

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

In the Matter of:)
)
Highway 36 Land Development Co.) RCRA Appeal No. 87-5
)
)
Permit No. COD 991300484)
)

ORDER DENYING PETITION FOR REVIEW


By petition dated April 10, 1987, and submitted under 40 CFR 1/ §124.19 (1986), Concerned Citizens of Eastern Colorado, et al., request review of a permit decision by U.S. EPA Region VIII authorizing Highway 36 Land Development Co. to operate a hazardous waste storage, treatment, and disposal facility in Adams County, Colorado.

Region VIII issued the permit under the Resource Conservation and Recovery Act, as amended, 42 U.S.C. §§6901-6991i. Although the State of Colorado is authorized to administer a hazardous waste program in lieu of the federal program, EPA retains authority to administer certain requirements imposed by the Hazardous and Solid Waste Amendments of 1984. Only conditions in the permit issued by the Region are appealable to EPA; conditions in the state-issued permit are appealable only to the State.

1/ The other petitioners joining with Concerned Citizens of Eastern Colorado include City of Brush; Board of County Commissioners of the County of Washington, Colorado; Board of County Commissioners of the County of Morgan, Colorado; City of Limon; Northeastern Colorado Association of Local Governments; Town of Akron; Leroy Whelden; Pam Whelden; Steve Baker; Pat Baker; and Robert D. Gilbert.

Under the rules governing this proceeding, there is no appeal as of right from the Region's permit determination. A petition for review of a RCRA permit should not be granted unless the permit determination is clearly erroneous or involves an important matter of policy or discretion. 40 CFR §124.19(a)(1) and (2). The preamble to the regulations 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) (emphasis added). The burden of demonstrating that the permit should be reviewed is therefore on those requesting review. Based on the petition for review, Region VIII's response, the permittee's submission, and the record on appeal, I conclude that Petitioners have failed to carry their burden.^{2/} Accordingly, their petition for review is denied.

So ordered.


Lee M. Thomas
Administrator

Dated: September 2, 1987

^{2/} The Region submitted its views on the issues raised by Petitioners in response to a request for such views by the Chief Judicial Officer. See Letter from Chief Judicial Officer Ronald McCallum to Acting Regional Administrator Alexandra Smith (April 21, 1987). In an April 9, 1987 teleconference, the Chief Judicial Officer granted leave to the permittee, Highway 36, to submit its views. See Letter from J. Spaanstra and M. Squarrell to Administrator Lee Thomas (April 10, 1987) (confirming grant of leave).

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Order Denying Petition for Review in the Matter of Highway 36 Land Development Co. RCRA Appeal No. 87-5 were served upon the following persons.

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postage prepaid:

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Dated: SEP - 3


Brenda H. Selden, Secretary
to the Chief Judicial Officer