RCRA Permit Appeal Fact Sheet **1991**

FACILITY: U.S. Department of Energy, Pinellas Plant (DOE/GEND)
Largo, Florida
FL6 890 090 008
RCRA Appeal No. 91-3

PETITIONER: The League of Women Voters North Pinellas County, Inc. (LWVNPC)

PETITION DATED: February 6, 1991

STATUS OF PETITION: See Permit Appeal Status Report

ISSUES:
- Corrective action issues (standards for cleaning up radioactive waste)
- Miscellaneous other issues (air emissions; regulation of plutonium)

Summary of Petition:

LWVNPC requests that the permit for thermal treatment of hazardous waste at DOE/GEND be denied, and that Region 4 take prompt action to regulate all radioactive and hazardous air emissions and plutonium operations at the facility. The petitioner also requests that EPA ensure adequate standards for cleanup that limit exposure to radiation.

- **Standards for Cleaning Up Radioactive Waste.** The petitioner requests that EPA re-examine the low-level radionuclide regulations to determine whether adequate protection is afforded if DOE applies the Nuclear Regulatory Commission's (NRC) policy of declassification called "Below Regulatory Concern." This policy was promulgated in June 1990, at the same time that new reports of scientific studies showed that exposure to low-level radioactive substances was more harmful than previously known. LWVNPC believes that EPA, and not NRC, should set standards for radioactive wastes. Deregulation of low-level rad-wastes under the NRC policy affects cleanup of soils, water, and groundwater at the installation.

- **Air Emissions.** LWVNPC requests prompt action for regulating all radioactive and hazardous air emissions at DOE/GEND. Although Region 4 determined that air permits are not required except for new construction under the 1985 National Emission Standards for Hazardous Air Pollutants (NESHAPs), the petitioner maintains that new emissions standards promulgated on December 15, 1989, and/or required under the Clean Air Act of 1990, as well

as new knowledge of the effect of exposure to low-level radionuclides, constitute grounds for policy considerations that the Administrator should review. The petitioner notes that even the DOE Tiger Team criticized the facility's monitoring of radionuclides. The Tiger Team also noted that new construction was starting up without air operating or air construction permits.

- **Regulation of Plutonium.** LWVNPC requests regulation of DOE/GEND according to the standards of 40 CFR Section 191.04. The petitioner notes that the Tiger Team found insufficient documentation of plutonium monitoring for soil and for stack releases in Building 400.

(Slip Opinion)

NOTICE: This opinion is subject to formal revision before publication. Readers are requested to notify the Environmental Appeals Board, U.S. Environmental Protection Agency, Washington, D.C. 20460, of any typographical or other formal errors, in order that corrections may be made before publication.

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

In the Matter of:	)	
	)	
U.S. Department of Energy	)	RCRA Appeal No. 91-3
Pinellas Plant	)	
	)	
Permit No. FL6 890 090 008	)	

Decided July 8, 1992

ORDER DENYING REVIEW

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

U.S. DEPARTMENT OF ENERGY,
PINELLAS PLANT

RCRA Appeal No. 91-3

ORDER DENYING REVIEW

Decided July 8, 1992

Syllabus

The League of Women Voters of North Pinellas County, Inc., petitioned for review of the federal portion of a permit issued by Region IV under Section 3005 of the Resource Conservation and Recovery Act to the U.S. Department of Energy (owner) and General Electric Company (operator) for the Pinellas Plant in Largo, Florida, which manufactures neutron generators and electronic and mechanical components for the weapons industry. Petitioner asks that authorization for thermal treatment of hazardous waste be denied, and raises concerns about the regulation of radioactive waste by the permit.

Held: The petition for review is denied because it fails to identify any factual or legal errors or any policy considerations or exercises of discretion that warrant review.

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

Per Curiam

Petitioner, the League of Women Voters of North Pinellas County, Inc., seeks review of the federal portion of a permit issued under Section 3005 of the Resource Conservation and Recovery Act of 1976 (RCRA), as amended, 42 U.S.C. §6925, for the Pinellas Plant in Largo, Florida, which manufactures neutron generators and electronic and mechanical components for the weapons industry. Region IV issued the federal portion of the permit on February 9, 1990 to the United States Department of Energy as owner, and the General Electric

Company as operator, of the Pinellas Plant. [1] The federal portion of the permit imposes operating requirements for the management of hazardous wastes under the 1984 Hazardous and Solid Waste Amendments (HSWA) to RCRA. [2] As requested by the Agency's Judicial Officer, [3] Region IV submitted a response to the petition for review and relevant portions of the administrative record.

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 §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 is on the petitioner.

Petitioner seeks review on four grounds. First, Petitioner asks that authorization for thermal treatment of hazardous waste be denied

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[1] Section 124.19(a) provides that a petition for review may be filed within thirty days after service of notice of the Regional Administrator's permit decision. The Region failed to serve a copy of its permit decision on Petitioner when that decision was issued on February 9, 1990. In an effort to preserve Petitioner's appeal rights, the Region served a copy of its permit decision upon Petitioner on January 9, 1991, almost a full year later. The Region's action in this regard is problematic because the normal time for reviewing the permit has long since expired. In other circumstances, the Region's actions might well raise serious equitable concerns, particularly if attempted in a proceeding involving a permit for new construction under RCRA or the Clean Air Act's Prevention of Significant Deterioration (PSD) Program. Because we deny review on the merits, however, we need not address whether the Region's action in fact preserved any right to substantive review of the issues raised by the petition.

[2] The non-HSWA portion of the permit was issued by Florida, an authorized State under RCRA §3006(b), 42 U.S.C. §6926(b).

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

because of concerns about the safety of open burning. [4] Second, Petitioner requests regulation of all radioactive and hazardous air emissions at the Pinellas Plant. Third, Petitioner requests that the permit apply the standards of 40 CFR §191.04 to the operations at Pinellas. [5] Finally, Petitioner requests re-examination of low-level radionuclide regulations to determine whether adequate protection is afforded if DOE applies the Nuclear Regulatory Commission policy of exempting low-level radioactive waste from regulation.

In much more detail than provided here, the Region responds that Petitioner has not met its burden of demonstrating that review is warranted under §124.19 because the issues raised by Petitioner are beyond the scope of the federally issued portion of this permit. Concerning Petitioner's request to deny authorization for thermal treatment of hazardous waste, the Region correctly notes that the thermal treatment process for this facility is presently governed by the state, not federal, portion of this permit. The Region also correctly explains that all other concerns raised by Petitioner pertain to matters regulated by provisions other than HSWA, the authority used by the Region in issuing this permit. For the reasons set forth in Region IV's "Response to the League of Women Voters Request for Permit Review," which reasons are hereby adopted and incorporated by reference as if fully set forth herein, Petitioners have failed to show that the Region's permit determination in this case is clearly erroneous or otherwise warrants review under 40 CFR §124.19(a). Accordingly, review is hereby denied.

So ordered.

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[4] Thermal treatment of hazardous waste at the Pinellas Plant is currently regulated under the State-issued portion of the RCRA permit. On May 2, 1989, DOE submitted a permit application to EPA for the thermal treatment process at the Pinellas Plant under Subpart X of 40 CFR Part 264. EPA has until November 8, 1992, to grant or deny this request. 42 U.S.C. §6925(c)(2)(B).

[5] This regulation is found in 40 CFR Part 191, which is entitled "Environmental Radiation Protection Standards for Management and Disposal of Spent Nuclear Fuel, High-Level and Transuranic Radioactive Wastes."

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Order Denying Review in the Matter of U.S. Department of Energy, Pinellas Plant, RCRA Appeal No. 91-3, were sent to the following persons in the manner indicated:

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By Hand:

Bessie Hammiel
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Dated: JUL 8 1992

Johnese K. Wilson for
Brenda H. Selden
Legal Staff Specialist