RCRA Permit Appeal Fact Sheet **1986**

FACILITY: Allied Corporation (Baltimore Chrome Ore Works)
Baltimore, Maryland
MDD 069 396 711
RCRA Appeal No. 86-4

PETITIONER: Allied Corporation

PETITION FILED: December 29, 1986

STATUS OF PETITION: See Permit Appeal Status Report

ISSUES:
- RFI conditions are too vague
- Definition of solid waste management unit
- Other corrective action issues (previous submittal of remedial investigation; dispute resolution; demonstration of financial assurance)
- Joint permitting

Summary of Petition:

Allied objects to six specific Regional permit conditions which the petitioner says are based on: (1) a clearly erroneous finding of fact or conclusion of law; or (2) an exercise of discretion or an important policy consideration that the Administrator should review in his discretion. Each of the six specified points of contention is discussed below. The majority of these issues address corrective action requirements in the permit.

- **RFI Conditions are too Vague.** Allied states that the Region 3 permit gives no guidance on what is to be included in certain multimedia plans specified in the RFI, specifically the facility's surface water control and monitoring plan (SWCMP) and the air control and monitoring plan (ACMP). The difficulties arising out of the vagueness and ambiguity of these Region 3 permit requirements are compounded by the requirement that Allied initiate SWCMP and ACMP programs no later than 60 days after the Regional Administrator's approval. Allied argues that it has no way of knowing how long it will take to initiate a pair of "undefined" control programs. Subsequently, Allied requests that the requirements in the Region 3 permit for a SWCMP and an ACMP should be deleted until reasonable guidance on their content can be provided.

- **Definition of Solid Waste Management Units.** Allied objects to the definitions of two of the four solid waste management units (SWMUs) at the facility: one SWMU for its vertical dimension; and one SWMU for both its horizontal and vertical delineations. Allied argues that information in its RI report proposed under the RCRA Consent Order does not support Region 3's definition of these units.

- **Previous Submittal of Remedial Investigation.** Allied requests that the Region 3 permit acknowledge that Allied has already submitted a remedial investigation (RI), a risk assessment (RA), and a groundwater monitoring plan that are sufficient to satisfy the requirements for initial submissions under Part II.A.1 and C.1 of the final permit.

  - Region 3 noted "serious deficiencies" in Allied's RI and RA submittal, but scheduled Allied to submit a revised RI and RA within 30 days after the effective date of the Region 3 permit. Allied believes that at least six months will be needed to submit these revised reports, which require additional field work.

  - At the same time, Allied is bound by the Federal District Court's RCRA Consent Order to proceed with a Feasibility Study (FS) for submission to the Maryland Waste Management Administration (WMA) within 16 weeks after WMA approves the RI and RA. WMA was scheduled to decide on the RI and RA on April 15, 1986. Allied argues that for Region 3 to ignore the obligations imposed by the RCRA Consent Order and to require Allied to undertake a parallel set of studies on different schedules from the one required by the RCRA Consent Order is an enormous waste of time and money, and delays corrective action at the facility.

- **Dispute Resolution.** Allied argues that the procedures established by Part II. E. for dispute resolution and incorporation of the corrective action plan (CAP) into the Region 3 permit deprive Allied of due process, for they: (1) impose no deadlines upon Region 3 for timely review of documents submitted by Allied; (2) do not specify a mechanism for review of Agency decisions; (3) may force Allied to offer a CAP as its own proposed major permit modification (thus disallowing Allied from challenging the CAP); and (4) rely on Agency assurances of "good faith" instead of procedural due process.

- **Demonstration of Financial Assurance for Corrective Action.** Allied argues that the permit should not require a demonstration of financial assurance at any point before approval of the CAP. Allied requests that the requirement for a demonstration of financial assurance on the CAP should be delayed until the point at which the CAP is incorporated into the permit.

- **Joint Permitting.** Allied requests that Part I, standard conditions, paragraphs H-10, H-12, H-13, and H-14, be deleted from the final Region 3 permit. Allied argues that these paragraphs, which relate to reporting anticipated noncompliance and releases that may create emergency conditions, duplicate virtually word-for-word corresponding provisions in the facility's base RCRA permit issued by the State of Maryland.

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

IN THE MATTER OF HSWA PORTION OF RCRA HAZARDOUS WASTE FACILITY PERMIT FOR ALLIED CORPORATION BALTIMORE CHROME ORE WORKS MDD 06 939 6711	RCRA Appeal No. 86-4

MOTION TO VACATE PERMIT AND
DISMISS THE APPEAL AS MOOT

The United States Environmental Protection Agency ("EPA"), Region III ("Region III") and Allied-Signal Inc. ("Petitioner"), jointly move to vacate the permit in the above-referenced appeal and to dismiss the appeal as moot. In support of this motion, Region III and Petitioner state as follows:

1. In November of 1986, Region III issued a RCRA § 3004(u) Corrective Action Permit which Petitioner appealed. The permit never became effective.

2. Region III and Petitioner subsequently executed a judicial Consent Decree under §§ 3008(h) and 7003 of RCRA.

3. The Consent Decree provides for corrective action at Petitioner's Baltimore Chrome Ore Works.

4. Under EPA's interpretation of RCRA § 3004(u), the issuance of corrective action permits is discretionary. Permits are to be issued "as necessary to protect human health and the environment." 50 Fed. Reg. 28713 (July 15, 1985).

5. In light of the existence of the Consent Decree, the proposed § 3004(u) permit is no longer necessary to protect human health and the environment.

WHEREFORE, Region III and Petitioner jointly request that the permit be vacated and the appeal be dismissed as moot.

Respectfully submitted,

Samuel A. Bleicher/DH

Samuel A. Bleicher, Esq.
Counsel for Petitioner
Allied-Signal Inc.

Patricia Hilsinger

Patricia D. Hilsinger
Senior Assistant Regional Counsel
EPA Region III

CERTIFICATE OF SERVICE

I hereby certify that, on this date, an original Motion to Vacate Permit and Dismiss the Appeal as Moot was sent by certified mail to Ronald L. McCallum, Chief Judicial Officer, U.S. Environmental Protection Agency, a copy was hand-delivered to the Regional Administrator, U.S. EPA, Region III, and a copy was sent by certified mail, return receipt requested, to:

Samuel A. Bleicher, Esquire
Miles & Stockbridge
1054 31st St., N.W.
Suite 200
Washington, D.C. 20007

Date: MAY 20 1991

Patricia Hilsinger
Patricia D. Hilsinger
Assistant Regional Counsel

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

In the Matter of:	)	
Allied Corporation Baltimore Chrome Ore Works	)	RCRA Appeal No. 86-4
Permit No. MDD 069 396 711	)	

ORDER

The final permit decision at issue in this case imposes corrective action requirements for Petitioner's Baltimore Chrome Ore Works facility under Section 3004(u) of the Resource Conservation and Recovery Act of 1976, as amended. By joint motion dated May 20, 1991, the parties assert that these permit conditions are no longer necessary, and that the instant proceeding has been rendered moot, due to a judicial consent decree that requires corrective action at the same facility. In view of the parties' motion, the final permit decision at issue is hereby vacated, and this appeal is dismissed as moot, without prejudice to the Region's ability to issue permit conditions for corrective action in this matter in the future should such conditions prove to be necessary to protect human health and the environment.

So ordered.

William K. Reilly

Dated: JUL 29 1991

William K. Reilly
Administrator

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Order in the matter of Allied Corporation (Baltimore Chrome Ore Works), RCRA Appeal No. 86-4, were sent to the following persons in the manner indicated:

By First Class Mail,
Postage Prepaid:

Patricia D. Hilsinger
Senior Assistant Regional Counsel
U.S. EPA, Region III
841 Chestnut Building
Philadelphia, PA 19107

Samuel A. Bleicher, Esq.
Miles & Stockbridge
1054 31st Street, N.W.
Suite 200
Washington, D.C. 20007

Dated: July 29, 1991

Mildred T. Connelly, Secretary
to the Judicial Officer