incinerator. In each case, the petitioner contests that the conditions are either inappropriate for the incinerator, arbitrarily required by EPA, or unnecessary procedural requirements. The petitioner argues that the most significantly flawed conditions are the two which impose a combustion air feed requirement in the event that the incinerator's thermal relief vent opens. Other conditions which the petitioner would like reviewed are:

- the limitation of CWM's operations in the period following the trial burn to a specific mix of waste feeds
- six conditions which deal with viscosity limitations and atomizing steam pressure
- two conditions prohibiting wastefeed to the incinerator before performing analyses of metals in each batch of waste
- the specific condition that CWM must meet in designing a new trial burn plan
- two conditions which specify the number of waste containers CWM must inspect to minimize the introduction to the incinerator of free standing liquid in containers
- two conditions which identify the types of wastes that may be fed into the incinerator through the ram-feeder device
- two conditions which specify requirements for submitting design engineering details for Agency approval and for incorporating "as-built" drawings of the incineration system into the permit after completion of construction

-- The petitioner does not believe that there is any justification for automatically triggering a full-scale assessment, including an evaluation plan, if hazardous constituents are detected in the shallow well network. CWM believes that such a requirement in the permit reflects a preconceived notion of what an evaluation plan should include and does not contain sufficient flexibility to allow for a mere investigation of laboratory procedures where that might be all that is appropriate. The petitioner suggests that the permit should instead require CWM to share with EPA any migration rate data from the shallow well network and to determine on a case-by-case basis over the course of time if additional studies are necessary. In addition, it is the opinion of the petitioner that the condition which requires the facility to analyze for three metals and to measure for total metals creates an inconsistency in the final permit by requiring CWM to analyze for total metals while elsewhere in the permit establishing further regulatory obligations contingent on the measurement of dissolved metals.

-- The petitioner argues that EPA introduced an undesirable level of detail into the permit by adopting, as permit attachments, "plans," including drawings, designs and specifications, that CWM furnished in its application to describe how it intends to develop and operate the facility and comply with Part 264. CWM further contests that the condition which specifies the records that CWM must retain at the facility is burdensome.

- **Specific Conditions Contested by CWM.**

-- Standard conditions

- The petitioner objects to the condition which specifies the records that CWM must retain at the facility, especially the particularly burdensome requirement that CWM retain "records of all data used to prepare documents required by this permit."

- The petitioner objects to the condition which provides that CWM may not commence treatment, storage or disposal of hazardous waste in a new unit or a modification of an existing unit until the Regional Administrator has either inspected the unit or waived inspection by failing to notify CWM within 15 days of EPA's intent to inspect. If, however, EPA notifies CWM of its intent to inspect a new or modified unit, the Agency has an indefinite time in which to conduct the actual inspection. CWM, concerned over the procedural aspects of the permit, requested in its comments on the draft permit that EPA set a reasonable schedule for its inspection.

- The petitioner objects to the condition which requires CWM, at the time it submits monitoring reports, to report to the Regional Administrator any noncompliance with the permit that is not otherwise reported. The petitioner argues that to encourage, rather than discourage, internal compliance monitoring, EPA should place reasonable limits on the use to which it will put such reports. The petitioner believes that this condition would be triggered by subjective determinations of "compliance" and "noncompliance". Moreover, the petitioner claims that this condition conflicts with the express terms of an EPA Consent Agreement and Order applicable to this facility and, in contravention of EPA's policy on environmental audits, will discourage candid internal monitoring of the facility's compliance status.

-- General facility conditions

- The petitioner objects to the condition which was amended in the final rule to require CWM to obtain EPA's prior written authorization for changes concerning the use of equipment or materials equivalent to those identified in the approved

specifications for any unit.

- The petitioner objects to the condition which was amended in the final permit to require that "as-built" drawings must be made available to EPA for review at the time of any inspection conducted pursuant to another specific permit condition which prohibits CWM from commencing treatment, storage, or disposal of hazardous waste in a new or modified unit until EPA has either inspected the unit or waived inspection.

- The petitioner requests an additional permit condition. The petitioner claims that a number of permit conditions require CWM to obtain EPA's written approval. The petitioner, however, is concerned that there is no provision in the permit outlining the schedule to be followed by EPA in reviewing such requests, the standard against which those requests will be judged, or the status of CWM's requests and submittal if EPA disapproves them. To provide the certainty that should accompany a final permit, the petitioner requests that these provisions be spelled out in a general condition.

-- Storage and management of containers

- The petitioner challenges EPA's failure to include certain wastes among those CWM is authorized to store at the facility. The petitioner claims that no facility exists that is authorized to treat, store, or dispose of a particular waste that CWM is storing at its facility under interim status. The petitioner argues that unless the permit allows for storage of these wastes at the facility, CWM will immediately be in violation of the permit once the permit becomes effective.

-- Hazardous waste landfill

- The petitioner objects to the condition which established limits on cyanide and sulfide bearing wastes that may be landfilled at the facility. The petitioner argues that these limitations are not appropriate for landfill operations and that they should be modified.

- The petitioner objects to the incorporation of four specific attachments into the permit. The petitioner believes that these attachments add unnecessary bulk and undesirable detail to the permit. The attachments, according to the petitioner, are also inconsistent with the permit conditions, in places, and thus cause confusion.

-- Short term incinerator permit

- The petitioner objects to the condition which subjects CWM unnecessarily to a potential permit violation if the company inspects the number of containers required by the permit, finds no free standing liquids, but subsequently discovers that an uninspected container holds free liquids. The petitioner wants the "Catch-22" effect of this condition eliminated.

- The petitioner objects to the conditions which improperly (according to the petitioner) exclude containerized waste from that which may be handled through the facility's ram-feeder.

- The petitioner objects to the conditions which require the automatic cut off of wastefeed to the incinerator when the wastefeed rates exceed limits specified for the various burning periods (e.g., "shakedown," trial burn, and post-trial burn).

- The petitioner objects to the conditions which require that if the thermal relief vent (TRV) is opened, the kiln damper must be operated to admit 5922 scfm of air to the kiln. The petitioner believes that the requirements of this condition are without technical basis or justification. The petitioner further claims that EPA arbitrarily raised the combustion air requirement to 5922 scfm, even though State calculations demonstrated that 1921 scfm of combustion air will supply more oxygen than is required for complete thermal destruction of organic constituents in the kiln when the TRV opens.

- The petitioner objects to the condition which requires CWM to prepare and submit a new trial burn plan for EPA's approval. This condition also specifies the conditions that must be demonstrated in the trial burn scenarios. The petitioner challenges the requirement in this condition to demonstrate in each test the maximum thermal load to the incinerator and the minimum resistance time. This requirement is an error because these two conditions simply cannot both be demonstrated in each test.

- The petitioner objects to the conditions which require that each batch of waste be analyzed for 11 metals before it is fed to the incinerator, even if there is no limitation on the metals content of wastes fed into the incinerator. The petitioner argues that there is no regulatory requirement for these metal analyses and, more important, the information gathered from the metal analyses serves no purpose relevant to deciding whether wastes are acceptable for the incinerator. The petitioner believes that this method of gathering data on metals fed to the incinerator unnecessarily and unreasonably interferes with CWM's operations.

-- Rotary kiln incinerator

- The petitioner objects to the condition which prohibits the feed of hazardous waste to the incinerator until another particular condition, which provides for notice to and inspection by EPA, has been complied with. The petitioner states that EPA, in writing the final permit, apparently decided that the condition which provides for notice and inspection is insufficient for the incinerator, and therefore CWM must not only submit as-built drawings for the incinerator, but must also receive EPA's written approval of those drawings before feeding waste to the incinerator. The petitioner claims that the incinerator as-built drawings should be treated in the same manner as all others under the permit.

- The petitioner objects to the condition which requires that CWM go through a permit modification to incorporate its approved as-built drawings for the incinerator into the permit. The petitioner believes that the inclusion of detailed drawings in the permit is unnecessary and modifying the permit to accomplish this would be a waste of both CWM's and EPA's resources.

- The petitioner objects to the condition which contains inspection requirements for containers to ensure that the containers do not contain free standing liquids. The petitioner objects to this condition for the same "Catch-22" reasons as explained above under "Short Term Incinerator Permit."

- The petitioner objects to the condition in which the Agency retained the viscosity limits instead of relying on manufacturers' specifications. The petitioner suggested a similar change to another condition (which sets out wastefeed limitations) in its comments on the draft permit, and claims that those comments applied equally to this condition and that the changes which were made to the other condition should also be made to this one.

- The petitioner objects to the condition for the rotary kiln incinerator that is similar to the condition above under "Short Term Incinerator" concerning the exclusion of containerized waste, and contests this permit condition on the same grounds as it did the earlier condition.

- The petitioner objects to the condition for the rotary kiln incinerator that is similar to the item above under "Short Term Incinerator" concerning analyzing each batch of waste for metals, and contests this permit condition on the same grounds

as it did the earlier condition.

- The petitioner objects to the conditions which mandate automatic waste feed cutoff when atomizing steam pressure to the secondary combustor or to the kiln falls below 90 psig. The petitioner suggests that the valve for a burner be described in the permit as "the lower limit of the optimal operating range recommended by the manufacturer," rather than specifying a particular psig limit.

- The petitioner objects to the condition which requires that the kiln damper admit 5922 scfm of combustion air into the kiln when the thermal relief valve is open. The petitioner believes this condition to be improper and contests the condition on the same grounds as it did the similar condition discussed above under "Short Term Incinerator."

-- Ground-water protection

- The petitioner objects to the condition which requires CWM to analyze three metals and to measure for total metals. The petitioner claims that this condition creates an inconsistency in the final permit by requiring CWM to analyze for total metals while elsewhere in the permit establishing further regulatory obligations contingent on the measurement of dissolved metals.

- The petitioner challenges the Agency's decision not to include in conditions under this section the language suggested by CWM in its comments on the draft permit to assure that a permit modification proceeding would not be necessary if CWM, or a laboratory with which it deals, decides it must change the Field Parameter Form or Chain of Custody Form. The petitioner believes that these conditions, without the suggested language, provide another example of the excessive detail included in the permit. The petitioner further argues that as long as the permit insures that proper procedures are followed to protect the integrity of the sample, the form used to do so is irrelevant.

- The petitioner objects to the condition which requires that an evaluation plan be submitted if a retest confirms the presence of hazardous constituents in a sample from a shallow well. The petitioner claims that, contrary to what EPA says in its response to the comments on the draft permit, this condition reflects a definite preconceived notion of what an evaluation plan should include and, furthermore, does not contain sufficient flexibility to allow for a mere investigation of laboratory procedures where that might be all that is appropriate.

The petitioner objects to the condition which requires CWM to submit both a report and an application for a permit modification within 30 days of completing an evaluation program, and to the condition which states that CWM need not submit the application for a permit modification if the Regional Administrator finds that the presence of hazardous constituents in ground water was not due to a release from a landfill unit or surface impoundment. The petitioner questions how CWM could possibly know what the Regional Administrator will find before CWM has submitted its report. The petitioners believes that these conditions are confusing and unnecessary, and that the manner in which the two conditions interact is unclear. The petitioner suggests either deleting these requirements or, at the very least, amending the requirements so that the application for a permit modification would not be required until after EPA has reviewed the report.

-- Attachment A - waste analysis plan

- The petitioner objects to EPA's deletion from the Waste Analysis Plan of six exceptions to CWM's pre-acceptance procedures. The petitioner claims that this change will substantially impair its ability to respond promptly to hazardous waste cleanup and disposal problems throughout the Region. The petitioner states that the Agency apparently incorrectly assumed that CWM accepts these wastes without obtaining a detailed chemical and physical analysis of the wastes as required by 40 CFR 264.13(a)(1). The petitioner further argues that the RCRA regulations require the facility accepting hazardous wastes to "obtain" such an analysis at some point, but not necessarily to "perform" such an analysis itself or have that analysis in hand before waste is received at the facility. Finally, the petitioner argues that this change would preclude CWM from receiving an unscheduled load of waste at the facility.

- The petitioner objects to the conditions concerning the Waste Analysis Plan which are in need of changes to maintain conformity with the change to the conditions requested in item 1 above under "Hazardous Waste Landfill."

PERMIT APPEAL FACT SHEET

Facility: Hoechst Celanese Corporation
Greer, South Carolina
SCD 097 631 691
RCRA Appeal No. 87-13

Petitioner: Hoechst Celanese

Petition Filed: July 1, 1987

Status of Petition: Appeal awaiting disposition by the Administrator

Issues: RFI conditions are too vague
RFI conditions are not justified
Definition of solid waste management unit
Due process
Other corrective action issues (definition of "contamination")
Procedural issues
Level of detail

Summary of Petition:

The petitioner raised issues relating to the corrective action section of the permit and several general permit issues.

- **Corrective Action Issues.** The petitioner believes that the RFI conditions are too vague. Hoechst Celanese also contests the RFI's definition of solid waste management unit (SWMU) and the definition of "contamination."

  -- Hoechst Celanese believes that the RFI permit conditions in Part II of the permit are so broad, indefinite, and completely open ended as to make it impossible for the company to know how to comply with the permit. Consequently, Hoechst Celanese believes that it has been effectively denied due process; a permittee may challenge permit conditions within 90 days after permit issuance, but Hoechst Celanese contends that Part II is worded so generically that site-specific permit conditions will not be known until after the 90 days has passed.

  -- Hoechst Celanese contends that the RCRA Facility Investigation (RFI) is not justified. The petitioner believes that the Regional Administrator (RA) ignored the findings of the RCRA Facility Assessment (RFA) by failing to use them to focus more narrowly the scope of the RFI.

  - The RFA concluded that only soil sampling should be required around the main waste oil tank; the RFI required investigation for all media pathways for this tank.

- Similarly, the permit requires Hoechst Celanese to conduct a full RFI for the portable waste oil storage tanks, while the RFA concluded that there was no release or threatened release to the environment from the tanks.

-- Hoechst Celanese objects to the definition of SWMU contained in the permit, for it does not duplicate the language contained in the preamble to the July 15, 1985, codification rule or the RFI guidance document.

- The petitioner argues that a chemical storage lagoon for which Hoechst Celanese certified closure on November 10, 1982, should be handled under a post-closure permit, rather than be included in the operating permit as a SWMU, subject to §3004(u) corrective action.

- Hoechst Celanese also maintains that the permit fails to provide clearly that effluent discharges from an NPDES-permitted waste treatment plant cannot be defined as a SWMU in the receiving water.

- Finally, the petitioner objects to defining each SWMU separately and requests that some units be grouped for the purposes of conducting the RFI.

-- Hoechst Celanese states that it is a violation of due process to require Hoechst Celanese to submit the final RFI report within 30 days after receiving the Region's comments on the draft report.

-- The petitioner objects to a definition of "contamination" in the permit based on exceedance of background levels, rather than levels established as protective of human health and the environment (such as alternate concentration limits), as a trigger for corrective action under §3004(u).

- **General Permit Issues.** The petitioner believes that the permit goes into too much detail and is not procedurally appropriate.

-- The petitioner feels that the level of detail in the permit is excessive, for it specifies the use of SW-846 test methods, even when these analytical methods are inappropriate for some of the substances on Appendix VIII.

-- The petitioner raises a procedural issue when it states that the permit fails to allow Hoechst Celanese to substitute the list of constituents in the proposed Appendix IX for those in Appendix VIII, if the Appendix IX regulations are made final during the term of the permit.

PERMIT APPEAL FACT SHEET

Facility: Ecolotec, Inc.
Dayton, Ohio
OHD 980 700 942
RCRA Appeal No. 87-14

Petitioner: City of Dayton

Petition Filed: July 30, 1987

Status of Petition: Appeal awaiting disposition by the Administrator

Issues: Facility location
Ground-water monitoring and sampling requirements

Summary of Petition:

The petitioner contests permit conditions in two general areas: ground-water monitoring and sampling requirements, and facility location.

- **Ground-Water Monitoring and Sampling Requirements.** The City of Dayton contends that the ground-water monitoring requirements established in the permit, which call for complete sampling only once every three months, are inadequate to detect contamination.

- **Facility Location.** The City of Dayton believes that the location of the Ecolotec facility poses an unacceptable risk of contamination to the public water supply for Dayton and the surrounding areas of Montgomery County. This petitioner states that the facility is located in the recharge zone of the aquifer which serves the public water supply, and is close to several of the City's wellheads.

PERMIT APPEAL FACT SHEET

Facility: Interstate Lead Company, Inc. (ILCO)
Leeds, Alabama
ALD 041 906 173
RCRA Appeal No. 87-16

Petitioner: ILCO

Petition Filed: September 30, 1987

Status of Petition: Appeal awaiting disposition by the Administrator

Issue: Compliance with liability requirements

Summary of Petition:

ILCO's operating permit for its Leeds, Alabama facility, a secondary smelting operation, was denied, because ILCO was unable to demonstrate in its Part B submission compliance with the liability requirements found at 40 CFR 270.14(b)(17). These regulations state that documentation of financial assurance for liability must be included in the Part B permit application. After its permit was denied, ILCO submitted a new certificate of coverage for sudden liability insurance in the requisite amounts and established an amended trust fund agreement for closure and post-closure care of its regulated units. To date, ILCO still is not in compliance with financial assurance requirements for nonsudden liability coverage.

ILCO asserted in its petition that the availability of insurance for secondary lead smelters is an important policy consideration necessitating the Administrator's review, given the contribution that such operations make to resource conservation and recovery. ILCO did not dispute the fact that it failed to demonstrate compliance with the requirement, nor did ILCO assert that the decision to deny the permit was clearly erroneous or that it involved an exercise of discretion requiring review (based on §124.19(a)(1) and (2) criteria for permit review.)

Although not raised in its petition, ILCO submitted a variance request to the Alabama Department of Environmental Management (ADEM) for liability coverage for nonsudden accidental occurrences, based on the "unavailability" of nonsudden insurance for secondary smelters. This request was made at the close of the public comment period, too late for consideration with the permit application. In addition, ILCO at one point had claimed that each of its regulated units was a waste pile, and that these waste piles were not subject to liability coverage for nonsudden accidental occurrences, as indicated by 40 CFR 264.147(b).

PERMIT APPEAL FACT SHEET

Facility: Pacific Gas and Electric Company (PG&E)
Pittsburg, California
CAT 080 011 695
RCRA Appeal No. 87-18

Petitioner: PG&E

Petition Filed: November 2, 1987

Status of Petition: Petition withdrawn. PG&E withdrew its petition after Region IX issued a permit modification, effective April 26, 1988.

Issues: Corrective action issues (ground-water terminology; ground-water monitoring parameters)
Procedural issues
Miscellaneous other issues (surface impoundment retrofitting)

Summary of Petition:

The petitioner outlines two groups of issues to be reviewed: issues concerning the technical parameters of the corrective action section of the permit (the RFI), and procedural issues. PG&E also contests the surface impoundment retrofitting requirement of the permit. Individual issues within each group are summarized below.

- **Corrective Action Issues.** The petitioner is contesting the technical requirements of the permit and the ground-water monitoring parameters.

  -- PG&E states that the ground water under the facility is tidally influenced, and fluctuations are sufficient to reverse the direction of ground-water flow. Consequently, PG&E asserts that it is technically inappropriate for the ground-water terminology to reference "upgradient" and "downgradient" locations, and should instead cite "background" and "point of compliance", respectively.

  -- Another corrective action issue raised by the petitioner pertains to the extensive list of parameters required for ground-water monitoring of the facility's surface impoundments during the first year after permit issuance. The petitioner contends that although plant operations have changed slightly over the 20-year life of the surface impoundments, the units were constructed to handle a specific waste stream. PG&E believes that leakage from the surface impoundments would be indicated by monitoring the parameters characterizing the specific waste stream.

- **Procedural Issues.** PG&E, after reviewing the applicable sections of 40 CFR Part 124, was confused as to the alternatives that were legally available to PG&E for requesting a review of the final permit decision.

PG&E, therefore, requested an evidentiary hearing, pursuant to 40 CFR 124.74. If a request for both a petition to review and an evidentiary hearing is not appropriate, PG&E requests to be advised of their available alternatives as soon as possible.

Retrofitting Surface Impoundments. The permit requires that four surface impoundments be retrofitted by October 1988, in order to meet the November 8, 1988, retrofitting deadline. PG&E believes that the 90-day time period allowed for construction and certification of retrofitted surface impoundments will not allow sufficient time to ensure proper installation of the new design. PG&E has stated that if they are unable to complete the final retrofitting by the November deadline, they will refrain from using the surface impoundments until the units are triple-lined and the construction drawings and certification of the actual liner installation quality assurance/quality control (QA/QC) procedures are approved. If that should be the case, PG&E requests that the facility be considered in compliance with the permit and be allowed to continue using the units once construction is completed and certification is approved.

PERMIT APPEAL FACT SHEET

Facility: Shell Oil Company, Deer Park Manufacturing Complex
Deer Park, Texas
TXD 067 285 973
Permit Appeal No. 87-19

Petitioner: Shell Oil Company

Petition Filed: December 16, 1987

Status of Petition: Appeal awaiting disposition by the Administrator

Issue: Surface impoundment retrofitting variance

Summary of Petition:

Shell is petitioning the Administrator to review a decision to deny its application for an interim status surface impoundment retrofitting variance under §3005(j)(3) for three surface impoundments identified as activated sludge biotreater basins. Prior to EPA's decision, the petitioner filed with the Texas Water Commission a Part B permit application that requests the continued operation of the biotreaters beyond November 8, 1988, without retrofitting the units, which the petitioner believes are entitled to the statutory exemption of §3005(j)(3). The petitioner claims that EPA's decision to deny the application for the statutory exemption effectively denies Shell's permit application. Therefore, the petitioner argues that EPA's decision is subject to the procedures set forth in 40 CFR Part 124.

PERMIT APPEAL FACT SHEET

Facility: Monsanto Agricultural Company
Luling, Louisiana
LAD 001 700 756
RCRA Appeal No. 88-1

Petitioner: Monsanto

Petition Filed: January 15, 1988

Status of Petition: Region response postponed pending settlement negotiations

Issues: RFI conditions are not justified
Definition of solid waste management unit
Due process
Other corrective action issues (use of term "disposal areas;" format of draft report; detail in RFI work plan)
Procedural issues
Joint permitting

Summary of Petition:

Monsanto's petition identifies four broad classes of objections: provisions that Monsanto claims are inappropriate and should be deleted from the permit; differing interpretations of statutory and regulatory authorities; provisions in the State portion of the RCRA permit; and wording changes and other clarification of terms. Many of these conditions relate to general and specific corrective action requirements.

- **Corrective Action Requirements.** The petitioner is contesting the incorporation of the definition of "SWMU" in the permit, and corrective action requirements based on identified SWMUs at the facility.

  -- Monsanto claims that based on the results of the RCRA Facility Assessment and other relevant data, the preliminary report and the RFI should be limited in scope to only one of the five SWMUs currently listed in the permit. Monsanto argues the RFA concluded that further investigation was needed at only one of the SWMUs, i.e., the closed landfill. In addition, Monsanto requests that the terms "other service areas" and "unit/disposal areas" be deleted from the permit, for they imply that the Agency has authority over areas other than SWMUs.

  -- Monsanto objects to the inclusion of a definition of SWMU in the permit, because the term SWMU is not defined under RCRA nor under the regulations, but is instead discussed only in the preamble to the HSWA codification rule. Monsanto argues that it is inappropriate to define the term "SWMU" in a permit when there has been no attempt to adopt it through the rulemaking process which subjects the proposed language to public notice and comment.

-- Monsanto objects to the administrative review process laid out in Section IX.F of the permit because it creates administrative review procedures for the RFI work plan that are contrary to existing law (42 U.S.C. §6976) and which do not give Monsanto its right of due process should Monsanto object to the EPA's comments on the work plan. In essence, Monsanto argues that it is allowed to object to deficiencies in the work plan identified during EPA's reviews, but if disagreements cannot be worked out, then the EPA version becomes the RFI work plan and must be "immediately" initiated by Monsanto.

-- Monsanto requests that Section VIII.J.2, Corrective Action Program, be deleted. No reason is given for this request.

-- Monsanto argues that the term "disposal area" duplicates the intent of the term "solid waste management unit," and so the use of the term "disposal area" in addition to the term "unit" in the RFI requirements section of the permit is redundant and potentially confusing.

-- Monsanto objects to providing EPA with a preliminary RFI report on facility conditions in the format specified in the permit, because Monsanto has already provided this information in another format.

-- Monsanto argues that permit conditions based on EPA's draft RFI guidance require "unnecessary," and "inappropriate" detail, particularly in developing the RFI work plan and reporting data, and do not have the force of regulation or law.

- **Procedural Issues.** Monsanto requests clarification of the effective date of the permit, and its duty to provide information at the request of the Administrator. Each of these issues is described in more detail below:

-- The signature page of the permit refers to the effective date of the permit, whereas other sections of the permit refer to Monsanto's responsibilities based upon the permit issuance date. Since the effective date is specified in the permit, Monsanto interprets 40 CFR 124.15(b) to mean that any reference contained in the permit to the date of issuance means the effective date. Monsanto requests that this permit be clarified.

-- Monsanto states that the current wording in Section II.D.7. Duty to Provide Information, does not provide Monsanto with reasonable safeguards to contest the relevancy of information requested. Monsanto argues that the Administrative authority should not have the sole discretion to determine what is relevant, and thus, suggests that the word "relevant" be included between the words "any" and "information."

- **State Permit.** Monsanto has a number of comments on the State portion of its permit:

  -- Monsanto states that certain conditions of the final State permit were not presented in the draft permit, including: tank inspections and testing (V.B.3(b),(d), and (e); and ground-water protection standards (VIII.C.3).

  -- Monsanto has a number of objections pertaining to the State portion of the permit per interpretation of authorities, including:

  - Description of effluent treatment pond and special conditions for tanks (fact sheet);
  - Compliance schedules (II.D.15(b) and (c));
  - General waste analysis and arrangements with local authorities (III.C.1 and 2 and III.K.5);
  - Special conditions applicable to tanks (V.E.1 and 5);
  - Storage in impoundments (VII.A.2);
  - Applicability of ground-water protection (VIII.A);
  - Hazardous constituents, parameters and concentration limits (VIII.D);
  - Documents to be maintained at the facility (II.D.21(b)); and
  - Compliance schedules (II.D.15(c)).

  -- Monsanto has a number of objections pertaining to the State portion of the permit per wording changes and other clarification of terms, including:

  - Duty to provide information (II.D.7);
  - Required equipment and aisle space (III.K.1 and 4);
  - Tank inspections and testing (V.B.3(b), (d), and (e));
  - Ground-water protection standards (VIII.C.3);
  - Hazardous constituents, parameters and concentration limits (VIII.D); and
  - Permit actions (II.B).

PERMIT APPEAL FACT SHEET

Facility: Utah Power and Light (UP&L)
Idaho Falls, Idaho
IDD 006 602 631
RCRA Appeal No. 88-2

Petitioner: UP&L

Petition Filed: March 25, 1988

Status of Petition: Region response postponed pending settlement negotiations

Issues: RFI conditions are too broad
Miscellaneous other issues (force majeure provision; non-compliance situations, incorporation of applicable standards; ground-water monitoring programs)

Summary of Petition:

UP&L objects to certain conditions in a post-closure permit issued jointly by EPA and Idaho Department of Health and Welfare (IDHW) to its Pole Treatment Yard in Idaho Falls, Idaho. UP&L utilized this facility to treat wooden electrical poles with creosote.

- **Corrective Action Issues.** The permit requires corrective action to address low level soil contamination in areas where creosote-treated poles were cured and stored. EPA considers this area a SWMU based on the fact that routine and deliberate releases occurred in the area, and that soil sampling results indicate that creosote releases did occur in this area. The petitioner believes that corrective action requirements should be eliminated from the permit. Although UP&L does not argue that drippage of creosote from poles that were stored in this area may have created an area that could be interpreted to be a SWMU, UP&L objects to the corrective action requirement on two points:

  -- There is no finding that the corrective action specified in the permit is necessary to protect human health and the environment; and

  -- There is no finding that a there is a release from a SWMU. The petitioner states that drippage of creosote from the poles that were stored in the area does not constitute a "release" from a SWMU subject to §264.101. To the contrary, the petitioner states that any drippings that may now be in the soils are so tightly bound up in the soil that they cannot possibly be migrating.

- **Force Majeure Provision.** The petitioner argues that the permit improperly excludes a force majeure provision which would excuse the facility, under certain circumstances, from complying with all of the permit conditions.

- **Non-Compliance Situations.** The petitioner argues that the permit improperly treats reasonable departures from the permit and the permit application as non-compliance situations. For example, in the Introduction section of the permit, any inaccuracy that the agencies find in the application with regard to how the facility's ground-water treatment plant is constructed and operated subjects UP&L to termination of the permit or an enforcement action. UP&L argues that while the permit application represents the best information at the time about the design and operation of the plant, that the operational aspects of the plant will continue to evolve as the facility operators gain more experience with the plant. UP&L does not believe that it should be held to the strict terms of the permit in this situation.

- **Incorporation of Applicable Standards.** The petitioner states that the permit improperly incorporates by reference certain "applicable" regulations. UP&L argues that by incorporating these regulations, the permit no longer is a "standalone" document, but becomes a document which requires cross-referencing and incorporation through cross-referencing of additional information.

- **Ground-Water Monitoring Program.** The petitioner believes that the permit improperly includes two inconsistent ground-water monitoring programs: one program is described in Part III of the permit (ground-water monitoring to be implemented during the post-closure period), and Attachment B. For example, the point of compliance wells, the flow rate and direction calculations, and the parameters to be monitored are different between the two programs.

PERMIT APPEAL FACT SHEET

Facility: Navajo Refining Company
Artesia, New Mexico
NMD 048 918 817
RCRA Appeal No. 88-3

Petitioner: Navajo

Petition Filed: March 25, 1988

Status of Petition: Appeal awaiting disposition by the Administrator

Issues: RFI conditions are too vague
RFI conditions are not justified
Joint permitting
Other corrective action issues (submittal of preliminary report)

Summary of Petition:

The petitioner is contesting issues relating to the corrective action section. These issues are outlined in greater detail below.

- **Corrective Action Issues.** Navajo is contesting three conditions of the RCRA Facility Investigation (RFI): corrective action for off-site units, submittal of a preliminary report, and release verification.

  -- The petitioner believes that the scope of the RFI is too broad, for it requires Navajo to perform an RFI and a Corrective Measures Study (CMS) at off-site wastewater treatment units identified as 3 Evaporation Ponds 1, 2, and 3, separated from the facility by both public and private lands. The ponds are connected with the facility by the 3 Mile Ditch, an old conveyance system for which Navajo has no continuous, established legal title. Navajo contests this condition on several grounds:

  - The ditch itself is not controlled by Navajo, as it is open to use by adjoining landowners and the public. Navajo argues, therefore, that it is "factually erroneous" for Region VI to contend that the evaporation ponds are part of the permitted facility, subject to §3004(u) corrective action.

  - Navajo contends that §3004(v) authority was intended only to deal with off-site contamination originating from on-site units. Navajo argues that any "release" of hazardous constituents would originate from the off-site units, and that any "discharge" from the refinery's on-site units to the wastewater treatment system would not in themselves constitute a "release."

- Finally, the petitioner contends that the 3 Mile Ditch and Evaporation Ponds have been actively regulated since 1974 by the New Mexico Oil Conservation Division, which directed a comprehensive ground-water and surface water impact analysis. Navajo argues that HSWA corrective action is "regulatorily redundant," and would potentially conflict with State-directed corrective action.

-- Navajo believes that the scope of the RFI is too broad also per permit conditions relating to release verification at the North Colony Container Storage Area. Specifically, Navajo contests the permit directive to collect analytical data identifying the location and sources of "suspected releases" associated with this storage area. Navajo argues that the findings of the RFA indicate that the container storage area was an unlikely source of hazardous waste or constituent release. The petitioner contends that the permit directive is unduly vague in failing to identify the nature of the "suspected release" and seems to conflict with the RFA report and Region VI's response to comments (Region VI responded to comments on the storage unit by stating that the North Colony Container Storage Area "is conditionally removed from the full RFI Workplan" provided Navajo verifies that no releases have occurred). Navajo requests that this condition be eliminated or appropriately reformed to be more specific.

-- As another corrective action issue, Navajo contests the RFI requirement to submit a preliminary report apart from the RFI workplan. Navajo contends that all background information requested to be included in the preliminary report is already included in the Part A and B permit applications, as well as other extensive RCRA file materials such as the RCRA Facility Assessment (RFA) Preliminary Assessment Report. Navajo argues that submittal of another preliminary report would impose burdensome information requests "which detract from limited manpower resources that could be more effectively concentrated on the RFI workplan itself."

PERMIT APPEAL FACT SHEET

Facility: Chemical Waste Management Inc. (CWM)
Kettleman Hills, California
CAT 000 646 117
RCRA Appeal No. 88-4

Petitioner: CWM

Petition Filed: April 6, 1988

Status of Petition: Region response postponed pending settlement negotiations

Issues: Due process
Procedural issues
Level of detail
Miscellaneous other issues (closure schedule, vague language, use of maximum contaminant levels)

Summary of Petition:

CWM objects to EPA's imposition of numerous permit conditions on the grounds that they: (1) go beyond EPA's statutory and regulatory authority under RCRA; (2) have been imposed without proper rulemaking procedures and without required findings; and (3) have not been supported by EPA in a statement of basis explaining conditions in the final RCRA permit. Specific issues are as follows:

- **Due Process and Use of the Omnibus Provision.** CWM states that EPA, by relying on the authority of §270.32(b) and §3005(c)(3) for incorporation of additional permit conditions, including compliance with other conditions based upon guidance documents, "subverts" the administrative rulemaking process under RCRA and the Administrative Procedure Act (APA), and denies CWM due process. Section 270.32(b), based on the omnibus provision of §3005(c)(3) of RCRA, as amended by HSWA, limits EPA's authority to impose additional permit conditions to those situations where necessary to protect human health and the environment. CWM states that EPA has made no finding that such additional conditions are necessary at Kettleman Hills (i.e., technical evidence does not show that the use of 40 CFR Part 264 regulations alone is inadequate to protect human health and the environment at the facility). CWM suggests that EPA has neither documented its rationale for the additional permit conditions, nor applied appropriate criteria to evaluate health and environmental risks at the facility.

  -- CWM finds permit conditions VI.G.2, VI.G.3, and Attachment VI-C (completion of a Corrective Measure Study (CMS)), objectionable, because (1) they are based on EPA draft guidance which has not been subjected to the required rulemaking process; and (2) they establish specific conditions and criteria for a CMS before a study is even determined to be necessary. To establish the scope and criteria of

a CMS prior to permit modification (which would follow the procedures of 40 CFR 270.41) suggests that the permit modification proceeding will be meaningless.

-- Other specific conditions relating to use of the omnibus provision include:

- Prohibition against acceptance or management of non-hazardous industrial waste (II.B.1.e and II.B.2). CWM argues that neither §264.13(b), §270.32(b)(1), or any RCRA statutory provision or regulation authorizes or prohibits CWM from servicing the market of non-hazardous, non-municipal wastes. CWM also maintains that EPA can not invoke protection of human health and the environment as a justification for its position.

- CWM argues that EPA is without authority to require containment systems for drum decant units staging and processing areas specified in the permit, because 40 CFR 270.175 concerns only containment systems for storage areas, not for temporary drum marshalling or loading areas. In addition, CWM argues that EPA has not justified the need for monthly reporting on the drum decant unit (which is not required by any regulation), nor provided any reason for singling out a specific waste management unit on which a facility must provide additional information.

- CWM objects to the inclusion of inspection and contingency plan requirements beyond those which CWM believes are authorized by RCRA, and the provision of permit conditions which impose "redundant" inspection requirements. For example, the final permit identifies inspection elements that are not RCRA-related (e.g., dolly-down areas, response vehicles), and contingency plan elements (e.g., earthmoving and site vehicles) that CWM does not consider emergency equipment.

- CWM does not believe that §§264.33 or 264.73 provide EPA with the authority to require that testing and maintenance of contingency plan equipment be documented in the facility operating record.

- Annual recertification of accepted waste streams. The final permit requires that CWM repeat the pre-acceptance evaluation of accepted waste streams at least annually, while §264.13(a)(3) requires only that the analysis be "repeated as necessary to ensure that it is accurate and up-to-date." CWM believes that a biennial recharacterization would be sufficient, or that an annual recertification program would need at least a six month phase-in period.

- **Procedural Issues.** Certain contested permit provisions were not included in the draft permit but instead appeared for the first time, without providing CWM notice or opportunity for comment, in the final RCRA permit:

  -- Mandatory analysis of all "special materials" identified in the waste analysis plan (II.C.1.c);

  -- Disaster response plan for transportation-related releases of hazardous waste within the City of Avenal, California (II.I.7);

  -- Permit conditions which require CWM to remove from service any landfill or pond at which the vadose zone monitoring system detects any level of moisture with any level of hazardous waste constituents or indicator parameters; and

  -- Permit provisions requiring CWM to compare sampling data for metal parameters with ground-water protection standards, and which expressly denied CWM the opportunity to demonstrate that errors in sampling, analysis, or evaluation caused statistically significant increases in hazardous constituent levels in ground water (CWM believes that this last provision is in direct conflict with 40 CFR 264.98(i)).

- **Level of Detail.** CWM claims that EPA incorporates into the facility's final permit detailed requirements that are not fully justified in the permit's fact sheet, including:

  -- Required aisle space in the drum storage unit and PCB flushing/storage unit (III.C.1.b and III.J.3). EPA has provided no explanation of basis nor reasons for establishing a 4-foot aisle requirement in the final permit.

  -- The permit requires that ground-water samples be analyzed according to those methods specified in SW-846. CWM objects due to the uncertainty in the reliability of SW-846 methods, and requests that it be allowed to use other EPA-approved methodologies for analyses (e.g., EPA methods 624 and 625).

  -- Height limitation in leachate detection, collection, and removal systems (IV.A.8.a). Immediate removal of all liquids out of the leachate detection, collection and removal system immediately following a rise in the liquid level to a height of thirty centimeters is burdensome, inconsistent with the proposed liner and leak detection rule (52 FR 20218), physically impossible from a technical point of view, and imposed without explanation or reasoning. CWM also argues that, based on the geographic and hydrogeologic characteristics at the facility, there is no risk to public health and the environment from the existence of liquid in the leachate detection, collection and removal system.

-- Required cessation of operation of waste management units when certain leachate levels are collected (IV.A.8.c and Attachment IV.B). CWM argues that this provision is inconsistent with EPA's proposed regulations for leachate collection and removal systems (52 FR 20218), and that there is no justification in the administrative record to support the requirement in the final permit for a complete shutdown of operations when these minimal leachate levels are reached. Along the same lines, CWM objects to other permit conditions requiring CWM to (1) empty immediately all free liquids from any surface impoundment in which there cannot be maintained less than one foot of liquid in the leachate detection, collection, and removal system; and (2) remove from service any landfill or pond which detects any level of moisture with any level of hazardous waste constituents or indicator parameters in the vadose zone monitoring system.

- **Closure Schedule of the Temporary Container Storage Unit and Interim Stabilization Unit.** These permit provisions involve a complex array of Agency approvals that must be received prior to the operation of the permanent waste management units, while requiring the closure of the corresponding temporary units before the permanent units are operational. To preclude the possibility that the interim units will have to be closed before the permanent units become operational, CWM has requested that the permit conditions be revised to explicitly provide that the closure schedule allow adequate time for the orderly transition of drum and stabilization operations to their new facility areas.

- **Vague Language.** CWM objects to vague language in the retrofit provisions regarding units that do not maintain a 30-centimeter (1 foot) maximum liquid level. The final permit requires retrofitting or closure activities if existing pumps cannot "properly" operate or "properly" drain. At the same time, the permit does not provide objective standards from which to determine whether such operations or pumping is proper.

- **Use of Maximum Contaminant Levels (MCLs).** CWM objects to the use of MCLs in determining whether or not sampling data indicate the presence of hazardous constituents in ground water under the facility. MCLs are standards established for drinking water at the consumer tap; CWM argues that MCLs are inappropriate for comparisons at monitoring wells in a non-drinking water aquifer.

PERMIT APPEAL FACT SHEET

Facility: CID
Calumet City, Illinois
ILD 010 284 248
RCRA Appeal No. 88-5

Petitioner: Waste Management of Illinois Inc. (WMII)

Petition Filed: April 11, 1988

Status of Petition: Region response postponed pending settlement negotiations

Issues: RFI conditions are too vague
RFI conditions are not justified
RFI conditions are technically inappropriate
Due process
Other corrective action issues (off-site monitoring; trigger levels)
Procedural issues
Level of detail
Joint permitting
Miscellaneous other issues (manifests; testing waste shipments)

Summary of Petition:

WMII is contesting the terms of the permit in three major areas: investigatory and corrective action requirements, waste analysis requirements, and waste restriction conditions. Each of these major areas is discussed with greater specificity below.

- **Investigatory and Corrective Action Requirements.** The permit now requires WMII to submit for approval and implement an RFI Phase I Workplan, including ground-water monitoring around the SWMUs at the facility. If ground-water monitoring discloses any contamination above baselines (practical quantification units (PQLs) for any constituent not present in background and for statistically significant levels of any constituent detected at background), WMII must submit for approval and implement a Phase II sampling plan for determining the rate and extent fo contamination.

  -- WMII argues that <u>certain RFI permit conditions are too vague</u>.

  - <u>Section IV.1.b.(2)(a) requires WMII to monitor the ground water for "dissolved solids calculated" without defining what "dissolved solids calculated" are</u>. The condition also refers to <u>Task A.5.d</u>, which <u>does not exist in Attachment I</u>. Finally, <u>WMII does not understand certain phrases</u> used in the last sentence of this paragraph, including "priority list of parameters."

- Section IV.1.b.(2) requires quarterly sampling, but does not make clear how the four sets of samples are to be used, and does not provide explicitly for resampling and statistical evaluation of multiple samples.

- Section IV.1.b.(2)(d)(ii)(A) requires WMII to develop a method for comparing observed concentrations of hazardous constituents in a particular stratum (Silurian Dolomite) to background levels. EPA has provided no guidance as to what it expects this submittal to encompass.

-- WMII argues that the RFI does not provide information that would allow the Agency to conclude that a contaminant plume was released from a SWMU.

- The CID facility is located in an historically heavily industrialized urban area, and is adjacent to a dredge and fill site owned by the City of Chicago and property owned by Conrail. WMII argues that the scope of work for the RFI does not provide WWII an opportunity to prove that contamination came from off-site versus coming from SWMUs.

- In addition, Phase II sampling is required if any contamination is found during Phase I monitoring--the presumption is that the contamination originated from the SWMUs. WMII argues that such monitoring does not provide EPA with sufficient justification for determining that a release has occurred.

- WMII proposes that, on remand to the Region, an entirely different approach be taken to these investigations; namely, that WMII would investigate the practicality and cost of installing an additional clay barrier through the surface sand (the Dolton Sand) near the SWMUs and installing a drainage and pumping system to remove water in the Dolton Sand.

-- WMII contends that certain ground-water monitoring requirements are technically inappropriate.

- For example, the permit requires ground-water monitoring of underlying glacial till. WMII states that the flow of water through the till is predominantly vertical and not horizontal, and that wells constructed in the till will be difficult to develop and sample due to the medium's very low hydraulic conductivity. The permit requires the evaluation of these wells for "informational purposes" only, and provides no method for analysis of any levels of contamination which may be found. WMII believes that this "arbitrary collection of data" should be stricken from the permit.

- In addition, WMII contends that it is improper for the permit to require use of SW-846 methods for the analysis of ground water, since these tests were designed for the analysis of solid waste.

-- The corrective action requirements of the permit effectively provide no means for due process review of the Agency's decision on the RFI Phase II sampling plan for determinning the rate and extent of contamination that CID must develop.

-- WMII objects to several other corrective action conditions as follows:

- In order to determine the nature and extent of a plume of contamination during Phase II sampling, WMII objects to potentially having to construct wells on land that it does not own (the Chicago landfill site) or in surrounding waterways.

- WMII requests that PDMLs be used for purposes of comparison rather than PQLs.

- **General Facility Conditions/Waste Analysis.** WMII objects to conditions which require analyses of wastes at an operating landfill to ensure compliance with restrictions on disposal of liquids and certain specified wastes. WMII believes the following conditions are ambiguous or inaccurate, and require clarification.

-- As a joint permitting issue, WMII requests that the permit clearly state that compliance with Illinois regulations which test for the absence or presence of free liquids constitute compliance with EPA requirements, which now require use of the Paint Filter Test. WMII states that EPA guidance recommends testing only if it is not obvious upon visual inspection that the waste does or does not contain free liquids. In addition, WMII believes that the waste analysis plan approved by Illinois EPA should satisfy the Federal requirements.

-- The petitioner objects that the level of detail in the permit is excessive, for the permit requires WMII to test each wastestream to be landfilled at least quarterly.

-- The petitioner raises the following miscellaneous other issues:

- The petitioner objects to the condition requiring CID to examine manifests to determine whether waste shipped is prohibited from land disposal. WMII states that generators are not required to provide RCRA waste codes on the Federal manifest forms. WMII proposes, instead, that they be allowed to rely on the certification which the generator must provide, which includes the RCRA waste codes and certifies compliance with 40 CFR Part 268 (i.e., the land disposal restrictions).

- WMII objects to the schedule for testing waste shipments and contends that it is unclear whose responsibility it is to perform the analyses -- CID's or the generators'.

- **Waste Restrictions.** Permit conditions IV.E and IV.H restrict WMII's ability to place certain wastes in the landfill after November 8, 1988. Permit condition IV.L allows certain wastes to be disposed of in the landfill between the dates of July 8, 1987, and July 8, 1989, only under certain conditions. After July 8, 1989, condition IV.K allows these wastes to be disposed only under more stringent conditions. These dates are derived from the requirements of §§3004(d) and (e) and 40 CFR §§ 268.1(c)(3); 268.30(b); and 268.32(e). Although it is unclear why WMII included this provision in its appeal, WMII requests that if these deadlines are extended or CID is exempted pursuant to 40 CFR 268.1(c), that these dates in the permit be so extended and that the permit specify these allowable extensions (procedural issue).

Finally, the petition discusses a letter from EPA Region V to the Illinois EPA (IEPA), in which the Region requested that the State incorporate certain operating conditions in the State portion of the permit (WMII did not specify what these conditions were). This letter stated that should IEPA choose not to incorporate the comments, EPA could still enforce them as permit conditions under RCRA §3008. WMII has sued EPA for a judgment that this letter is invalid. While WMII believes that the court properly has jurisdiction over this issue, WMII is incorporating in the petition all the allegations set forth in its complaint should Region V prevail in its view that the letter is, in fact, part of the permit (procedural issue).

PERMIT APPEAL FACT SHEET

Facility: Chem-Security Systems, Inc. (CSSI)
Arlington, Oregon
ORD 089 452 353
RCRA Appeal No. 88-6

Petitioner: Chemical Waste Management Inc.

Petition Filed: April 14, 1988

Status of Petition: Appeal awaiting disposition by the Administrator

Issues: RFI conditions are technically inappropriate
Other corrective action issues (modification of cost estimate)
Procedural issues
Level of detail
Miscellaneous other issues ("harmless" condition; record of wastes)

Summary of Petition:

CSSI objects to ten permit conditions, a plate, and a table on the basis that these materials demonstrate that the Agency and State have made a clearly erroneous finding of fact or conclusion of law and/or overstepped the statutory and regulatory authority to impose such conditions. CSSI believes that other contested conditions highlight important policy considerations that the Administrator should review in his discretion. Each of these contested provisions is discussed below.

- **Corrective Action Ground-Water Monitoring Network.** Permit conditions IX.A.(1), IX.A.(2), IX.B.(7), Plate 1, and Table 2 require CSSI to construct and operate a ground-water monitoring network specified by EPA rather than the network submitted in CSSI's Part B permit application.

  -- CSSI argues that EPA's waste management area designation is incorrect based on hydrogeological characterization data on record; and that the well distances required by EPA, based on modeled results, are without factual basis.

  -- CSSI also requests that the Administrator reopen the administrative record regarding requirements for the location of new ground-water monitoring wells.

- **Modification of Cost Estimates.** Sections II.M.(5) and II.M.(6) conditions modify the post-closure care cost estimates submitted by CSSI in its Part B application in Appendix C to reflect the expanded ground-water monitoring network which the Agency seeks in the permit under Sections IX.A.(1), IX.A.(2), Plate 1 and Table 2. CSSI argues that the imposition of these revised costs prior to a determination of the validity of EPA's ground-water monitoring network would be an abuse of its discretion.

- **Procedural Issues.** CSSI argues that EPA modified the grouping of certain waste management units at the facility between the draft and final permit, without providing CSSI the opportunity to comment on EPA's decision.

- **Equivalency Demonstration for Clean Closure.** Section II.J.(14)(b) requires CSSI to demonstrate that all 14 units that clean closed under the interim status requirements of 40 CFR Part 265 (and were certified by the appropriate agency) were clean closed in a manner equivalent to the requirements of 40 CFR Part 264. This equivalency demonstration must be submitted within 120 days from the effective date of the permit for each of the clean closed units. If the equivalency demonstration fails to document that clean closure of any of these units was not equivalent to 40 CFR Part 264 standards, the Agency may require a post-closure permit, including corrective action, for that unit.

  -- CSSI argues that EPA's decision to require recipients of a Part B permit to conduct additional sampling and analysis of all previously clean closed units constitutes an erroneous application of the law and an abuse of discretion. The Agency has pointed out no factual basis to show that there is: (a) any reason to review the way these units were closed; (b) any indication that they do not meet the closure requirements of 40 CFR Part 264, or (c) any suggestion that they may now require a post-closure permit.

  -- CSSI asserts that imposition of a schedule for submittal of the equivalency demonstration is an arbitrary and erroneous exercise of EPA's discretion. Section 270.1(c) does not specify a submittal deadline with respect to the equivalency demonstration, but rather allows a schedule which is technically feasible. CSSI does not know if such a demonstration can be made for all 14 units within this time period, given the limited regulatory description of how a demonstration is to made, no standards for EPA's decision on whether a demonstration is adequate, and no guidance on how to make this demonstration. CSSI has had no opportunity to comment on this 120 day requirement, which was not in the draft permit.

  -- Finally, CSSI contends that the provision allowing EPA to require a post-closure permit, including corrective action, if EPA determines that the equivalency demonstration fails to document clean closure, is clearly erroneous under the law, because it violates CSSI's due process rights and fails to provide CSSI with the procedural rights in 40 CFR 270.1(c)(6) governing the equivalency demonstration for clean closure.

- **Level of Detail.** CSSI takes issues with the level of detail in the permit, specifically those conditions which specify test methods and accuracy of waste recordkeeping:

-- Permit conditions V.A.(4)(a) and VI.B.(3)(c) require CSSI perform in-place hydraulic conductivity testing, as specified using the Double-Ring Infiltrometer (DRI) testing method in the EPA's "Construction Quality Assurance Guidance," on any soil liner used for a surface impoundment or landfill, respectively. In the preamble to its proposed rules on leak detection from landfills, EPA solicited comments on whether in-field testing should be mandatory for permeability testing of the lower soil liner. EPA itself has not yet decided whether an in-field hydraulic conductivity test will be adopted as a regulatory requirement. In addition, CSSI argues that EPA has no legal authority to require liner testing for the clay portion of that soil liner, since there is no minimum technology requirement for the clay portion of the primary composite liner.

-- Section VI.A.(6) requires that CSSI maintain a permanent, accurate record of the three-dimensional location of each waste buried at the site in existing landfills, irrespective of the date of disposal. CSSI argues that EPA lacks the legal authority to impose absolute obligation on CSSI to ensure that waste location records prepared by the previous owner provide an accurate three dimensional location of each waste disposed within the landfill irrespective of the date of disposal.

- **Harmless Condition.** Section I.B requires CSSI to hold the Federal government, the State of Oregon, and all or their personnel "harmless" for any claim filed against them based on activities at the facility, except those claims arising from their own negligence. CSSI argues that EPA lacks statutory or regulatory authority to impose this condition, which is without precedent in the regulations and in other RCRA Part B permit issued by EPA.

PERMIT APPEAL FACT SHEET

Facility: Eli Lilly and Company, Tippecanoe Laboratories
Shadeland, Indiana
IND 006 050 967
RCRA Appeal No. 88-7

Petitioner: Eli Lilly

Petition Filed: May 4, 1988

Status of Petition: Region response postponed pending settlement negotiations

Issues: Level of detail
Miscellaneous other issues (storage for recovery of Part 268-restricted wastes, waiver from storage prohibition, storage of PCBs)

Summary of Petition:

Eli Lilly is appealing five conditions of the facility's final Federal permit. All but one of these conditions address 40 CFR Part 268 land disposal restrictions requirements; the fifth condition addresses ground-water pumping.

- **Ground-Water Pumping.** The petitioner believes that Condition II.A.2, which requires the facility to pump contaminated ground water from "seven recovery wells" in the main plant area, is too detailed and inflexible. Eli Lilly suggests that the appropriate language for this permit condition would require the facility to pump contaminated ground water from "the recovery well system" installed in the main plant area. The petitioner argues that the recovery well system includes different numbers of wells at different times depending upon the recommendations of its technical consultants and upon maintenance needs. Therefore, the number of wells in the recovery well system at any time may be more or less than seven.

- **40 CFR Part 268 Land Disposal Restrictions Requirements.** Eli Lilly petitioned for a review of four permit conditions related to Part 268 land disposal restrictions requirements:

  -- Condition III.C.1 now limits the facility to storing Part 268-restricted wastes "as necessary to facilitate proper treatment and disposal." The petitioner states that its facility also recovers, and stores for recovery in tanks and containers, Part 268-restricted wastes. Because such storage for recovery is permitted under §268.50(a)(2), Eli Lilly requests that Condition III.C.1 be modified to allow accumulation "as necessary to facilitate proper recovery, treatment, and disposal."

-- Condition III.C.1 also does not allow storage beyond one year for Part 268-restricted wastes. Eli Lilly requests that its facility be allowed, per §268.50(c), to store such wastes for more than a year, as necessary to accumulate such quantities of hazardous waste as are necessary to facilitate proper recovery, treatment, or disposal.

-- The petitioner requests modification of Condition III.C.3 (waiver from storage prohibition) to preserve its right to store hazardous wastes that meet the treatment standards specified under any variance granted under §268.44. Section 268.50(e) states that the storage prohibition in question does not apply to hazardous wastes that meet the treatment standards specified in the §268.44 variance.

-- Condition III.C.4 does not allow Eli Lilly to store liquid hazardous waste containing PCBs at concentrations greater than or equal to 50 ppm. The petitioner requests that this condition be modified to be consistent with the requirements of 40 CFR 268.50(f), allowing hazardous waste containing PCBs in these concentrations to be stored at a facility that meets the requirements of 40 CFR 761.65(b).

PERMIT APPEAL FACT SHEET

Facility: Waste Tech Services and BP Chemicals America, Inc.
Lima, Ohio
OHD 042 157 644
RCRA Appeal No. 88-8

Petitioners: Clementina DePalma, Kenneth Watt, Noreen Christoff, and James Carpenter

Petition Filed: May 5, 1988

Status of Petition: Awaiting Regional response

Issues: Procedural issues
Miscellaneous other issues (level and effectiveness of monitoring; health effects/hazards associated with current facility operations and demonstration; hazardous waste storage, transport, and volume; insurance; conflict of interest)

Summary of Petition:

Effective March 31, 1988, Waste Tech Services was granted a research, development, and demonstration (RD&D) permit for a one-time demonstration of "fluidized bed combustion" at its Lima, Ohio, facility. Four citizens from Lima jointly filed an undated petition requesting the Administrator to review Region V's permit determination in this case. The petitioners presented their comments in two sections: those concerning procedural errors and denial of due process inherent in the existing permitting process; and those questioning substantive issues in the permit itself. The petition (submitted with attached responses by the petitioners to EPA's comments on the draft permit) did not reference specific permit conditions under appeal, nor did it indicate whether the conditions under appeal were part of the Regional or State permit.

- **Procedural Issues and Denial of Due Process.** The petitioners object to the way in which EPA and Ohio conducted the permit proceedings for this facility, and suggest that the entire permit process of notice, hearing, review, decisionmaking, and appeal operates to deny citizens due process and equal protection of law.

  -- Specifically, the petitioners argue that EPA and State public notices on the fact of a public hearing and on the issuance of the draft permit (1) were "vague, ambiguous, and confusing" in content; (2) failed to inform the public adequately about the substance of the draft permit and the public hearing in question, or about opportunities for public comment; and (3) provided conflicting information on the duration of the public comment period.

  -- In addition, the petitioners state that the Ohio public hearing was "prejudicial," because the public was not allowed to ask questions of either BP Chemicals officials or the Ohio EPA officials in

attendance, and public comments were limited to five minutes. For these reasons, the petitioners suggest that the public hearings for this facility were "sham proceedings."

- **Substantive Issues on Current and Proposed Operations at the Facility.** The petitioners raised a number of substantive issues on general permit conditions. The majority of these comments relate to the lack of information and follow-up investigation of health hazards and health effects from the proposed RD&D unit, and the lack of adequate, effective, scientifically valid monitoring of environmental media at the facility.

  -- The petitioners believe that EPA and Ohio do not adequately (and can not effectively) monitor air, water, and soil contamination based on existing operations (deep-well injection) at the facility, and note that scientific studies are not planned to assess existing and current human health effects or health hazards resulting from proposed incinerator operations at the facility. In addition, the petitioners question whether EPA's technical judgment in issues relating to the permit can withstand scientific scrutiny.

  -- Neither the permittee, EPA, the State of Ohio, or the Allen County Health Department plan to test or monitor the short- and long-term health effects associated with the proposed one-time demonstration at the facility.

  -- There is no adequate warning system to alert the public of major accidents during the transport of hazardous waste to and from the facility. The petitioners also raise questions about the routes that will be used in transporting these wastes, and the times at which these wastes will be transported.

  -- The petitioners are concerned over drum and container storage of hazardous materials at the facility before and after incineration. In addition, the petitioners are concerned about the amount of waste that the facility will need to handle to run the incinerator in a cost-effective manner.

  -- The petitioners believe that insurance coverage is inadequate.

  -- The petitioners question how BP Chemicals America, as a multinational corporation, will be held accountable to the public, the State, and EPA.

  -- The petitioners also raise possible conflict-of-interest issues.

PERMIT APPEAL FACT SHEET

Facility: Pearl Harbor Public Works Center (PWC)
Makalapa, Hawaii
HI1 170 024 334
RCRA Appeal No. 88-9

Petitioner: State of Hawaii

Petition Filed: May 19, 1988

Status of Petition: Petition withdrawn. Hawaii's request for withdrawal of its petition was granted by the Chief Judicial Officer on June 8, 1988.

Issues: Facility location
Additional safety considerations

Summary of Petition:

The Pearl Harbor PWC hazardous waste storage facility is within a Navy Industrial Activity area, on property adjacent to an elementary school. The State's concerns largely stem from the location of the facility with respect to the direction of the normal trade winds (the school is downwind of the facility, when prevailing trade winds are present). The petitioner believes that the location of the facility is especially important should a sudden or non-sudden release occur, either at the facility or during transportation of wastes to and from the facility. With this in mind, the State raises two concerns: the location of the facility, and the need for additional safety measures in the permit.

- **Location of the Facility.** The petitioner requests that the permittee evaluate alternative sites for locating the storage facility within the Pearl Harbor Naval Shipyard, and prepare a document such as an Environmental Impact Statement or Environmental Assessment for each location.

- **Additional Safety Measures.** The petitioner requests that additional safety considerations be included in the final permit. These measures would:

  -- Limit hours of operation to hours when school children are not on their way to and from school;

  -- Require the permittee to enclose totally the facility (i.e., to enclose not only the storage building, but also the loading docks) to limit fugitive or toxic air emissions; and

  -- Amend the contingency plan to incorporate evacuation plans and practices, in the event of a catastrophic release.

PERMIT APPEAL FACT SHEET

Facility: Amerada Hess (Port Reading) Corporation
Port Reading, New Jersey
NJD 045 445 483
RCRA Appeal No. 88-10

Petitioner: Amerada Hess Corporation[1]

Petition Filed: May 20, 1988

Status of Petition: Appeal awaiting disposition by the Administrator

Issues: RFI conditions are not justified
Definition of solid waste management unit
Other corrective action issues (financial assurance)
Miscellaneous other issues (legal name of permittee)

Summary of Petition:

Amerada Hess petitioned the Administrator to review conditions of the facility's final HSWA permit relating to a 500-gallon underground storage tank (Module II, Sections B.3, D, and H). The petitioner outlined two groups of issues to be reviewed: general issues concerning the scope of corrective action required by the permit, and specific issues concerning corrective action provisions of the permit. In addition, the petitioner noted that the legal name of the permittee was incorrectly identified in the permit, and requested that the permit be revised accordingly.

- **General Corrective Action Issues.** In Module II, Section B.3 of the permit, EPA identifies as a solid waste management unit (SWMU) "the area around the excavated 500-gallon underground storage tank." Amerada Hess argued that the underground storage tank in question was never used for managing solid waste. Consequently, the area around the excavated tank should not be identified as a SWMU. The petitioner's arguments are as follows:

  -- The tank, which was removed in April 1986, was used only for temporary storage of petroleum products and feedstock -- specifically, it was associated with the refinery's removal of water from its product storage tanks. Product and feedstock were subsequently recovered from the tanks.

  -- Based on the redefinition of solid waste and the recent decision in American Mining Congress v. Environmental Protection Agency, 824 F.2nd 1177 (D.C. Cir. 1987), Amerada Hess argued that petroleum products temporarily stored in the tank cannot be characterized as

---

[1] Amerada Hess Corporation is the corporate parent of Amerada Hess (Port Reading) Corporation.

solid waste, since at no time had petroleum product been "discarded".

-- EPA has no basis for asserting that hazardous wastes were ever stored in or released from the tank.

- **Specific Corrective Action Provisions.** Module II, Section D requires Amerada Hess to prepare soil sampling and analysis plans for this area. Module II, Section H requires Amerada Hess to demonstrate financial assurance for the implementation and completion of corrective action measures required by the permit. Amerada Hess argued that since the 500-gallon tank was not a SWMU, it does not trigger the application of either the corrective action requirements under RCRA §3004(u) or the associated financial assurance requirements. The petitioner's arguments are as follows:

  -- EPA policy, as reflected in the National RCRA Corrective Action Strategy and "Guidance on Corrective Action for Continuing Releases", affirms that releases from product storage facilities are beyond the scope of RCRA §3004(u).

  -- EPA policy also affirms that corrective action should only be applied in circumstances where it is necessary to protect human health and the environment. Since the tank was removed in a manner protective of human health and the environment (as outlined in the petition), corrective action is unnecessary.

- **Legal Name of the Permittee.** The petitioner noted that Amerada Hess (Port Reading) Corporation, a wholly-owned subsidiary of Amerada Hess Corporation, is the actual owner and operator of the Port Reading refinery and is the party to whom New Jersey issued the RCRA Part B permit. However, the party named in the permit issued by Region II is Amerada Hess Corporation, not Amerada Hess (Port Reading) Corporation. The petitioner requested that the permit issued by Region II be revised to state correctly the name of the permittee (i.e., Amerada Hess (Port Reading) Corporation).

PERMIT APPEAL FACT SHEET

Facility: American Cyanamid Company
Westwego, Louisiana
LAD 008 175 390
RCRA Appeal No. 88-11

Petitioner: American Cyanamid Company

Petition Filed: June 23, 1988

Status of Petition: Awaiting Regional response

Issues: RFI conditions are not justified
Definition of solid waste management unit
Procedural issues
Level of detail
Joint permitting
Miscellaneous other issues (submittal of plans, ground-water protection requirements, closure of surface impoundments, tank treatment)

Summary of Petition:

The petitioner requests a review of the final permit issued jointly to its chemical manufacturing plant in Westwego, Louisiana, by Region VI and the Louisiana Department of Environmental Quality (LDEQ). The petitioner's comments on the Regional portion of the permit address HSWA corrective action and land disposal restrictions. The majority of the petitioner's comments, however, deal with the State portion of the permit.

- **HSWA Corrective Action Conditions.** The petition requests that sections VIII.C, D, E, G, H, and all included task outlines be deleted from the permit. These sections address corrective action for continuing releases.

  -- The petitioner states that the RCRA Facility Assessment (RFA) findings do not support the need for further investigations. Both the RFA and a site inspection conducted by the State indicated no evidence of a release. In addition, ground-water sampling data showed no detectable constituent concentrations.

  -- The petitioner states that permit conditions addressing corrective action for continuing releases are "much too detailed," appear to be extracted from guidance documents, and overstep the intent of §3004(u). The petitioner states that the findings of the RFA negate the requirements of this section of the permit.

  -- American Cyanamid objects to inclusion of any definition of solid waste management unit (SWMU) in the permit. Moreover, the petitioner argues that the inclusion of "areas contaminated by

routine, systematic, and deliberate discharges from process areas" in the permit's definition of SWMU contradicts a decision by the U.S. Court of Appeals, ruling that areas subject to corrective action pursuant to HSWA regulations must be those intended for storage, treatment, or disposal of hazardous or non-hazardous waste at a facility seeking a RCRA permit (United Technology v. EPA, No. 85-1654).

-- The petitioner comments that well MW-27 is not a SWMU.

- **Procedural Issues.** The petitioner states that a provision relating to a "land disposal reopener" under HSWA was added since the draft permit and argues that this permit condition actually defines a regulatory requirement applicable to EPA and not the permittee. Consequently, the petitioner requests that this condition be deleted from the facility's permit.

- **State Permit.** The majority of the petitioner's comments address conditions in the State portion of the permit, including general permit conditions (section II), general facility conditions (section III), permitted facilities (section IV), permit conditions applicable to all tanks (section V), storage in impoundments (section VI), and ground-water protection (section VII).

  -- Since the Louisiana Hazardous Waste Regulations (LHWR) have recently been renumbered and recodified, American Cyanamid requests that its permit be revised to identify both the old LHWR numbering system and new numbering system, to replace old regulatory references with the new numbering system, or to provide a cross reference between the two numbering systems. Any resulting revisions to titles and page numbers should be reflected in a revised permit table of contents.

  -- American Cyanamid believes that certain general permit conditions (i.e., II.B-E) contain excessive "standard regulatory verbiage" or statements that are not required conditions of compliance for the permittee (e.g., II.E.24, general permit conditions, duties and requirements, confidentiality).

  -- The petitioner states that the language in II.E.9 (general permit conditions, duties and requirements, monitoring and records) is too narrow, in that it does not reference (1) sampling procedures equivalent to methods in SW-846; (2) laboratory methods for analyses in the ground-water sampling and analysis plan; and (3) accepted sampling methods for parameters specified in documents other than SW-846.

  -- The permit requires that revisions to the permit be submitted with the annual facility report. American Cyanamid argues that such submittals are unnecessary and duplicative in cases where State regulations require that revisions be submitted prior to the change

itself (e.g., as is the case with changes to closure plans). In addition, American Cyanamid suggests that regular submission of paperwork which is required to be maintained in the operating record is unnecessary and excessive.

-- The petitioner requires that III.A.2 (general facility conditions, design and operation of all facilities) be changed to allow emergency permitting, as provided in the LHWR.

-- The petitioner claims that certain State permit conditions exceed regulatory requirements, have no basis for protection of human health and the environment or to ensure compliance with regulations, are inconsistent with existing State requirements, or violate the statutory procedures of State law:

- requirement to perform an annual review and submit an annual report on the waste analysis plan;

- requirement to submit an annual report reviewing and evaluating the laboratory quality assurance/quality control program;

- requirement to perform an annual recharacterization of hazardous waste;

- requirement to complete an annual review of the status of arrangements with local authorities;

- requirements concerning inspection of existing tank systems;

- requirements pertaining to operation of surface impoundments (e.g., requirements to inspect and record levels every eight hours, to install gauges within impoundments, to certify annually dike integrity, etc.);

- references in the permit to the Louisiana Water Control Act and to the Louisiana Environmental Quality Act;

- turbidity requirement to generate water with a specific clarity in the ground-water monitoring system;

- requirement to submit well depth measurements with the Ground-water Annual Report; and

- requirement to identify and evaluate all compounds appearing on the analytical gas chromatograph (which would, presumably, include the identification and evaluation of compounds that are not identified as hazardous constituents).

-- The petitioner contends that certain sections of the final State permit (e.g., general facility conditions, cost estimate for

facility closure) were not edited to reflect LDEQ's responsiveness summary. In addition, the permittee found several typographical errors in the permit, as well as errors in design codes and calculations with respect to design codes for certain units.

-- With regard to financial assurance and liability requirements, the petitioner proposes changes clarifying that: (1) financial assurance has been provided by the permittee, and (2) the facility has demonstrated financial assurance for liability through the financial test.

- **Submittal of Plans.** The petitioner does not believe that various plans (e.g., waste analysis plan, ground-water sampling and analysis plan, field report forms, etc.) submitted with the permit application are required to be attached as part of the permit.

  -- American Cyanamid argues that although Louisiana regulations require that the plans be submitted with the application and that they be maintained onsite, the regulations do not require that such plans be a part of the permit.

  -- Consequently, the petitioner requests that the permit application be appended, with these plans as attachments and with the permit specifying that the attachments are for reference only.

  -- In addition, the petitioner notes that references in the permit to the attachments and that permit conditions reflecting the wording of the attachments are often incorrect or inconsistent (e.g., VII.C.3.h, ground-water protection, ground-water protection standard).

- **Ground-Water Protection.** With regard to ground-water protection in the State portion of the permit:

  -- American Cyanamid states that it has maintained one of the wells included in the ground-water monitoring system as a piezometer for hazardous waste ground-water monitoring. American Cyanamid requests a compliance schedule to remove sediments and obtain and install a bladder pump for this well. In addition, the petitioner requests that water elevation not be measured at this well.

  -- The petitioner comments that pH is not a representative indicator of hazardous waste contamination in the ground water at this site, or of mechanical performance of wells in the monitoring system.

  -- The petitioner requests that background levels and the ground-water protection standards developed using the "method detection limit" be doubled to establish acceptable concentration limits at the facility.

-- The petitioner requests that the 10 percent screen interval blockage by sediments by revised to read 50 percent, which the petitioner claims is a more feasible value for requiring well maintenance to take place.

-- American Cyanamid has requested abandonment of several non-hazardous wells which may eliminate them soon from the ground-water monitoring system. The petitioner suggests that the permit clarify that these wells are not monitoring wells.

-- American Cyanamid has requested wording changes referring to the student's t-test.

-- American Cyanamid has requested clarification of items to be included in the Ground-water Annual Report.

-- The petitioner argues that the condition to correct ground-water contamination from any source should not be a condition of a hazardous waste permit unless relative to solid waste management areas. Consequently, American Cyanamid argues that it should not be required to investigate and correct all confirmed ground-water contamination, regardless of the source of the contamination, as part of its detection monitoring program.

- **Closure of Surface Impoundments.** The petitioner suggests that the State permit may need to address closure of surface impoundments necessitated by the land disposal restrictions. The petitioner states that it is committed to expend $8.25 million to close and replace these units in 1988, and that LDEQ was notified of such closure in May 1987.

- **Tank Treatment.** The petitioner believes that a table summarizing treatment tank systems at the facility can be further consolidated for easier viewing (see IV.A.1 -- permitted facilities, tanks, existing tanks). With respect to tanks, the petitioner states that:

  -- The State permit should not classify in-line cartridge filter units as tanks, since such filter systems do not hold accumulations of hazardous waste and are typically thought of as "other" or "miscellaneous" units by LDEQ and EPA; and

  -- Specifics other than minimum allowable design code compliance (e.g., structural integrity, metal thicknesses necessary to maintain structural integrity) are unnecessary in the State permit.

PERMIT APPEAL FACT SHEET

Facility: L-TEC Company, d/b/a L-TEC Welding and Cutting Systems
Florence, South Carolina
SCD 005 574 967
RCRA Appeal No. 88-12

Petitioner: L-TEC

Petition Filed: July 19, 1988

Status of Petition: Awaiting Regional response.

Issues: RFI conditions are not justified
Definition of solid waste management unit

Summary of Petition:

L-TEC objects to the incorporation of corrective action requirements in this facility's post-closure permit, which lists and provides for regulation of eight solid waste management units (SWMUs) located on the facility property.

- **Corrective Action Issues.** L-TEC argues that the requirement to prepare a detailed RCRA Facility Investigation (RFI) plan addressing all SWMUs is not justified and requests that the areas identified as SWMUs be removed from the list of regulated units in the permit.

  -- L-TEC states that a Preliminary Assessment/Site Investigation (PA/SI) prepared by EPA in 1986 concluded that no further action was required at six SWMUs (SWMU Nos. 1, 2, 4, 5, 7, and 8). Because EPA previously determined that no further action was required for these areas, L-TEC argues that these units should be deleted from the list of units covered in the permit. L-TEC states that it has completed necessary cleanup activities at one of the SWMUs at which further action was required (SWMU No. 9, a varnish strip tank with an underlying concrete slab).

  -- L-TEC argues that a number of these units are not units from which hazardous constituents might migrate and pose no environmental hazard. Consequently, L-TEC believes that further regulation of these units is not necessary to protect human health and the environment. For example,

     - The units listed as SWMU Nos. 1, 2, 3, 7, and 9 are within the zone of hydraulic control of L-TEC's planned ground-water extraction system.

     - SWMU No. 1, a wastewater treatment plant with an aboveground treatment tank, has been visually inspected, and no leaks have been found. SWMU No. 2, another wastewater treatment plant,

was closed in 1976, and all equipment was removed at that time. There is no evidence or record of spills at the remaining concrete pad.

- L-TEC contends that the drum storage area listed as SWMU No. 8 has been completely cleaned up, including removal of contaminated soils. Since only new, empty drums are stored in that area now, L-TEC reasons that further investigation of SWMU No. 8 is unwarranted.

-- SWMU No. 4, a sump and lift station, is not identified in the permit. L-TEC reserves the right to contest the inclusion of this area as a SWMU after its location has been identified in the permit.

- **Definition of Solid Waste Management Unit.** L-TEC states that SWMU number 5 contains sanitary wastewater, and therefore is excluded under §261.4(a) from the definition of solid waste.

PERMIT APPEAL FACT SHEET

Facility: USX Corporation
Gary, Indiana
IND 005 444 002
RCRA Appeal No. 88-13

Petitioner: USX Corporation

Petition Filed: July 28, 1988

Status of Petition: Awaiting Regional response.

Issues: Permit denial
Joint permitting

Summary of Petition:

The petitioner requests review of EPA's decision to deny a hazardous waste permit for USX's Gary Works.

- **Permit Denial.** The letter announcing the permit denial states that the basis for EPA's decision was "previously outlined in the Fact Sheet," and, in general, was based on USX's "failure to correct deficiencies in the State portion of the permit application and failure to be in compliance with certain interim status standards." Since this letter does not further specify the grounds for the review, USX comments that it is unable to be specific in its request for review. Instead, USX incorporates by reference in its petition the following documents:

  -- its comments on the Fact Sheet, to the extent that the denial is based on matters raised in the Fact Sheet; and

  -- the Request for Adjudicatory Hearing which USX filed with the Indiana Department of Environmental Management, to the extent that the denial is based upon matters cited by the State as deficiencies in the application or in the Notice of Violation.

- **Joint Permitting.** USX also requests review on the issue of whether EPA has jurisdiction to act to deny the State permit.

PERMIT APPEAL FACT SHEET

Facility: Environmental Waste Control, Inc. (EWC), d/b/a Four County Landfill
Fulton County, Indiana
IND 000 780 544
RCRA Appeal No. 88-14

Petitioner: EWC

Petition Filed: July 29, 1988

Status of Petition: Awaiting Regional response.

Issues: Procedural issues
Miscellaneous other issues (bases for permit denial)

Summary of Petition:

The Indiana Department of Environmental Management (IDEM) and the U.S. EPA, Region V, (EPA) jointly issued a Notice of Intent to Deny a RCRA Operating Permit for the Four County Landfill. The petitioner contends that the Notice of Intent to Deny, in accordance with §124.2(a), is considered the draft permit. EWC is petitioning for administrative review of the Regional Administrator's decision to deny the issuance of the permit.

- **Procedural Issues.** EWC believes that its due process rights have been denied by the lack of a description, in the denial letter, of the bases for EPA's decision to deny EWC's permit. Although the denial letter refers to a Response to Comments, the letter fails to make specific references to those particular responses which constitute the basis for EPA's denial.

  -- Although the IDEM Commissioner stated several broad reasons for IDEM's denial of the permit, she did not indicate whether EPA's reasons for denial were the same or similar. The Commissioner stated only that EPA "also denied" EWC's permit.

  -- The petitioner claims that it is impossible to determine which of the numerous responses to comments are the actual bases for EPA's decision or how much weight was given to each response.

  -- EWC states that the Response to Comments attached to the denial letter fails to comply with the requirements of 40 CFR §124.17(a)(1) which requires that, at the time a permit decision is issued, the Regional Administrator shall issue a response to comments which "shall specify which provisions, if any, of the draft permit have been changed in the permit decision, and the reasons for the change."

-- The petitioner argues that EPA's denial of EWC's requested extension of the comment period denied EWC its minimum due process rights by denying EWC the opportunity to respond to comments made by others during the public comment period. EWC believes that it sufficiently demonstrated the need for such extension in a letter which accompanied its comments on the draft permit decision.

-- The petitioner objects to a statement in the denial letter which, if used as a basis for EPA's decision to deny the permit, infringes upon EWC's due process rights by prematurely concluding that EWC is guilty of alleged interim status violations prior to their being fully litigated.

- **Other Permit Denial Issues.** EWC objects to the denial of its permit to the extent that such denial was based on the inadequacy or incompleteness of information submitted by EWC concerning the Four County Landfill.

-- The petitioner argues that, for each of the subjects that the Agency considers deficient in terms of the information provided, it raised all reasonably ascertainable issues and submitted all reasonably available arguments supporting its position during the public comment period. These subjects are as follows:

- ground-water monitoring system/program;
- compatibility testing;
- layout design;
- collection systems;
- water balance;
- tranmissivity testing;
- permeability and liner contacts;
- landfill design;
- stability of landfill slopes;
- material testing data or equivalent capacity information;
- system strength or prevention of clogging;
- synthetic liners, run-on control system, or drainage and erosion;
- construction quality assurance program;

- interim status monitoring;

- aquifer identification;

- contaminant plume description, detection monitoring program and information relating to indicator parameters, and waste constituents and reaction products to be monitored.

-- The petitioner acknowledges EPA's opinion that the site is located in an area poorly suited geologically for hazardous waste disposal. However, EWC objects to the denial of its permit on the basis of failure to provide complete or adequate information or on the basis of failure to comply with interim status standards (as outlined above), if, in fact, the major reason for permit denial is the allegedly poor site geology.

-- The petitioner objects to the permit denial to the extent that such denial was based on its failure to provide information which could not reasonably be provided to the extent requested.

PERMIT APPEAL FACT SHEET

Facility: Ross Incineration Services, Inc.
Grafton, Ohio
OHD 048 415 665
RCRA Appeal No. 88-15

Petitioner: Ross Incineration Services

Petition Filed: July 29, 1988

Status of Petition: Awaiting Regional response.

Issues: Procedural issues
Miscellaneous other issues (storage or treatment at new or modified units; incinerator test performance requirements; emissions plans; typographical error)

Status of Petition:

Ross is petitioning the Administrator to review certain conditions contained in the final RCRA permit issued to its Grafton, Ohio, facility on July 1, 1988. The conditions that are being contested relate to facility operations.

- **Certification of Construction or Modification at the Facility.** The permittee objects to the provision in Section I.D.11, which prohibits the commencement of storage or treatment of hazardous waste at modified or newly constructed storage or treatment areas placed into service after the effective date of this permit unless certain conditions are met.

  -- Ross contends that the provision improperly applies to the construction of the Closed Loop Scrubber system and container storage area, which is being constructed in compliance and in accordance with the requirements of the permit. Instead the provision, according to the petitioner, should only apply to construction of units anticipated to be in noncompliance with the permit.

  -- The petitioner claims that the provision violates due process, because it fails to specify what will happen if the Regional Administrator does not render a compliance determination within 90 days (60 days, in the case of the Closed Loop Scrubber system) of the receipt of the letter and certification.

  -- Ross requests that the section be modified to state that the Regional Administrator's failure to render a compliance determination within the requisite time period constitutes a waiver on the part of EPA. Ross points out that Federal statutes prohibit the use of the surface impoundment after November 8, 1988. Assuming that the compliance demonstration will take the full 60 days, Ross

must complete construction of the Closed Loop Scrubber system by earlier September and the compliance demonstration must be completed on schedule or Ross will have to close its facility, unless the section is modified.

- **Incinerator Performance Test Requirements**. Ross suggests that the condition at Section V.C.9, which requires an incinerator performance test every three years, is unwarranted and vague.

  -- The petitioner contends that the condition violates Ross' due process, because it is unclear what is required for the incinerator performance test.

  -- Ross claims that test is superfluous since the permit contains provisions to ensure that the incinerator is meeting performance standards.

  -- The petitioner, with reference to §270.62, suggests that EPA regulations neither require nor allow an incinerator performance test (or trial burn) to be conducted every three years.

  -- Ross states that the inclusion of this condition constitutes an illegal attempt to institute rule-making without going through the required formal rulemaking process, violating Ross' procedural rights.

- **Toxic Metals and Hydrogen Chloride Emission**. The petitioner objects to the condition in the permit which requires that Ross submit a written implementation plan, within six months from the issuance of the permit, for control of toxic metals and hydrogen chloride emission from the incinerator. Ross objects to this condition on the grounds that the condition is infeasible, inequitable, and illegal.

  -- The petitioner contends that EPA nor the regulated community has reached a consensus on the need for or the appropriate methods of quantifying metal concentrations and their impact on human health and the environment. To this extent, Ross claims that the requirement is so open that compliance is impossible.

  -- The petitioner argues that the condition violates due process, because it is being implemented through guidance to which the regulated community is not privy and it is being arbitrarily applied to only some facilities.

  -- Ross submits that the inclusion of this condition in the permit constitutes illegal rule-making, because EPA did not follow formal provisions in adopting this requirement. Instead, the requirement is being implemented through guidance.

- **Typographical Error**. The petitioner requests that the Administrator

review condition VII.B. Ross contends that there is an omission from this provision. As a result, it is impossible to comply with the condition.

PERMIT APPEAL FACT SHEET

Facility: Chemical Waste Management, Inc. (CWM)
Emelle, Alabama
ALD 000 622 464
RCRA Appeal No. 88-16

Petitioner: CWM

Petition Filed: July 29, 1988

Status of Petition: Awaiting Regional response.

Issues: Procedural issues
Miscellaneous other issues (omnibus provision; carbon monoxide limitations; feed rate of metals)

Summary of Petition:

CWM objects to new permit conditions for the incinerator it proposes to construct and operate at its Emelle facility. The petitioner outlines both legal objections and technical objections to the imposition of new permit conditions.

- **Omnibus Provision.** The petitioner argues that EPA's decision to impose conditions for control of products of incomplete combustion and metals emission by relying on its authority under the omnibus provision has no legal justification.

  -- The petitioner argues that the Agency used "forthcoming guidance and proposed rules" as a basis for the permit conditions.

  -- EPA can impose regulations under the omnibus provision only if necessary to protect human health and the environment. That EPA is considering "forthcoming guidance and proposed rules" on control of products of incomplete combustion and metals does not demonstrate the requisite necessity.

- **Procedural Issues.** The petitioner further argues that to rely on unpublished, perhaps even unwritten, documents (i.e., forthcoming guidance and forthcoming proposed regulations) is contrary to the notions of fundamental fairness that underlie the due process clause and notice-and-comment rulemaking procedures.

- **Carbon Monoxide Limitations.** The petitioner objects to the requirements of two permit conditions which specify that, if waste feed must be cut off for an exceedance of established carbon monoxide (CO) limits, CWM may not resume the waste feed to the incinerator upon reestablishment of the 100 ppm limit, but must operate on virgin fuel for at least 10 minutes after the 100 ppm concentration limit for CO in the exhaust gas has been reestablished.

-- The petitioner argues that there is no evidence that this requirement is necessary to protect human health and the environment since CO excursions above the 100 ppm limit are caused almost exclusively by "CO spikes" and since, under other conditions in CWM's permit, these spikes activate an interlock system that automatically shuts off all waste feed and concurrently switches operation of the burners to virgin fuel until the rolling average has returned to 100 ppm. Therefore, the petitioner contends that to require operation of the incinerator for an additional period (whether it be ten minutes or even one minute) would not serve any function.

-- The petitioner further asserts that the establishment of a ten-minute lag time (as opposed to some other length of time) is arbitrary.

- **Feed Rate of Metals.** The petitioner objects to the conditions which limit the total feed rate of metals to the incinerator during the pre-trial burn period, the post-trial burn period, and the operation of the incinerator.

-- The petitioner argues that, aside from the previously raised objections to the use of omnibus authorities to impose conditions based not on a rule or a proposed rule but on what EPA anticipates will be a proposed rule, there are no data to support the assumptions that underlie these conditions (i.e., that all metals in the waste are emitted to the atmosphere).

-- The petitioner contends that the imposition of these metal feed rate limitations at Emelle will place the incinerator at a competitive disadvantage with other commercial incinerators around the country which have not had metal feed rate limits established in their permits.