



RCRA Permit Appeal Fact Sheet

1988

FACILITY: United Technologies Corporation, Pratt and Whitney Group
Middletown, Connecticut
CTD 003 935 905
RCRA Appeal No. 88-34

PETITIONER: Pratt and Whitney (P&W)

PETITION FILED: November 8, 1988

STATUS OF PETITION: See Permit Appeal Status Report

ISSUES:

- RFI conditions are not justified
- RFI conditions are technically inappropriate
- Due process
- Other corrective action issues (denial of alternate concentration limits demonstration)
- Procedural issues
- Joint permitting
- Miscellaneous other issues (length of permit)

Summary of Petition:

The petitioner objects to permit conditions involving aspects relating to the Metal Hydroxide Management Area (MHMA) (an area encompassing disposal units for electro-chemical machinery (ECM) waste and F006, other surface impoundments, and leachate discharge areas), the hazardous waste storage area, solid waste management units SWMUs, and some procedures in the permit process that involve policy and legal considerations. These contested provisions are discussed below.

- **RFI Conditions are not Justified.** The petitioner objects to permit conditions IV. I.1 and 2 which mandate that a corrective action program be proposed within 120 days to bring the groundwater in the vicinity of the Metal Hydroxide Landfill and surface impoundment portions of the MHMA into compliance with groundwater protection standards. The petitioner also objects to the permit's requirement to conduct a study of the ECM landfill (Condition V, Attachment H) and sedimentation pond, which are portions of the MHMA, that will determine further corrective measures. The petitioner claims this mandated corrective action program (Condition IV. D.1) contains a groundwater protection standard that is not only inappropriate for the area, but also unattainable. Pratt and Whitney asks the Administrator to review Region I's mandate of a more stringent groundwater protection



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standard on the basis that the law is erroneous and not justified as demonstrated in the following:

- The petitioner states that there is no evidence that any leachate from the MHMA is harmful to public health or the environment. In fact, as recently as June 1988, the State of Connecticut determined that the discharge of hazardous constituents from the MHMA, "would not cause pollution of the groundwater or surface water, and consequently, would not be detrimental to public health or the environment." Pratt and Whitney contends that Region 1 has decided, with no evidence to support the statement, that constituents leaching from the MHMA are harmful.
- The petitioner objects to Region 1's findings that ten alleged SWMUs require investigation and corrective action. Four of these units are located in, or would only release to the MHMA. The petitioner asks that these units be assigned groundwater protection standards consistent with the State of Connecticut's law. The petitioner also claims that there are erroneous findings of fact that releases are occurring in the Sanitary Sludge Drying Beds (#5), Disposal Area NNE of Building 310 (#6), and the Disposal Area along Road N (#14).
- **RFI Conditions are Technically Inappropriate.** The petitioner argues that the bonding technology used to solidify F006 waste material and keep contaminants immobile, and the substance for landfilling that this technology produces, present significant legal and technical considerations that must be addressed in composing the permit conditions (III. C.1 through 21, III. F.1 and 3, III. Q.8 and 9). The petitioner claims that Region 1 did not take technical or legal aspects into consideration.
- **Due Process.** The petitioner objects to the permit's investigative and corrective action program which require the petitioner to submit proposals, reports, or testing results to the Director of the Waste Management Division for his approval, but does not make any provisions for the petitioner to appeal the Director's decision or resolve any disagreements. This limitation on the petitioner's right to object effectively to decisions of the Director is reflective of an important policy consideration which Pratt and Whitney asks the Administrator to review. Since EPA has not promulgated any procedural or substantive regulations that are applicable to investigative, corrective and other actions being mandated for SWMUs, it is erroneous to conclude that Region 1 has the authority to include permit conditions.
- **Denial of Alternate Concentration Limits.** The petitioner also asks the Administrator to review the denial of the limits proposed in the Alternate Concentration Limit (ACL) Demonstration submitted by the petitioner for the entire zone covered by the "GC"



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classification. Pratt and Whitney sought to establish alternate concentration limits for the MHMA, demonstrating that the ACLs will protect human health and the environment. The petitioner submitted no information concerning a corrective action program for the MHMA as provided in 40 CFR Section 270.14 (c)(8). The petitioner requests that the Agency review this exercise of discretion which denied the ACLs.

- **Procedural Issues.** The petitioner claims that substantive information pertaining to the facilities and processes has been denied Pratt and Whitney. The procedural violations are outlined below.
 - The petitioner made Freedom of Information Requests for documents, but pages of itemized materials were refused.
 - The petitioner sought to question the EPA permit writers as to the methodology and rationale used to produce certain draft permit conditions. Since these are not the product of formal rulemaking, EPA has advised that such documents should not be used for establishing permit limitations. The petitioner was denied his request to question the permit writers and no answers could be obtained.
 - The petitioner relates that a meeting was set up then cancelled by the Assistant Regional Counsel, who then addressed Pratt and Whitney's questions to Region 1. These questions were never answered.
 - The petitioner argues that according to Connecticut law, Pratt and Whitney has the right to question or cross examine any presenter at a public hearing. At the time of the public hearing, Region 1 decided that the Department of Environmental Protection would not be a party to the hearing, thus denying Pratt and Whitney the opportunity to cross examine the two Region 1 employees presenting the permit for EPA.
- **Joint Permitting.** Pratt and Whitney claim that Region 1 seeks to establish a groundwater protection standard that is contrary to Connecticut law. Connecticut law specifically authorizes the use of the soil and the groundwater within the "GC" area, extending to the Connecticut River, for the assimilation of hazardous constituents from the MHMA. Region 1 has no authority under RCRA to establish a groundwater protection standard in contravention of a State law which was adopted when the State had primacy in the implementation of the RCRA program.
- **Length of Permit.** The petitioner argues that the permit provided by Region 1, concerning the storage, disposal and alleged releases from on-site waste units, is excessive (over 300 pages long) and so extensive that it renders daily compliance impossible. The petitioner asks



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the Administrator to review the entire permit for both its lack of consistency with appropriate State authority and its excessiveness, keeping in mind EPA policy to issue permits jointly with the State that are reasonable and compliant.

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

In the Matter of:

United Technologies Corporation
Pratt & Whitney Group

RCRA Permit No. CTD 003 935 905

RCRA Appeal No. 88-34

ORDER DENYING REVIEW

By Petition submitted November 8, 1988, United Technologies Corporation, Pratt & Whitney Group, seeks review of a permit issued by Region I under the Resource Conservation and Recovery Act of 1976 ("RCRA"), 42 U.S.C.A. §§6901-6991i. The permit authorizes continued hazardous waste storage and disposal at Petitioner's aircraft engine plant in Middletown, Connecticut. As requested by the Agency's Chief Judicial Officer, Region I responded to the Petition on January 11, 1989 ("Region Response"). Petitioner submitted a reply to the Region's response on February 13, 1989.

Petitioner argues, inter alia, that: (1) the Region erred in rejecting Petitioner's request for alternate concentration limits ("ACLs"); (2) certain permit conditions are inconsistent with the Agency's new land disposal requirements; (3) permit conditions applicable to the plant's hazardous waste storage area are overly restrictive (e.g., those that specify the types of

containers and waste that may be stored); (4) the Region erroneously determined that three solid waste management units (Nos. 5, 6, and 14) have releases that require corrective action; (5) the permit improperly makes no provision for administrative appeal of certain interim decisions and approvals by the Region during the corrective action process; and (6) the Region refused to provide Petitioner with certain information requested under the Freedom of Information Act ("FOIA") or during the permitting process, thereby precluding informed comment on the draft permit.

Under the rules governing this proceeding, there is no automatic administrative appeal from the Region's permit decision. Ordinarily, a RCRA permit determination 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. See 40 CFR §124.19; 45 Fed. Reg. 33,412 (May 19, 1980). The preamble to Section 124.19 states that "this power of review should be only sparingly exercised," and that "most permit conditions should be finally determined at the Regional level * * *." Id. The burden of demonstrating that review is warranted is thus on Petitioner.

Each of Petitioner's arguments has been carefully considered, and none has been found to justify review. Region I thoroughly examined Petitioner's request for ACLs under the appropriate rule (40 CFR §264.94(b)), and it fully explained its reasons for rejecting the request. See Region Response at 6-17; Response to Comments on the Draft Permit at 48-50 (Attachment 4

to Region Response). Petitioner has failed to show that this determination is clearly erroneous or otherwise warrants review.^{1/} Nor has it shown that the permit is inconsistent with the Agency's land disposal restrictions. See Region Response at 17-20. Petitioner's unsupported characterization of the permit conditions for the storage area as overly restrictive similarly falls short of the showing needed for review, and in any event the Region has justified these conditions as necessary to protect human health and the environment. See id. at 20-27.

The Petition likewise fails to show clear error in the Region's findings regarding releases that require corrective action. See Region Response at 31-33. Each unit at issue is unlined, and each finding of a release is supported by elevated concentrations of hazardous constituents or by other record evidence. Moreover, the permit properly gives to the Region final authority to make various interim decisions during the corrective action process, with the ultimate corrective measures to be added to the permit through a major modification (which will afford Petitioner an opportunity for administrative review

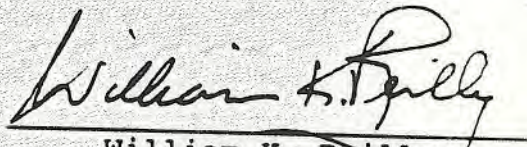
^{1/} Contrary to Petitioner's contentions, the Region is not bound to adhere to state water quality determinations, but instead must review facility operations independently under the regulations that implement RCRA. Although the Agency considers state groundwater determinations under RCRA when appropriate, where specific criteria or responsibilities are specified by federal statute or rule, federal law must prevail. While not crucial to today's decision, it is relevant to note that the state itself proposed to reject Pratt & Whitney's ACL request when it issued its draft hazardous waste permit under state law. See Fact Sheet at 30-32 (Attachment 2 to Region Response). The final state permit has not been issued.

at that time). See In re Hoechst Celanese Corp., RCRA Appeal No. 87-13, at 8-9 (February 28, 1989). Allowing an administrative appeal from such interim decisions and approvals would lead to unnecessary and undesirable delays in the corrective action process. If Petitioner is dissatisfied with an interim decision by the Region, it is free to pursue any available opportunities for judicial review. Finally, Petitioner has failed to show that its FOIA and other requests for information were improperly denied, or that it was deprived of any information necessary for informed comment on the draft permit. See Region Response at 36-38.

All other arguments raised in the Petition are hereby rejected. For the reasons set forth above, in Region I's Response to the Petition, and its response to comments on the draft permit, review is denied.

So ordered.

Dated: FEB 12 1990


William K. Reilly
Administrator

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Order Denying Review in the matter of United Technologies Corporation, Pratt & Whitney Group, RCRA Appeal No. 88-34, were sent by First Class Mail to the following persons:

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Dated: February 13, 1995

Andrea C. Taylor's
Brenda H. Selden, Secretary
to the Chief Judicial Officer