



RCRA Permit Appeal Fact Sheet

1988

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

PETITIONER: USX

PETITION FILED: July 28, 1988

STATUS OF PETITION: See Permit Appeal Status Report

ISSUES:

- Procedural issue
- Joint permitting

Summary of Petition:

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

- **Procedural Issue.** 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." Because 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.

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

In the Matter of:

USX Corporation, USS Division,
Gary Works

Permit No. IND 005 444 002

)
)
)
) RCRA Appeal No. 88-13
)
)
)

ORDER DENYING REVIEW

By Petition dated July 26, 1988, USX Corporation requested review of a determination by Region V to deny USX's application for the federal portion of a permit under the Resource Conservation and Recovery Act of 1976 ("RCRA"), 42 U.S.C. §§6901-6992k. The permit would have authorized continued operation of a hazardous waste landfill, known as HWD-5, at USX's steel plant in Gary, Indiana.

The denial decision was jointly issued by Region V and the State of Indiana, which is authorized under RCRA §3006 to administer its State hazardous waste program in lieu of the federal program, except for requirements imposed under the Hazardous and Solid Waste Amendments of 1984 ("HSWA"). The Region and the State denied the permit due to numerous technical deficiencies in USX's permit application, as well as various continuing violations of the State interim status regulations. Although the Notice of Intent to Deny ("NOID") and accompanying Fact Sheet issued under 40 CFR §§124.6 and 124.8 specified deficiencies with respect to both the HSWA and non-HSWA portions

of the application, USX cured the HSWA-related deficiencies through submissions during the public comment period on the NOID. The final permit decision is based on non-HSWA related deficiencies and non-compliance with the State's interim status regulations. ^{1/}

Shortly after USX filed its Petition for Review, the parties jointly requested, and were granted, a stay of the proceedings in view of anticipated developments at the State level that would render a RCRA permit for the facility unnecessary, thereby mooted the appeal. Specifically, the parties represented that USX now intends to close HWD-5, but that this closure is linked to the closure of another hazardous waste unit at the site, HWT-2. Under the closure plan for HWT-2, waste from that unit would be removed and placed in HWD-5. The parties stated that once HWT-2 is closed, USX would begin closure of HWD-5 and withdraw its Petition for Review. ^{2/}

The parties submitted regular status reports during the pendency of the stay, but by February 1991, more than two years after USX filed its Petition for Review, the closure plan for HWT-2 had not been finalized. By letter dated February 19, 1991, the Agency's Judicial Officer extended the stay of consideration until May 20, but he expressed reluctance to continue the stay

^{1/} See Response to Comments Received on the Federal Portion of the Draft Permit Decision, at 19 (response 1).

^{2/} USX has also sought State administrative review of the State's denial of the application. The parties requested and received a stay of the State appeal while awaiting closure of HWT-2.

absent assurances that the relevant State determinations and the closure of HWT-2 would occur in the near future. On May 20, Region V submitted a substantive response to the Petition for Review, arguing that it should be denied because it fails to show clear error in the Region's permit denial or other grounds for review under 40 CFR §124.19.

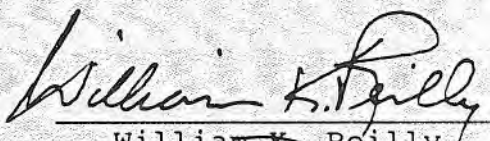
I agree with Region V that USX's Petition fails to set forth grounds for review under §124.19. Both parties evidently concur, however, that the regulatory status of HWD-5 would be best resolved once State officials establish the appropriate closure requirements and procedures for HWT-2. Although this order should not be read as limiting the Region's enforcement discretion, it does not appear that further action at the federal level is necessary at this time in view of the continuing dialogue between USX and the State regarding closure, particularly given that the Region's final denial of the federal (HSPA) portion of the permit is based on deficiencies concerning the State (non-HSPA) portion of the application.

Accordingly, USX's Petition for Review is denied for the reasons set forth in Region V's response to the Petition and the response to comments on the NOID (which reasons are hereby adopted and incorporated by reference as if fully set forth herein). This order, however, shall not be construed to limit the Region's or the State's enforcement discretion in directing the timing and procedures governing closure of HWD-5, including whether this unit may be used for disposal of waste from HWT-2 as

part of the overall closure plan for the Gary Works facility. Region V is directed to continue to monitor HWD-5 to ensure that it is closed in a manner consistent with the parties' representations during the course of this appeal, or, alternatively, in the exercise of the Region's discretion, to invoke its enforcement authority ^{3/} to achieve immediate closure of HWD-5 should such closure be necessary to protect human health or the environment or to achieve full compliance with applicable regulations.

So ordered.

Dated: OCT 2 1991


William K. Reilly
Administrator

^{3/} See, e.g., United States v. Conservation Chemical Co., 660 F. Supp. 1236 (N.D. Ind. 1987) (U.S. EPA retains overlapping enforcement authority in an authorized State); Commonwealth Oil Refining Co., Inc., RCRA (3008) Appeal No. 87-16 (EPA CJO, Sept. 21, 1989) (same); Municipal & Industrial Disposal Co., RCRA (3008) Appeal No. 87-11 (EPA CJO, Nov. 1, 1988) (same).

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Order Denying Review in the matter of USX Corporation, USS Division, Gary Works, RCRA Appeal No. 88-13, were sent to the following persons in the manner indicated:

By First Class Mail,
Postage Prepaid:

Stephen K. Todd
USX Corporation
600 Grant Street
Room 1538
Pittsburgh, PA 15219

David A. Ullrich, Director
Waste Management Division
U.S. EPA, Region V
230 S. Dearborn Street
Chicago, IL 60604

Thomas J. Kenney
Assistant Regional Counsel
U.S. EPA, Region V
230 S. Dearborn Street
Chicago, IL 60604

Dated:

OCT 09 1991


Brenda H. Selden
Legal Staff Assistant