



RCRA Permit Appeal Fact Sheet

1988

FACILITY: Westinghouse Electric Corporation (Westinghouse)
Waltz-Mill/Madison Facility
Yukon, Pennsylvania
PAD 982 580 316
RCRA Appeal No. 88-31

PETITIONER: Concerned Residents of the Yough (CRY)

PETITION FILED: November 7, 1988

STATUS OF PETITION: See Permit Appeal Status Report

ISSUES:

- Procedural issues
- Miscellaneous other issues (erroneous information; Agency consistency; testing and monitoring; exceeding national pollutant discharge elimination system limits; transportation and disaster response; air quality guidelines)

Summary of Petition:

CRY filed an appeal requesting the Administrator to suspend the research, development, and demonstration (RD&D) permit issued to Westinghouse until a full scale review of past occurrences at the facility is conducted. The petitioner believes Westinghouse is being given too much freedom with their testing methods and that more stringent controls and regulations should be levied upon the company before any testing is performed.

- **Procedural Issues.** The petitioner objects to the issuance of this permit because it believes EPA's decision to issue the permit was based on inadequate, insufficient, or inappropriate information.
 - The petitioner argues that no environmental impact information or studies of the effects of past activities at the Westinghouse Waltz-Mill facility have been made available for public review. Neither have facts regarding prior accidents and releases been thoroughly examined. Specifically, CRY raises concerns about the lack of information made available to the public in a nuclear accident involving a test reactor at the site in the 1960's.



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- Additionally, the petitioner claims there is no mechanism for Westinghouse to report their findings on toxic releases to the community. Evoking the "Right to Know" laws, the petitioner believes the community has "the right to know what is being tested, when, and what the test results are."
- **Erroneous Information.** The petitioner believes that the information in the permit application regarding the proximity of residences to the site is erroneous. Westinghouse reported that the trailer park adjacent to their site was established as a campground, but the petitioner claims that this park houses some permanent residents.
- **Agency Consistency.** Since this is a RCRA research, development, and demonstration permit, the petitioner feels the permit should be revoked or delayed until EPA can examine the following recommendation made to the Agency in a report published by the Office of Technology Assessment: "The United States does not need more hazardous waste burners."
- **Testing and Monitoring.** The petitioner points out that the location of the facility in an area that has been exposed to a wide variety of toxic contaminants renders standard risk assessment models not applicable. The petitioner wants the permit suspended until a full scale review of past occurrences at the facility has been conducted, measuring the risk to a community which has had "multiple long-term low level exposures."
- The petitioner objects to "random" sampling for organics and specific compounds related to test material, and calls for full scale monitoring of each test material.
- The petitioner also objects to the permit on the grounds that the efficiency standards that Westinghouse has established were derived from non-hazardous or pure products. The petitioner claims that there is an unacceptable risk in assuming that mixed waste products will burn or be destroyed with the same efficiency as non-hazardous products.
- The petitioner claims that Westinghouse has not demonstrated what types of products will be formed during testing and, therefore, the permit should be denied and reissued on a test by test basis to ensure public health and safety.
- **Exceeding National Pollutant Discharge Elimination System Limits.** The petitioner claims Mill Service consistently exceeds their national pollutant discharge elimination system (NPDES) limit, discharging into Sewickley Creek, a tributary of the Youghiogheny River. The petitioner objects to the issuance of the permit because it will allow another source of contamination into the area's waters, a contamination not corrected simply by setting NPDES limits which the company does not respect.



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- **Transportation and Disaster Response.** The petitioner requests that instead of operating under the best case scenario, Westinghouse should plan for and take methods to ensure public safety in the "worst case" occurrence.

The petitioner is concerned because there is no regulated route for removal of hazardous substances, and emergency response is left up to the host municipality. The petitioner calls for more attention to developing an emergency plan with guidelines established to control the transportation route and times of transport.

- **Air Quality Guidelines.** The petitioner believes the permit should be revoked on the basis that air quality guidelines are inadequate to be protective of public health. Because area residents have had previous exposure, the petitioner asks for more stringent air quality standards.
 - The petitioner objects to Westinghouse's request for carbon monoxide emissions to be permitted.
 - Further, the petitioner feels that the potential release of hydrogen chloride (HCL) gas into the atmosphere in the event of a power failure is unacceptable. The petitioner asks that before this process can be tested, the potential for release of HCL should be remedied.

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

In the Matter of:

Westinghouse Electric Corporation

RCRA Permit No. PAD 98 258 0136

RCRA Appeal No. 88-31

ORDER DENYING PETITION FOR REVIEW

By petition dated November 3, 1988, Concerned Residents of the Yough (CRY) seek review under 40 CFR §124.19 of a permit issued by EPA Region III to Westinghouse Electric Corporation. The permit is a research, development, and demonstration (RD&D) permit issued under Section 3005(g) of the Resource Conservation and Recovery Act, as amended (RCRA), 42 U.S.C.A. §6925(g). It authorizes Westinghouse to conduct process and equipment development for four hazardous waste treatment technologies at its Waltz Mill research complex near Madison, Pennsylvania. On January 4, 1989, Region III filed its response to the petition along with relevant portions of the administrative record (Region Response), as requested by EPA's Chief Judicial Officer.

The treatment units at issue pyrolyze hazardous waste by using a thermal plasma field. Destruction and removal efficiency greatly exceeds conventional combustion processes, thereby significantly reducing potentially harmful products of incomplete combustion. Three of the four units are mobile and designed to

travel from site to site with little maintenance. The permit is for testing only, and there are no current plans to establish a large-scale, commercial treatment operation at the facility.

Under the rules governing this proceeding, there is no appeal as of right from the Region's permit decision. See 40 CFR §124.19. Review is discretionary, and under longstanding Agency policy a Regional permit determination ordinarily will not be reviewed unless it is based on a clearly erroneous finding of fact or conclusion of law, or involves an important matter of policy or exercise of discretion that warrants review.^{1/} When the Agency issued Section 124.19, it made clear that "this power of review should be only sparingly exercised," and that "most permit conditions should be finally determined at the Regional level * * *." 45 Fed. Reg. 33,412 (May 19, 1980). The burden of demonstrating that review is warranted is therefore on the petitioner.

CRY raises fourteen separate issues in its petition, which can be briefly summarized as concerning: the site's location and previous contaminant releases in the area (issues 1, 2); sampling and monitoring under the permit (issue 3); potential releases to air and water (issues 4, 6, 7, 8, 9, 10, 13); waste transportation and emergency procedures (issues 5, 6); waste disposal

^{1/} See, e.g., In re Hytek Finishes Co., RCRA Appeal No. 88-45, at 2 (January 17, 1989); In re Highway 36 Land Dev. Co., RCRA Appeal No. 87-5, at 2 (September 2, 1987); In re Resource Technology Services, Inc., RCRA Appeal No. 83-1, at 2 (September 27, 1983).

(issue 6); the need for additional treatment technologies (issue 11); public reporting requirements (issue 12); and whether the permit protects human health and the environment (issues 9, 14). The Region's response to the petition and the record as a whole are replete with findings that the permit will protect human health and the environment, particularly in light of the scale and type of tests at issue.^{2/}

In my view, the Region has sufficiently addressed each of CRY's concerns, and the petition fails to show that the Region's permit decision is clearly erroneous or otherwise warrants review. The permit complies with all statutory and regulatory requirements. To expedite issuance of RD&D permits, RCRA §3005(g) allows for waivers of most permit application and issuance requirements set forth in the general RCRA regulations, but Region III granted no such waivers here. Indeed, in several respects Region III has gone beyond the regulations to impose additional, environmentally protective conditions.

RCRA §3005(g) reflects a strong congressional policy to encourage the development of new treatment technologies and processes where human health and the environment will be protected. Several of CRY's contentions cannot be reconciled with this statutory mandate. For example, CRY implies that recycling and waste reduction should be encouraged instead of new

^{2/} See, e.g., Region Response at 2, 3, 4, 5, 6, 8; Fact Sheet at p.14 §G, p.15 §§H.2, H.3, H.5; Summary Report, Response to Public Comment on the Draft Permit at 7.

treatment technologies. While the Agency believes that these activities deserve the highest priority, they will not completely obviate the need for environmentally protective treatment, storage, and disposal.^{3/} Indeed, RCRA §3005(g) plainly reflects a determination by the Congress that source reduction and recycling should be supplemented by innovative treatment processes. CRY's allegation that there is no current need for additional incinerators, even if true, would not justify cessation of research into more environmentally protective treatment methods like the pyrolytic processes at issue here. CRY's proposal to use unattainable standards such as zero risk, if adopted, would preclude the issuance of RD&D permits altogether. Its suggestion that prior unrelated exposures be investigated would significantly delay the issuance of RD&D permits, and conceivably increase the overall risk to human health and the environment by extending reliance on less protective disposal methods.

Other allegations in the petition are simply mistaken. For instance, although CRY contends that the tests will be subject only to random sampling (Petition at 2), in fact waste sampling will be conducted according to approved sampling and analysis matrices. Region Response at 2. Still other arguments in the Petition are irrelevant to this proceeding, such as whether the Waltz Mill facility will comply with its NPDES permit under the

^{3/} See Proposed Pollution Prevention Policy Statement, 54 Fed. Reg. 3845 (January 26, 1989).

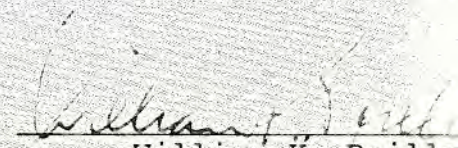
Clean Water Act. CRY cites no record evidence of existing violations of this permit, and the Region represents that the permittee is currently in compliance. Region Response at 3. Any wastewater from tests conducted under the RD&D permit will either be treated off-site or pretreated prior to being sent to the Waltz Mill treatment complex in accordance with its NPDES permit.

Id. Allegations that the permittee might violate its NPDES permit do not constitute sufficient grounds to deny this RCRA permit. I must observe that EPA has an affirmative obligation to enforce compliance with the NPDES permit, and that, if the Agency fails to do so, the petitioners in this appeal may initiate a citizen suit under Section 505 of the Clean Water Act for any NPDES violation.

In short, CRY has not shown that Region III's permit determination warrants review. For the foregoing reasons, as well as those set forth in the Region's Response, the petition for review is denied.

So ordered.

Dated: FEB 17 1990



William K. Reilly
Administrator

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Order Denying Petition for Review in the matter of Westinghouse Electric Corporation, RCRA Appeal No. 88-31, were sent to the following persons by first class mail, postage prepaid.

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Dated: FEB 21 1989

Brenda H. Selden, Secretary
to the Chief Judicial Officer