

its publication. ^{1/} Region III opposes review of the permit denial. I hold that further review is unwarranted and deny the petition.

Petitions for review of RCRA permit decisions are not granted unless the permit determination is clearly erroneous or involves an exercise of discretion or policy that is important and therefore should be reviewed as a discretionary matter. 40 CFR §124.19(a)(1) and (2)(1985). ^{-2/} The burden of demonstrating that the permit decision should be reviewed is therefore on the party petitioning for review. Petitioner has not met that burden in this instance.

Review of the RCRA permit application process reveals that at any time after July 1982 the Region was authorized to issue a call-in letter requiring Bryant Waste Management, Inc., as a pre-existing interim status facility, to submit a Part B application. 40 CFR §270.1(b). The letter must allow "at least six months from the date of the request" for submission of the required materials. 40 CFR §270.10(e)(4). Here, the Region issued its letter on June 6, 1983, and granted Petitioner six

^{1/} The parties have evidently confused publication of the Guidance Manual, published June 21, 1983, with the Final Draft Permit Applicants Guidance Manual for Hazardous Waste Land Treatment, Storage and Disposal Facilities, Vol. 1, published in January 1984. Petitioner apparently received both documents in October 1984.

^{2/} All references to the Code of Federal Regulations (CFR) are to the 1985 edition.

months for compliance; Petitioner answered by filing a timely application on December 2, 1983.

The regulations require the Region to review the application within 60 days:

Upon completing the review, the Regional Administrator shall notify the applicant in writing whether the application is complete. If the application is incomplete, the Regional Administrator shall list the information necessary to make the application complete. When the application is for an existing HWM [Hazardous Waste Management] facility . . . the Regional Administrator shall specify in the notice of deficiency a date for submitting the necessary information.

40 CFR 124.3(c); see also 40 CFR 270.10(c).

In the instant case, the Region reviewed Petitioner's application for completeness and issued a detailed Notice of Deficiency on January 31, 1984.^{3/} In accordance with the regulations--which, as indicated above, simply provide that the Notice of Deficiency shall "specify . . . a date for submitting the necessary information"--Petitioner was granted 60 days to submit the required information. On April 25, 1984, after review of Petitioner's additional submissions, and determining them to be inadequate, the Region commenced the enforcement process by issuing a Notice of Violation.^{4/}

^{3/} Petitioner does not contest the Region's conclusion that all of its submissions were incomplete.

^{4/} The regulations state that should an applicant fail to provide the required information after receipt of a Notice of Deficiency, appropriate enforcement actions may be taken. 40 CFR §124.3(d). The fate of the enforcement action against Petitioner, filed June 28, 1984, is not apparent from the record.

Public notice of the Region's intent to deny a permit issued on September 21, 1984. Petitioner availed itself of a public hearing. A final decision to deny the permit on the grounds of failure to submit a complete Part B application issued on December 17, 1984. 40 CFR §270.10(e)(5).

It is clear that Region III met all of the legal requirements for the establishment of the initial Part B application deadline and the deadline for complying with the Notice of Deficiency. Moreover, it is apparent that the regulations contemplate the exercise of discretion in the setting of these deadlines, in addition to the selection of a date for sending the call-in letter. Therefore, absent a showing by Petitioner that the Region committed a clear abuse of discretion--for example, by ignoring a legitimate and timely request for additional time--Petitioner has not made the showing necessary to warrant review of the Region's determination.

Petitioner has not alleged that it requested an extension during the Part B application period,^{5/} nor has Petitioner argued with specificity that additional time would have had a significant effect on its ability to satisfy the Part B application

^{5/} The record shows that Petitioner's argument that the allotted application time was inadequate was not raised until Petitioner's letter of November 2, 1984, to the Director of Region III's Hazardous Waste Management Division. In that letter, Petitioner requested a public hearing regarding EPA's intent to deny Petitioner a permit. The letter was written well after the deadline set in the Notice of Deficiency had expired. At the hearing, Petitioner's only relevant testimony was to read the November 2 letter into the record.

requirements. Indeed, the Region notes that the local zoning matter was resolved prior to the Part B call-in deadline, allowing ample opportunity for Petitioner to address it prior to the Notice of Deficiency deadline. In any event, local zoning matters are simply irrelevant to Petitioner's ability and duty to submit a complete Part B application. Similarly, Petitioner's receipt of the Guidance Manual in October 1984, seventeen months after publication, is also irrelevant to its ability and duty to submit a complete Part B application. The information in the Guidance Manual was substantially available to Petitioner through the applicable RCRA regulations, the Part B checklist accompanying the call-in letter,^{6/} and the item-by-item explanation accompanying the Notice of Deficiency. Finally, any delay in obtaining certification of dike stability does not excuse Petitioner's failure to submit the broad scope of information required by the call-in letter (per the accompanying Part B checklist) and by the Notice of Deficiency: Petitioner had been informed by the Region that a proposal for an action plan to bring the dikes into compliance would have sufficed. Petitioner offers no explanation for its failure to supply such an action plan.

6/ In Petitioner's letter of November 2, 1984, it is averred that in the "original request for [the] Part B on June 6, 1983, there was not enclosed a list of items that would be applicable to my facility type." Petitioner does not deny that a Part B checklist was included in the June 6 letter. The call-in letter expressly notes that a Part B checklist applicable to Petitioner's facility was enclosed, along with a copy of "264 Standards." Petitioner does not specify how the checklist was inapplicable to BWM's facility. In any event, Petitioner does not renew this argument in this Petition.

Petitioner has failed to persuade me that the timetable followed in this case demonstrates a clear departure from the sound, reasonable and legal discretion required of the Regional Administrator. Further review of this matter is unwarranted.

In accordance with 40 CFR §124.19(f)(1), the Regional Administrator shall issue a final permit decision consistent with this order. The decision shall be considered final Agency action for purposes of judicial review.

So ordered.



Lee M. Thomas
Administrator

Dated:

June 23, 1986