

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

In re:)
) RCRA Appeal No. 84-3(a)
Earth Industrial Waste)
Management, Inc.,)
)
Applicant)
)
TND-000-614-321)
)

ORDER DENYING PETITION FOR REVIEW

Earth Industrial Waste Management, Inc. (EIWM) petitioned ^{1/} the Administrator to review a permit issued to it for operation of a hazardous waste management (HWM) facility in accordance with the Resource Conservation and Recovery Act (RCRA) of 1976, as amended. ^{2/} The permit was issued by the Director, Air and Waste Management Division, U.S. Environmental Protection Agency, Region IV.

^{1/} The petition was submitted in accordance with 40 CFR §124.19, which provides, in pertinent part:

- (a) Within 30 days after a . . . final permit decision has been issued . . ., any person who filed comments on the draft permit . . . may petition the Administrator to review any condition of the permit decision

^{2/} A petition for review was also filed by Mr. and Mrs. Ralph Adams, on behalf of the People of Woodstock, Inc. (POW). That petition for review is also being denied today. See In re Earth Industrial Waste Management, Inc., RCRA Appeal No. 84-3(b), Order Denying Petition for Review.

petitions for review of RCRA permits are not usually granted unless the permit determination is clearly erroneous or involves an exercise of discretion or policy which is important and which should be reviewed as a discretionary matter, 40 CFR §124.19(a)(1) and (2). The preamble to the regulations containing this standard states that "this power of review should be only sparingly exercised [and] . . . most permit conditions should be finally determined at the Regional level" 45 Fed. Reg. 33412 (May 19, 1980). - The burden of demonstrating that the permit conditions should be reviewed is therefore on the petitioner. In this case, EIWM objected to condition III D, which requires it to store its hazardous waste containers on pallets. EIWM contends that this requirement greatly increases its material handling and storage costs and does not provide any "additional protection" when compared to the alternative method it suggested. EIWM's alternative is to inspect frequently and to have additional collection tanks available in the event of rainwater or other runoff.

The requirement to store containers on pallets may in fact be more costly than EIWM's alternative. However, the Region explained in its Response to Comments that it could not adopt EIWM's alternative because EIWM did not provide sufficient information in the permit application to determine if its proposal would meet the requirements of the regulations, 40 CFR §§ 264.174 and 264.175. In its petition for review, EIWM does not argue that the additional information is not needed for EPA to evaluate

its proposal; in fact, it does not address this point at all. Therefore, in view of the Regional Administrator's considerable discretion in determining permit conditions,^{3/} and EIWM's failure to address the need for the additional information, EIWM has not met its burden of demonstrating that the permit determination should be reviewed. The petition for review is denied. As the Region suggested, if EIWM provides sufficient information to allow review of its proposal, the Region may modify the permit in accordance with 40 CFR §270.41 (1984).

The Regional Administrator shall issue a final permit in accordance with 40 CFR §124.19(f)(1). Issuance of the permit shall be considered final Agency action for purposes of judicial review.

So ordered.



Lee M. Thomas
Administrator

Dated: March 12, 1985

^{3/} See In the Matter of Velsicol Chemical Corporation, RCRA Appeal No. 83-6, Remand and Partial Denial of Petition for Review, dated September 14, 1984.

CERTIFICATE OF SERVICE

I certify that copies of the foregoing Order Denying Petition for Review In the Matter of Earth Industrial Waste Management, Inc., RCRA Appeal No. 84-3(b), were sent to the following individuals:

By 1st Class Mail,
Postage Prepaid:

Mr. and Mrs. Ralph R. Adams
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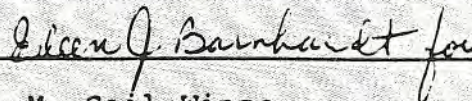
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Honorable Ed Jones
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M. Gail Wingo
Secretary to the Chief
Judicial Officer

Dated: 3-18-85