



RCRA Permit Appeal Fact Sheet

1990

FACILITY: MacDermid, Incorporated (MacDermid)
Ferndale, Michigan
MID 005 338 371
RCRA Appeal No. 90-26

PETITIONER: MacDermid

PETITION FILED: October 29, 1990

STATUS OF PETITION: See Permit Appeal Status Report

ISSUES: RFI conditions are not justified

Summary of Petition:

MacDermid petitions for review of the HSWA permit issued by Region 5 to its facility in Ferndale, Michigan. Specifically, MacDermid petitions for review of the permit provision requiring an extensive RFI of the two closed surface impoundments. MacDermid asserts that the tasks set out in the RFI in the final permit are inappropriate and unnecessary and delay implementation of remedial action at the two areas. The petitioner maintains that the permit does not take into consideration the substantial investigation and analysis of the two impoundment areas that have already been performed. Given that studies have already been conducted, the petitioner believes that the RFI requirements are redundant and counter-productive.

J. Michael

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

In the Matter of:	)	
	)	
MacDermid, Incorporated	)	RCRA Appeal No. 90-26
	)	
EPA ID. No. MID 005 338 371	)	
	)	

ORDER DENYING REVIEW

By petition dated October 24, 1990, MacDermid, Incorporated seeks review of a RCRA permit issued by Region V for MacDermid's chemical production facility in Ferndale, Michigan. As requested by the Agency's Judicial Officer, Region V filed a response to the petition dated December 18, 1990.

MacDermid petitions for review of permit conditions that require a RCRA Facility Investigation ("RFI") for two closed surface impoundments areas at the facility. It contends that the seven-task RFI required by the permit "is inappropriate and unnecessary and needlessly delays the implementation of remedial action at the two closed surface impoundment areas." Petition at 3. The merits of MacDermid's petition need not be addressed, however, because the petition is procedurally defective.

Under the Agency's rules, the right to petition for review of a Regional permit decision is generally limited to "any person who filed comments on [the] draft permit or participated in the public hearing * * *." 40 CFR §124.19(a). Persons who fail to file comments or participate at the hearing may petition for

review only with respect to any changes from the draft permit to the final permit. Id. The rules also require a petitioner to demonstrate that the issues raised in the petition were preserved for review by being raised during the public comment period "to the extent required by these regulations * * *." 40 CFR §124.19(a). The regulations provide that "[a]ll persons * * * must raise all reasonably ascertainable issues and submit all reasonably available arguments supporting their position by the close of the public comment period (including any public hearing) under 124.10." 40 CFR §124.13. These requirements ensure that the Region has an opportunity to address ascertainable issues, thereby promoting the Agency's strong policy that most permit issues be resolved at the Regional level. ^{1/}

Although MacDermid represents that it submitted written comments on the draft permit (Petition at 2), the Region asserts that it has never seen these comments (Region Response at 1), and the Docket Log fails to reflect their receipt. ^{2/} MacDermid also states that it participated at the public hearing on the draft permit, but the record shows that it did not participate. ^{3/}

^{1/} See In re EnviroSAFE Services of Idaho, Inc., RCRA Appeal No. 88-41, at 7 (April 3, 1990); In re Shell Oil Co., RCRA Appeal No. 88-48, at 3-4 (March 12, 1990); In re Amoco Oil Co., RCRA Appeal No. 84-5, at 3-4 (May 17, 1985); In re Resource Technology Services, Inc., RCRA Appeal No. 83-1, at 1 n.1 (Sept. 27, 1983); 45 Fed. Reg. 33290, 33412 (May 19, 1980).

^{2/} See Region Response, Attachment A (Administrative Record Index).

^{3/} See Public Hearing Transcript for MacDermid Incorporated Proposed Operating License and HSWA Permit (August 21, 1990).

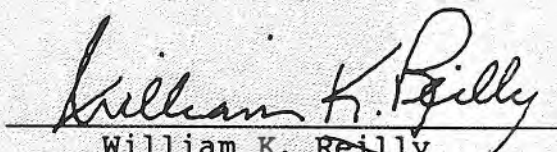
Furthermore, MacDermid's petition does not raise issues regarding a change from the draft permit to the final permit, but instead focuses solely on permit conditions that remained unchanged. Accordingly, MacDermid has failed to demonstrate that it has standing to petition for review of the Region's permit determination.

Moreover, the only comments regarding the RFI during the public comment period were made by a local citizens group. The comments concern the RFI's projected time-frame and the inclusion of an incinerator and underground storage tanks.^{4/} These inquiries did not require the Region to explain or justify the extent of the RFI requirements as they relate to the surface impoundment areas and thus did not preserve for review the issues now raised by MacDermid.

Because MacDermid lacks standing and failed to preserve the issues raised in its petition, the petition is denied.

So ordered.

Dated: JAN 14 1991


William K. Reilly
Administrator

^{4/} See id.; Letter from J. Narich to S. Blayer, at 3 (August 21, 1990).

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Order Denying Review in the matter of MacDermid, Inc., RCRA Appeal No. 90-26, were sent to the following persons in the manner indicated:

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Dated: 1/15/91



Brenda H. Selden
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