RCRA Permit Appeal Fact Sheet **1988**

FACILITY: National Steel Corporation, Midwest Steel Division (Midwest Steel)
Portage, Indiana
IND 016 584 641
RCRA Appeal No. 88-38

PETITIONER: Midwest Steel

PETITION FILED: December 8, 1988

STATUS OF PETITION: See Permit Appeal Status Report

ISSUES:

- Other corrective action issues (submittal of information on newly-discovered solid waste management units; financial assurance; clean closure versus corrective action)
- Miscellaneous other issues (land disposal restrictions; acceptance of off-site waste; new landfill notification and technical standards requirements; boundary of the existing landfill)

Summary of Petition:

Midwest Steel is petitioning for review of specific permit conditions within its facility's final Federal RCRA permit, signed on November 7, 1988. Five major areas of concern are raised by the petitioner: (1) corrective action requirements; (2) land ban requirements; (3) acceptance of off-site waste; (4) new landfill notification and technical standards requirements; and (5) boundary of the regulated landfill. In addition, Midwest Steel raises procedural issues regarding permit conditions not included in the draft permit.

- **Submittal of Information on Newly-Discovered Solid Waste Management Units.** Midwest Steel believes that all of the permit's corrective action conditions and provisions exceed the agency's statutory authority under Section 3004(u) of RCRA, as well as the regulatory language of 40 CFR Sections 264.100, 264.101, and 270.14.

  - Midwest Steel argues that EPA does not have the authority to require the petitioner to submit information on newly-discovered solid waste management units (SWMUs)within 30 days after discovery. The petitioner contends that 40 CFR Section 270.14 does not require permitted facilities to provide new SWMU identification information, and states that such information should be gathered only at permit reissuance or modification.

Subsequently, the petitioner also contends the permit condition requiring Midwest Steel to submit a written RFI work plan within 120 days of identifying a new SWMU.

- **Financial Assistance.** Midwest Steel contends that it should have 120 days after the effective date of the permit to obtain financial assurance for corrective action. In addition, the petitioner contends that the permit should not restrict the type of mechanism used by the petitioner, since the existing Federal regulations do not prescribe specific mechanisms for demonstrating financial assurance for corrective action.

- **Clean Closure versus Corrective Action.** Although Region 5 has identified one lagoon at the facility as a nonregulated unit, the permit requires the petitioner to clean close this lagoon in accordance with the facility's approved closure plan for the remaining lagoons. A second permit condition allows the Region to require corrective action at this one lagoon after the unit has been certified clean closed. Midwest Steel believes that clean closure is protective of human health and the environment, and that any additional corrective action efforts would be duplicative of clean closure and would result in no environmental benefit. The petitioner contends that this provision was not included in the draft permit and, therefore, was not subject to public comment and review.

- **Land Disposal Restrictions.** Midwest Steel objects to permit conditions requiring it to have all computerized land disposal records printed on hard copy and certified by an authorized representative at least quarterly. Specifically, Midwest Steel contends that there is no regulatory authority under 40 CFR Part 268 upon which this permit provision may be based.

- **Acceptance of Off-Site Waste**. With limited exception, the final permit prohibits Midwest Steel from accepting any off-site wastes for disposal in its Greenbelt Landfill. EPA and the Indiana Department of Environmental Management (IDEM) interpret this condition as applying to process wastewaters from the Enamel Products and Plating Company (EP&P), a source that Midwest Steel contends is on-site.

  - Midwest Steel states that the EP&P operation is conducted on a small parcel of land surrounded on all sides by Midwest Steel's operations.

  - The petitioner argues that EPA and IDEM can not infer that one facility is either on-site or off-site with respect to the other based solely on the fact that the two operations have different identification numbers.

  - Midwest Steel also contends that this condition was not included in the draft permit and, therefore, was not subject to public comment and review.

- **New Landfill Notification and Technical Standards Requirements.** Midwest Steel contends that permit conditions regarding notification and technical standards requirements for new and expansion landfill units are not applicable to existing operations at the facility, and should be deleted from the permit. The petitioner states that if the facility did choose to expand, it would do so following the permit modification regulations specified by State and Federal law.

- **Boundary of the Existing Landfill.** Midwest Steel contends that the boundary of the Greenbelt Landfill provided in an attachment to the permit is inaccurate, and suggests replacement of this attachment with a more accurate figure.

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

In the Matter of:	
Midwest Steel Division, National Steel Corp.	RCRA Appeal No. 88-38
RCRA Permit No. IND 016 584 641	

ORDER DENYING REVIEW

Pursuant to 40 CFR §124.19, Midwest Steel Division, National Steel Corp., has petitioned for review of the federal portion of a RCRA permit issued by Region V. The permit authorizes continued hazardous waste management at Midwest's facility in Portage, Indiana. As requested by the Agency's Chief Judicial Officer, Region V submitted a response to the petition ("Region Response"), which defends the permit as written and argues that review should be denied.

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. 33,412 (May 19, 1980). The preamble to Section 124.19 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 thus on the Petitioner.

Midwest's petition raises nine issues, none of which satisfies the prerequisites for review. Specifically, Midwest objects to: 1) the prohibition on receipt of off-site waste as applied to waste from the Enamel Products & Plating Company ("EP&P"); 2) the requirement that Midwest notify Region V prior to lateral expansion or replacement of its landfill, and commit to meet minimum technology requirements for any such additions to capacity; 3) the inclusion of any corrective action requirements in the permit; 4) the timing and mechanisms for corrective action financial assurance; 5) the requirement that Midwest promptly report newly identified solid waste management units; 6) the corrective action closure standards for lagoon number 1; 7) the requirement that Midwest prepare a timely Phase 1 Environmental Monitoring Report for all newly identified SWMUs; 8) the permit condition specifying that Midwest may periodically provide certified summaries of computer records to document compliance with land ban recordkeeping requirements; and 9) the permit's inclusion of a landfill boundary map, provided by Midwest, which Midwest now asserts is inaccurate.

The first issue listed above centers on whether EP&P's waste is generated off-site. Midwest represents that EP&P's electroplating operations are surrounded on all sides by Midwest's operations, and argues that EP&P waste is thus on-site as defined in 40 CFR §260.10. In my view, the issue is not yet ripe for disposition. Permit Condition II.B prohibits Midwest from accepting off-site wastes, but it does not expressly

identify EP&P waste as being generated off-site. Although the Region has evidently taken the position that EP&P waste is off-site waste, this position is not reflected in Permit Condition II.B itself. Thus, Midwest is not challenging the permit, but merely Region V's presently intended application of the permit to EP&P waste. Regardless of how EP&P's waste is correctly characterized (on-site or off-site), the permit would not need to be revised. Because review under the rules is limited to "any condition of the permit decision" (§124.19(a)), this appeal is not the proper forum for resolving the issue. [1/]

All other arguments raised by Midwest have been considered and rejected, essentially for the reasons set forth in the Region Response. Issues 3 and 8 were not raised below and thus not properly preserved for review. See 40 CFR §§124.19(a), 124.13. For issues 2-9, Midwest has failed to show that the permit is

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[1/] The issue will not be ripe for resolution until Region V attempts to apply Condition II.B (for example, in an enforcement action) in a manner contrary to Midwest's views on the subject.

based on clear error or otherwise warrants review. For the reasons set forth above and in the Region Response (pp. 10-23), review is denied. [2/]

So ordered.

Dated: AUG 27 1990

William K. Reilly
Administrator

[2/] Midwest requests that the contested portions of the permit be stayed pending any judicial appeal. See Petition at 12. Because Midwest has failed to argue, much less show, that such a stay is in the public interest, necessary to prevent irreparable injury, or otherwise appropriate, its request is denied.

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Order Denying Review in the matter of Midwest Steel Division, National Steel Corp., RCRA Permit Appeal No. 88-38, were sent to the following persons in the manner indicated:

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Dated: 8/28/90

Brenda H. Selden, Secretary
to the Chief Judicial Officer