RCRA Permit Appeal Fact Sheet **1988**

FACILITY: Hytek Finishes Company
Kent, Washington
WAD 076 655 182
RCRA Appeal No. 88-45

PETITIONERS: Ciba-Geigy Corporation and Phoenix Washington Corporation

PETITION FILED: December 12, 1988

STATUS OF PETITION: See Permit Appeal Status Report

ISSUES:
- Procedural issues
- Miscellaneous other issues (transfer of property and permit responsibilities)

Summary of Petition:

Ciba-Geigy Corporation and its wholly-owned subsidiary, Phoenix Washington Corporation, are petitioning for a review of the post-closure permit issued to the Hytek Finishes Company. Phoenix Washington acquired the business of the Heath Tecna Aerospace Company (Heath Tecna) from the owner of Hytek: the Heath Tecna business is located on property adjacent to the Hytek facility. The Heath Tecna business consists of six parcels of land sold by Hytek to Phoenix Washington. Although Phoenix Washington has taken title to five of the six parcels, it will wait to take title to the last parcel, a metal finishing operation, until Hytek has closed this operation and completed associated cleanup activities. Heath Tecna and Hytek have entered into an access agreement allowing Hytek to carry out its permit responsibilities on Heath Tecna's property.

- **Procedural Issues**. The petitioners contend that the final permit introduces language on property transfer not in the draft permit, and that this new language raises the threat of naming Phoenix Washington as a party to the permit following conveyance of the last parcel of land to Heath Tecna.

- **Transfer of Property and Permit Responsibilities.** The petitioners contend that the post-closure permit introduces language suggesting that permit requirements applicable to the metal finishing operation would be transferred upon property conveyance. The petitioners state that in doing so, the permit contrasts with the existing access agreement between Heath

Tecna and Hytek. The petitioners want to fully preserve all rights to object to either Heath Tecna, Phoenix Washington, or Ciba Geigy as being named on Hytek's permit following conveyance of the last parcel of land from Hytek to Heath Tecna.

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

In the Matter of:	
Hytek Finishes Company	RCRA Appeal No. 88-45
Post-closure Permit	

ORDER DENYING PETITION FOR REVIEW

By petition dated December 19, 1988, Ciba-Geigy Corporation and its wholly-owned subsidiary, Phoenix Washington Corporation, request review under 40 CFR §124.19 of a post-closure permit issued by EPA Region X to Hytek Finishes Company. Petitioners state that Phoenix Washington acquired the Heath Tecna Aerospace Company from the owner of Hytek, and as part of that sale took title to certain property. Phoenix Washington will take title to additional property subject to the permit (Parcel E) after Hytek closes its metal finishing operations. Heath Tecna and Hytek have entered into an access agreement to allow Hytek to meet its permit obligations. Petitioners are concerned, however, that under the permit as written the permit requirements applicable to Parcel E will be transferred to Phoenix Washington when that parcel is conveyed. They object to any such transfer and to the possibility of being named as parties to the permit.

Under the rules governing this proceeding, the Region's permit decision is not subject to automatic review. See 40 CFR §124.19. 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. The preamble to the regulations states 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). Petitioners thus have the burden of demonstrating that review is warranted.

Petitioners' concerns are not yet ripe for review. They acknowledge that the "threat [of being named as parties to the permit] has not occurred, and may never occur." Petition at 2. The petition is merely a protective filing "to preserve fully all rights to object" if they are subjected to the permit. Id. Petitioners' proper course of action, however, is to pursue whatever review procedures are available if and when the permit is modified after the conveyance of Parcel E. The Agency's formal administrative appeal procedures should not be used to pursue speculative concerns. The petition is denied.

So ordered.

Dated: Jan. 13, 1989

Lee M. Thomas
Administrator

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing order in the Matter of Hytek Finishes Company, RCRA Appeal No. 88-45, have been served on the following persons in the manner indicated:

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Dated: January 17, 1989

Brenda H. Selden, Secretary
to the Chief Judicial Officer