RCRA Permit Appeal Fact Sheet **1991**

FACILITY: Atlas Environmental Services, Inc. (AES)
Joplin, Missouri
MOD 985 798 164
RCRA Appeal No. 91-18

PETITIONERS: Jim Mueller, Eileen Nichols, Brenda White, and Linda Poe

PETITION FILED: August 16, 1991

STATUS OF PETITION: See Permit Appeal Status Report

ISSUES:
- Joint permitting
- Miscellaneous other (cumulative impact of expected air emissions; design flaw in the waste analysis sampling; improper assessment of existing groundwater contamination; incinerator feed rates; insufficient geologic and hydrologic data; and lack of confirmation of miscellaneous unit operations)

Summary of Petition:

Jim Mueller, Eileen Nichols, Brenda White, and Linda Poe are petitioning for review of the incinerator permit issued jointly by Region 7 and the Missouri Department of Natural Resources (MDNR) on July 18, 1991, to Atlas Environmental Services' proposed Joplin, Missouri facility. Specifically, the petitioners contend that the proposed facility is experimental and Region 7 has never processed or approved a permit for incineration of explosives of this nature. Furthermore, the petitioners maintain that given the lack of experience with incineration and munitions on the part of the permittee, the abysmal historical and environmental record of the permittee's owner at the same site, the lack of precedent for treating certain waste streams which the facility plans to incinerate, the fragile karst geology of the site, and the imminent hazard presented by the operation which the permittee has itself identified, the permit should be denied.

- **Joint Permitting.** The petitioners maintain that there are inconsistencies with the portions of the permit issued by MDNR and Region 7. Specifically, the petitioners contend that Section 16 of the permit incorporates by reference special condition II of the MDNR portion of the permit, which refers to miscellaneous units. However, the petitioners contend that special condition II of the MDNR permit refers to facility inspections only, whereas special condition IV, not II, contains the provisions that pertain to the proposed miscellaneous unit (e.g., storage and feed handling building).

- **Cumulative Impact of Expected Air Emissions.** The petitioners argue that the permit fails to mention that the facility will be sited on property occupied by the single largest air polluter in the area. Furthermore, the petitioners maintain that cumulative impact of expected air emissions from the miscellaneous unit, expected incinerator emissions and existing emissions are not discussed.

- **Design Flaw in the Waste Analysis Sampling.** The petitioners contend that waste load confirmation and waste analysis sampling of inbound reactive waste (including munitions and nitroglycerin-based commercial explosives) will be conducted in the vicinity of the miscellaneous unit (e.g., storage and feed handling building). According to the petitioners, the miscellaneous unit's design fails to require waste analysis of newly arrived waste to take place in a bermed or other area sufficiently designed to prevent propagation of an explosive in either direction between the miscellaneous unit and a truckload of reactive waste. The petitioners maintain that such a design flaw is unnecessary and represents an imminent hazard to human health and the environment.

- **Improper Assessment of Existing Groundwater Contamination.** The petitioners contend that both Region 7 and MDNR know that the shallow aquifer under and around the site is contaminated with ammonia and nitrates due to ammonia nitrate fallout from the Atlas Powder Company Prill Tower. The petitioners argue that the permittee's statement that "the groundwater is not impacted at this time," was not based on a complete water analysis but rather on water samples obtained from only three perimeter monitoring wells that were tested for only a few selected contaminants.

- **Incinerator Feed Rates.** The petitioners contend that many experts in the explosive industries believe that the proposed wastes (e.g., nitroglycerin (NG) in the form of a high order detonation explosive) cannot be successfully incinerated in the amounts that the permit allows. While munitions containing NG have and are being incinerated at Department of Defense facilities, the petitioners maintain that NG in commercial explosives has not been previously incinerated for the following reasons:

  - NG in commercial explosives does not have the same properties or reactivity as NG found in munitions;

  - NG in munitions is sensitized to burn at a controlled rate while NG in commercial explosives is not; and

  - NG begins to decompose at 50 degrees centigrade and self-detonates at 215 degrees centigrade to 218 degrees centigrade.

Furthermore, the petitioners maintain that the permittee itself considers NG to be such an imminent hazard that even though it is one of the design basis feeds, and even though the permittee desires to incinerate NG at the rate of 150 pounds/hour once full operation is achieved, the permittee refused to trial burn NG in quantities larger than 13.23 pounds/hour. The petitioners contend that AES has determined that it is not in the best interest of the public to demonstrate maximum explosive weight feed conditions in the trial burn with a material that presents the static, friction, and impact hazards of a nitroglycerin based explosive. Furthermore, the petitioners maintain that AES stated that it does not want to assume the risk to the general public caused by unduly exposing untrained personnel in the handling of such explosive materials. However, the petitioners contend that AES's claim that they will be using personnel not trained in handling explosives contradicts the statement in the permit that implies that the trial burn contractor will have been fully trained in TSD explosives handling, including nitroglycerin. The petitioners argue that a permit cannot be issued to incinerate a quantity of material on an operational basis that both the permittee and the permit writer agree is too hazardous to use in a trial burn.

Finally, the petitioners object to the use of naphalene and Powermax 140 ammonium nitrate explosive as the trial burn surrogates. The petitioners argue that these surrogates do not resemble NG's static, impact friction and sensitivity during feed preparation, waste charging, and incineration, and the bulk strength of NG compared to ammonium nitrate is 50 percent greater.

- **Insufficient Geologic and Hydrologic Data.** The petitioners argue that the permittee did not test bore the intended site locations to the bedrock to determine site suitability. The petitioners maintain that the permit does not mention that the site is underlain by a high water table, fractured and incompetent bedrock, and a sub-surface collapse structure that is immediately under or adjacent to the intended miscellaneous unit (e.g., storage and feed handling building). The petitioners further maintain that the circumference of the collapsed structure has not been determined, nor is it known whether other similar collapsed features exist under the planned locations of the storage and feed handling building, the incinerator building, and/or the reactive wastes storage buildings.

- **Lack of Confirmation of Miscellaneous Unit Operations.** The petitioners contend that the permitted activities for the miscellaneous unit are not being properly addressed in the permit. The petitioners argue that few if any of the specialized waste feed preparations operations (e.g., defusing, pulling, sheering, punching, sawing) will be required to prepare trial burn materials. Furthermore, the petitioners argue that the permittee will not be required to demonstrate proficiency with each planned treatment procedure in the miscellaneous unit

even though the permittee has no historical experience with munitions disassembly. In addition, the petitioner maintains that negative pressure, VOC, or particulate emission monitoring is not required to be conducted during the trial burns.

(Slip Opinion)

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BEFORE THE ENVIRONMENTAL APPEALS BOARD
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C.

In the Matter of:	)	
Atlas Environmental Services, Inc. and Atlas Powder Company	)	RCRA Appeal No. 91-18
Permit No. MOD 985 798 164	)	

[Decided April 22, 1992]

ORDER DENYING REVIEW

Before Environmental Appeals Judges Ronald L. McCallum, Edward E. Reich, and Timothy J. Dowling (Acting).

ATLAS ENVIRONMENTAL SERVICES, INC. ET AL.

RCRA Appeal No. 91-18

ORDER DENYING REVIEW

Decided April 22, 1992

Syllabus

Petitioners have filed a petition for review challenging U.S. EPA Region VII's decision to issue the federal portion of a permit under Section 3005 of the Resource Conservation and Recovery Act of 1976 (RCRA). The permit is for a reactive waste incinerator (for disposal of explosives) and its associated storage/feed handling building in Joplin, Missouri. The petition focuses on the operating requirements for the storage/feed handling building, which is regulated as a Miscellaneous Unit ("MU") under Subpart X of 40 CFR Part 264. The petition asks that review be granted with respect to: (1) a typographical error in the federal portion of the permit, which references the wrong section of the state portion of the permit; (2) the alleged failure by the Region to require accurate characterization of the site's hydrologic and geologic conditions; (3) the alleged failure of the Region to require an accurate description of existing groundwater quality at the site; (4) the alleged failure of the application and the permit to acknowledge that the MU is located on property occupied by the single largest air polluter in the area, and the alleged failure of the Region to consider the impact of the facility on air quality; (5) the location of the MU near the area where waste load confirmation and analysis will take place; (6) the imminent danger to human health posed by incineration of nitroglycerin, as evidenced by the fact that the trial burn, for safety reasons, will burn only a small percentage of the explosive material that will be burned once the facility is fully operational; (7) the failure of the permit to require trial runs of activities to be conducted inside the MU; and (8) "policy considerations" such as the experimental nature of the facility, the Region's lack of experience in permitting this type of facility, the permittees' lack of experience in operating this type of facility, the permittees' alleged "abysmal" environmental record, and the imminent hazard of the facility.

Held: Review is denied as to all issues raised in the petition. With respect to the typographical error, review is denied because the Region has represented that the error will be corrected through a modification of the permit. With respect to the other issues, review is denied because Petitioners have not identified any clearly erroneous factual or legal conclusions or any important policy matters that should be reviewed.

Before Environmental Appeals Judges Ronald L. McCallum, Edward E. Reich, and Timothy J. Dowling (Acting).

Opinion by Judge Reich:

Four citizens, Eileen Nichols, Brenda White, Linda Poe, and Jim Mueller, have filed a petition for review challenging U.S. EPA Region VII's decision to issue the federal portion of a permit under Section 3005 of the Resource Conservation and Recovery Act of 1976 (RCRA), as amended, 42 U.S.C. §6925, to Atlas Powder Company (Atlas), as owner, and Atlas Environmental Services, Inc. (AES), as operator. [1] The permit is for a reactive waste incinerator (for disposal of explosives) and its associated storage/feed handling building in Joplin, Missouri. The federal portion of the permit (Part II) imposes corrective action requirements for the entire facility under the 1984 Hazardous and Solid Waste Amendments (HSWA) and imposes operating requirements for the storage/feed handling building under Subpart X of 40 CFR Part 264. [2] The non-federal portion of the permit (Part I) was issued by the Missouri Department of Natural Resources (MDNR) and contains operating requirements for the incinerator. At the request of the Agency's Judicial Officer, the Region filed a response to the petition for review. [3]

Under the rules that govern this proceeding, a RCRA permit 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. *See* 40 CFR §124.19; 45 Fed. Reg. 33412 (May 19, 1980). The preamble to the Federal Register notice in which Section 124.19 was promulgated 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

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[1] AES is a wholly-owned subsidiary of Atlas.

[2] While Missouri is authorized to issue RCRA permits in lieu of the Agency, it is not authorized to impose standards under Subpart X because it has not revised its RCRA program to include such standards. *See* 52 Fed. Reg. 46946, 46961-62 (December 10, 1987)(State that is otherwise authorized to issue RCRA permits in lieu of the Agency may not impose Subpart X requirements until it revises its RCRA program to include such requirements).

[3] At that time, the Agency's Judicial Officers provided support to the Administrator in his review of permit appeals. Subsequently, effective on March 1, 1992, the position of Judicial Officer was abolished, and all cases pending before the Administrator, including this case, were transferred to the Environmental Appeals Board. *See* 57 Fed. Reg. 5321 (Feb. 13, 1992).

is on the petitioners. The petitioners in this case have not carried that burden.

The petition focuses on the storage/feed handling building at the facility, which is separate from the incinerator. At the storage/feed handling building, reactive waste will be processed to reduce its size, alter its configuration, reduce its explosive nature, and/or repackage it to make it suitable for introduction to the incinerator. Under the RCRA scheme, the storage/feed handling building is classified as a Miscellaneous Unit (MU) governed by Subpart X of 40 CFR Part 264. Subpart X was promulgated in 1987 as a catch-all category for hazardous waste management units that did not fit into any of the then-existing regulatory categories in Part 264. *See* 52 Fed. Reg. 46946 (December 10, 1987) (final rule). Environmental performance standards for MUs are set out at 40 CFR §264.601 of Subpart X, which gives the Agency considerable flexibility in choosing permit conditions appropriate to a particular MU.

Typographical Error: Petitioners begin by pointing out a typographical error in the federal portion of the permit. Even though MDNR does not have authorization to regulate the MU in this case, it included in its portion of the permit (Part I) a Special Condition IV, which sets forth requirements relating to the MU. The Region, which is authorized to regulate the MU, attempted to incorporate by reference this Special Condition IV into the federal portion of the permit. As Petitioners correctly point out, however, the Region actually incorporated Special Condition II of MDNR's portion of the permit, the wrong section. The Region concedes that the federal portion of the permit refers to the wrong section of MDNR's portion of the permit. The Region states, however, that AES has indicated it will cause the permit to be modified under the procedures set out at 40 CFR §270.42 to correct this mistake. The Region represents that it will ensure completion of the amendment. Accordingly, review of this issue is denied.

Geologic Suitability of Site: Petitioners assert that geologic information available to the permittee and the Region, but not included in the permit application, suggests that the ground underlying the proposed site of the proposed MU is unstable and therefore unsuitable for the MU. Specifically, Petitioners say that a subsurface "collapse

structure" lies immediately under or adjacent to the proposed MU. Petitioners also point out that a high water table lies under the site. Petitioners argue that such information should have been included in the permit application and that leaving it out of the permit application was a violation of 40 CFR §§270.23(b) & 264.601(a)(2). Section 264.601(a)(2) provides that, in writing a permit for an MU, the permit-writer must consider the geologic and hydrologic conditions of the site to ensure that the proposed MU will not cause adverse effects on human health or the environment through a degradation of the groundwater. [4] Section 270.23(b) provides that a permit application for an MU must include information about the hydrologic, geologic, and meteorologic conditions at the proposed site. [5]

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[4] Under 40 CFR §264.601, a permit for a miscellaneous unit must contain "such terms and provisions as necessary to protect human health and the environment." Section 264.601 provides that protection of human health and the environment includes:

> (a) Prevention of any releases that may have adverse effects on human health or the environment due to migration of waste constituents in the ground water or subsurface environment, considering:
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> * * *
>
> (2) The hydrologic and geologic characteristics of the unit and the surrounding area;
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> * * *

40 CFR §264.601(a)(2).

[5] Section 270.23(b) provides that Part B of an application for a miscellaneous unit must include:

> Detailed hydrologic, geologic, and meteorologic assessments and land-use maps for the region surrounding the site that address and ensure compliance of the unit with each factor in the environmental performance standards in 40 CFR §264.601. If the applicant can demonstrate that he does not violate the environmental performance standards of §264.601 and the Director agrees with such demonstration, preliminary hydrologic, geologic, and meteorologic assessments will suffice.

40 CFR §270.23(b).

In response, the Region points out that, in some cases, Section 270.23(b) provides that detailed information is not necessary and that "preliminary" hydrologic and geologic information will suffice. [6] The Region argues that in this case, the preliminary hydrologic and geologic information contained in the permit application is sufficient. The Region concedes that the available geologic evidence suggests that varying levels of bedrock underlie the MU site, but the Region rejects the suggestion that the MU site necessarily sits on top of a "collapse structure." The Region also concedes that the average depth to groundwater is only 13.5 feet. The Region contends, however, that while such considerations as the varying level of bedrock and the depth of the water table would be important if the permit were for a land disposal facility, the permit for the MU in this case need not contain such an extensive geologic and hydrologic characterization of the site. The Region notes that, at any one time, the MU will handle no more than 8,320 pounds of reactive waste (including the weight of the hardware encasing the waste). *See* Permit, Part I, Special Condition IV.A.2. The Region also notes that the permit conditions governing the MU were derived in part from Subparts I (use and management of containers) and J (tanks) of 40 CFR Part 264. Those permit conditions require the permittee to take certain steps to ensure the physical integrity of the MU and to maintain a secondary containment system in case of leaks or spills. *See* Permit, Part I, Special Condition IV. For example, the containment system must be designed so that the concrete base will be free of cracks or gaps. The concrete base must be coated with an impervious sealant to ensure that potential leaks, spills, or accumulated precipitation will not migrate into pores or joints. *See* Permit, Part I, Special Permit Condition IV; Permit Application, Section 4. In addition, once each operating day, the permittees must conduct a thorough inspection of the MU for signs of corrosion or release. *See* Permit, Part I, Special Permit Condition IV.E.

For the reasons outlined in the Region's response as noted above, we conclude that the permit application, as written, does not violate Section 270.23(b) and the permit, as written, does not violate Section 264.601. We also conclude that, with respect to this issue, the Petitioners have not carried their burden of identifying either a clear

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[6] *See* note 5 *supra*.

factual or legal error or an important policy consideration or exercise of discretion that should be reviewed. Review of this issue is therefore denied.

Condition of the Groundwater: To ensure that an MU permit will protect human health and the environment, Section 264.601(a)(3) provides that the permit writer must take into consideration the "existing quality of the ground water, including other sources of contamination and their cumulative impact on the ground water." Petitioners assert that the groundwater in the shallow aquifer under and around the site is contaminated with ammonia and nitrates from the activities of Atlas, the owner of the proposed facility and AES' parent company. Petitioners argue that this contamination is not accurately described in the permit. Petitioners also charge that groundwater samples from the perimeter monitoring wells are tested for only a small number of contaminants.

In response, the Region states that it is aware of the contamination of the shallow aquifer underlying the Atlas facility. The Region also agrees that groundwater samples for the MU site were tested for only a few select contaminants. The Region explains that it did not require a complete water analysis for the groundwater at the site because there is no reason to believe that the MU will have any effect on the groundwater. In this regard, the Region notes that the MU is not a land disposal facility. The Region also explains that the condition of the groundwater at the site is being addressed through the corrective action requirements of Part II of the permit (Sections 1, 5, 6, 7, & 8) and through a Consent Order applying to Atlas, which is incorporated by reference into Part II of the permit.

For the reasons outlined in the Region's response, we conclude that the permit, as written, does not violate Section 264.601(a)(3). We also conclude that, with respect to this issue, petitioners have not carried their burden of identifying either a clear factual or legal error or an important policy consideration or exercise of discretion that should be reviewed. Review of this issue is therefore denied.

Effect on Air Quality: Section 264.601(c)(5) provides that the permit writer must consider, among other things, the "existing quality of the air including other sources of contamination and their cumulative

impact on the air." Petitioners argue that, because the proposed MU will be situated on property occupied by the largest air polluter in the area, the permit should discuss the cumulative impact of expected air emissions from the MU in combination with expected incinerator emissions and existing emissions. Petitioners charge that the absence of such a discussion in the permit violates Section 264.601(c)(5).

According to the permit application, the only pollutant emissions anticipated from the MU are particulates generated during drilling, punching, sawing, and otherwise altering the waste feed materials, and Volatile Organic Compounds (VOCs) from the evaporation of the liquids used to desensitize bulk explosives during storage and transport. *See* Permit Application, Part B, Section 17-27. The Region notes that the permit specifies emission control devices for the MU to limit Volatile Organic Compounds (VOCs) and particulate emissions, and contends that ambient air emissions from the MU will be negligible. The Region also points out that Section 14 in Part II of the permit provides that the MU must comply with certain requirements of 40 CFR Subpart AA of Part 264 (Air Emissions Standards for Process Vents) and of Subpart BB of Part 264 (Air Emission Standards for Equipment Leaks). As for the existing air quality conditions, the permit application states that

> [t]he Joplin area currently has attainment status as defined by the Clean Air Act. This means that none of the National Ambient Air Quality Standards are being exceeded.

Permit Application, Part B, Section 17-31.

The explanation set forth in the Region's response is persuasive, and we conclude that, with respect to the issue of whether the permit violates Section 264.601(c)(5), petitioners have not carried their burden of identifying either a clear factual or legal error or an important policy consideration or exercise of discretion that should be reviewed. Review of this issue is therefore denied.

Location of Miscellaneous Unit: Petitioners assert that waste load confirmation and waste analysis sampling of incoming reactive waste (including munitions and nitroglycerin-based commercial

explosives) will be conducted in the vicinity of the MU. Petitioners are concerned that an explosion in the waste sampling area could cause an explosion in the MU or vice versa. Petitioners believe, therefore, that the MU's proximity to the waste sampling area violates Section 264.601, which provides that miscellaneous units must be "located * * * in a manner that will ensure protection of human health and the environment * * *."

The Region responds that this issue may not be raised now because it was not raised either at the public hearing or during the comment period, even though it was reasonably ascertainable at that time. *See* 40 CFR §§124.19(a) & 124.13. The Region also points out that the MU is approximately 400 feet from the parking area where waste analysis will be performed. The Region notes further that the permit prohibits chemical testing or treatment of the waste at the waste sampling area.

In light of the Region's assertion that this issue was not raised during the public comment period and Petitioners' failure to include a demonstration in the petition for review that this issue was raised at the public hearing or during the public comment period, as required by Section 124.19, we conclude that this issue has not been preserved for review. [7] We also conclude that, even if the issue had been properly preserved, petitioners have not identified either a clear factual or legal error or an important policy consideration or exercise of discretion that should be reviewed. Review of this issue is therefore denied.

The Trial Burn Plan: Petitioners believe that the handling and incineration of nitroglycerin at the proposed facility once operational will pose a threat to human health and the environment. As evidence, Petitioners point out that, to minimize risk to the public, the

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[7] Section 124.19(a), which governs this appeal, contains the following requirement:

> The petition shall include a statement of the reasons supporting that review, *including a demonstration that any issues being raised were raised during the public comment period (including any public hearing) to the extent required by these regulations* * * *.

40 CFR §124.19(a) (emphasis added). Under Section 124.13, issues must be raised during the public comment period if they are "reasonably ascertainable." 40 CFR §124.13.

independent third parties who will conduct the trial burn for the incinerator will burn only a small fraction of the nitroglycerin that will be burned at any one time once the incinerator is fully operational. Petitioners argue that if it is too dangerous to burn the full amount of nitroglycerin during the trial burn, then it is too dangerous to burn the full amount once the incinerator is operating at full capacity.

In the permit application, Permittees explain that only a small amount of nitroglycerin will be burned at the trial burn because the trial burn will be conducted by untrained third parties over whom Permittees have no control. Permittees refuse to assume the risk of harm to the public that might result if the full amount of nitroglycerin were burned at the trial burn. *See* Application/Permit Page 12-30(c) (quoted in Petition for Review, at 8).

In its response to the petition, the Region notes that Petitioners' concerns about nitroglycerin focus on both the incinerator and the MU. The Region points out that the two units are separate, and that only the MU is permitted by EPA, whereas the incinerator is governed by the state-issued portion of the permit. The Region, therefore, addresses Petitioners' concerns only as they relate to the MU. The Region says that Atlas, AES' parent company, has been manufacturing nitroglycerin-based explosives for many years and has developed specific handling procedures and safety guidelines for that activity. The Region also points to several permit provisions designed to promote the safe handling of nitroglycerin and other reactive wastes. The Region states, moreover, that all personnel must be trained before performing hazardous waste treatment processes without supervision, and must follow the standards set out in the "DOD Contractor's Safety Manual for Ammunition and Explosives."

For the reasons outlined in the Region's response, we conclude that, with respect to this issue, Petitioners have not carried their burden of identifying either a clear factual or legal error or an important policy consideration or exercise of discretion that should be reviewed. Review of this issue is therefore denied.

Miscellaneous Objections: Petitioners make the following objections about the MU operating procedures: (1) few, if any, of the specialized waste feed preparation activities to be carried out in the MU

(e.g., de-fusing, pulling, sheering, punching, sawing) will be performed when the trial burn materials are prepared; (2) the permit does not require the permittee to demonstrate proficiency with each planned treatment procedure in the MU, even though the permittee has no historical experience with munitions disassembly; (3) the permit should require the permittee to deal with negative pressure, VOCs, or particulate emissions at the MU during the trial burn; and (4) the activities at the MU need far greater oversight than the permit requires.

The last of these objections is too vague to sustain. As for the first three objections, the common theme is that the permittees should be required to conduct trial runs of the activities to be carried out inside the MU before the incinerator goes into full operation. The Region does not directly respond to the question of whether trial runs of these activities should be conducted. Instead, the Region essentially argues that such activities will be subject to regulations and permit conditions that will ensure protection of human health and the environment. With respect to Petitioners' concerns about air emissions, the Region points out that it is not necessary to have negative pressure in the MU since no explosions or burning will take place there, and that VOCs and particulate emissions will be controlled with activated carbon and particulate filters.

After a review of the record, and based on the explanations contained in the Region's response, we conclude that the Region did not clearly err by failing to require trial runs for the activities to be conducted in the MU. We also conclude that Petitioners have not otherwise carried their burden of identifying either a clear factual or legal error or an important policy consideration or exercise of discretion that should be reviewed. Review of this issue is therefore denied.

Policy Considerations: Petitioners urge review of the permit for the following "policy considerations": (1) the facility is experimental; (2) EPA has never processed a permit for incineration of explosives of this nature; (3) the permittees lack experience with munitions and with incineration in general; (4) the permittee's owner, Atlas Powder Company, has an "abysmal" historical and environmental record at the same site; (5) there is no precedent for treating some of the waste streams under consideration here; (6) the geology of the site

is unstable; and (7) the waste sampling area will be too close to the MU.

The sixth and seventh of these "policy considerations" have been dealt with in earlier parts of this opinion. As for the rest, we believe that the Region has given them adequate consideration. With respect to the first concern, the Region rejects the description of the facility as "experimental," arguing that all of the treatment technologies to be used at the facility have been proven. With respect to the second concern, the Region argues that the permit as written is adequate to protect human health and the environment and that it is thus irrelevant that EPA has never processed or approved a permit for incineration of explosives of this nature. With respect to the third issue, relating to the permittees' alleged lack of expertise, the Region notes that the permittees have demonstrated through the permit application that they have sufficient expertise to incinerate reactive waste. With respect to the fourth issue, relating to Atlas Powder's alleged "abysmal" environmental record, the Region responds that there are no specific federal laws or regulations requiring consideration of the facility's past environmental record. The Region also notes that the MDNR does not consider AES to be a "habitual violator." Finally, with respect to the fifth issue, relating to the alleged lack of precedent for treating certain waste streams to be incinerated at the facility, the Region states that the facility will follow Department of Defense procedures for treating the permitted waste streams prior to incineration. Based on the Region's response, we conclude that none of Petitioners' concerns rises to the level of an important policy consideration justifying review under 40 CFR §124.19(a).

In summary, none of the bases set forth in the petition for review meets the threshold level for granting review, and the petition is accordingly denied.

So ordered.

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Order Denying Review in the matter of Atlas Environmental Services, Inc., RCRA Appeal No. 91-18, were sent to the following persons in the manner indicated.

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