RCRA Permit Appeal Fact Sheet **1988**

FACILITY: California Thermal Treatment Services, Inc. (CTTS)
Vernon, California
CAD 987 005 670
RCRA Appeal No. 88-47

PETITIONERS:

- Law Offices of the Western Center on Law and Poverty, Inc., (WCLPI) on behalf of the City of Los Angeles, the Mothers of East Los Angeles, Concerned Citizens of South Central, Assemblywoman Lucille Roybal-Allard, Senator Art Torres, and Margarito Gutierrez

- Michele Grumet on behalf of the California Alliance in the Defense of Residential Environments (CADRE), joining the petition for review filed by WCLPI

- Susan Nelson, on behalf of CADRE, the Alysian Height Residence Association, and Friends of Santa Monica Mountains, Parks, and Seashore, joining the petition for review filed by WCLPI

- Virginia Adams and Lucille Gatewood on behalf of the Coalition Against the Pipeline (CAP) and the 77th Street Block Club, joining the petition for review filed by WCLPI

- U.S. Representatives Edward Roybal, Augustus Hawkins, and Matthew Martinez, joining the petition for review filed by WCLPI

- George Cole, Councilman, on behalf of the City of Bell, City Council

- Edmund D. Edelman, Board of Supervisors, Third District, County of Los Angeles

- Richard Adams, Vice Chair, on behalf of CAP and the Coalition Against Pollution

PETITIONS FILED: December 22, 1988

STATUS OF PETITIONS: See Permit Appeal Status Report

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ISSUES:

- Procedural issues
- Miscellaneous other issues (environmental impact statement requirements; applicant's history of noncompliance; environmental hazards associated with facility operations; timing of CTTS submittals)

Summary of Petitions:

Numerous citizens' groups have submitted either formal petitions or other correspondence requesting review of the Agency's decision to issue a hazardous waste permit to the CTTS incinerator and storage facility proposed to be constructed in Vernon, California. All citizens' groups demand that an environmental impact statement be prepared at the facility prior to permit issuance. In addition, all groups are unsatisfied with the way EPA and the State of California have handled the RCRA permitting process for the proposed incinerator complex.

- **Procedural Issues.** The petitioners raise numerous procedural issues associated with issuing a RCRA permit to the incinerator complex.

  - WCLPI contends that the Agency failed to respond to all significant comments on the draft permit by providing conclusory, nonresponsive, and uninformative responses to issues.

  - WCLPI states that the Agency has failed to consider other reasonable alternatives to the proposed project, including facility siting, appropriateness of incineration versus recycling or landfilling of wastes, variation in proposed design, reduction of the project's scope, and resource limitations.

  - CAP and the Coalition Against Pollution contend that the Agency did not specify the libraries in which copies of the permit application are available, and that the California agencies were not useful in providing these coalitions with pages of the application that were missing from a local library. These petitioners argue that EPA and the State made permit decisions not based on facts, but on models and draft information that were under development by CTTS. In addition, these petitioners claim that EPA is not abiding by its November 1986 booklet titled, "Solving the Hazardous Problem-EPA's RCRA Program."

  - CAP and the Coalition Against Pollution state that SCAQMD's system for granting temporary operating permits is undemocratic.

- CADRE, CAP, and the 77th Street Block Club contend that the Agency has failed to provide meaningful public input or considered the adverse effects of the proposed facility on the people of Los Angeles.

- **Environmental Impact Statement Requirements.** Although CTTS performed a "limited" health risk assessment with respect to certain expected emissions from the proposed incinerator complex, WCLPI claims that there has been no environmental assessment of the project as a whole. WCLPI and other petitioners contend that such an environmental impact statement (EIS), with follow-up public hearings, is particularly important for facilities in the Los Angeles area, due to existing air pollution problems in this densely populated area. (In addition, CAP and the Coalition Against Pollution request that EPA investigate cumulative hazards posed by CTTS and two other facilities owned by Chem Clear and Oil Process Co.).

  - WCLPI contends that NEPA's EIS requirement is applicable to facilities undergoing the RCRA permitting process, if the process does not satisfy the procedural requirements of NEPA. Because the Agency relied on the State hazardous waste permitting process and because the State unlawfully chose not to require a full environmental review, WCLPI states that the Agency did not conduct a thorough permit review that would satisfy NEPA procedural requirements.

  - WCLPI states that when the California Department of Health Services chose not to require a full environmental review, it did so based on the South Coast Air Quality Management District's (SCAQMD) prior issuance of a "negative declaration" in support of an air quality permit for the project. Since then, SCAQMD has announced that air permits previously granted for construction of the incinerator would not be extended pending an EIS, a revised and updated health risk assessment, and demonstration that the project conforms with present District BACT criteria. WCLPI, CAP, and the Coalition Against Pollution note that this announcement overrides the previous negative declaration on which the State based its decision to not require an EIS. The petitioners contend that SCAQMD's announcement demonstrates conclusively that further review of the RCRA permit is warranted.

  - WCLPI contends that a complete environmental review is appropriate because the CTTS operation relies on still experimental and untested technology.

- **Applicant's History of Noncompliance.** WCLPI states that the applicant's history of noncompliance at its other facilities constitutes substantial evidence that the applicant does not possess the requisite technical expertise, competence, or reliability essential to safe and environmentally sound operation of the proposed Vernon incinerator.

- **Environmental Hazards Associated with Facility Operations.** WCLPI contends that neither CTTS nor EPA have conducted any studies on the environmental impacts of transportation of liquid hazardous wastes to and from the facility, the impacts of potential fires, explosions, spills, upsets, or of other disasters at the site, and the implications of the disposal of hazardous wastes, ash, dust, and dropout materials. CAP and the Coalition Against Pollution request information on SCAQMD's 20 year plan for the Los Angeles air basin, following closure of the CTTS operation.

- **Timing of CTTS Submittals.** CAP and the Coalition Against Pollution object to the permit condition allowing CTTS to develop a trial burn plan, an operational plan, and a risk assessment plan following permit issuance.

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

In the Matter of:	
California Thermal Treatment Services, Inc.	RCRA Appeal No. 88-47
RCRA Permit No. CAD 982 005 670	

ORDER DENYING REVIEW

Before me are several petitions requesting review of a permit authorizing construction and operation of a new hazardous waste incinerator in Vernon, California. [1/] The permit was issued November 15, 1988, to California Thermal Treatment Services, Inc. ("CTTS") by U.S. EPA Region IX under the Resource Conservation and Recovery Act of 1976 ("RCRA"), 42 U.S.C.A. §§6901-6991i (1983 & West Supp. 1989). As requested by the Agency's Chief Judicial Officer, Region IX filed a response to the petitions dated February 9, 1989 ("Region Response").

[1/] A petition dated December 12, 1988 was submitted jointly by the City of Los Angeles, the Mothers of East Los Angeles, Concerned Citizens of South Central, Assemblywoman Lucille Roybal-Allard, Senator Art Torres, and Margarito Gutierrez. This petition was subsequently joined by the Coalition Against the Pipeline and Coalition Against Pollution ("CAP"), the California Alliance in Defense of Residential Environments ("CADRE"), Alysian Heights as Residence Association, Friends of Santa Monica Mountains, Parks and Seashore, and U.S. Congressmen Edward R. Roybal, Matthew G. Martinez, and Augustus F. Hawkins. Additional petitions and letters of concern were submitted separately by the City Council of the City of Bell, Los Angeles County Supervisor Edmund D. Edelman, U.S. Congressman Mel Levine, and CAP.

Under the rules governing this proceeding, there is no automatic appeal from the Region's permit decision. 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. 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.

Petitioners first argue that CTTS should be required to prepare an Environmental Impact Statement ("EIS") under Section 102(2)(C) of the National Environmental Policy Act of 1969 ("NEPA"), 42 U.S.C. §4332(2)(C). It is well established, however, that the Agency's RCRA permitting process itself is the functional equivalent of an EIS and that a separate EIS need not be prepared. [2/] Petitioners also argue that Region IX improperly failed to study, develop, and describe alternatives to the project under NEPA §102(2)(E), 42 U.S.C. §4332(2)(E). I agree with Region IX, however, that the functional equivalency doctrine again relieves the Agency from formal compliance with this

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[2/] See, e.g., Alabamians for a Clean Environment v. EPA, 26 Env't Rep. Cas. (BNA) 2116, 2121-22 (N.D. Ala. Dec. 8, 1987); In re Chemical Waste Management, Inc. (Emelle, AL), RCRA Appeal No. 87-12 (May 27, 1988); 40 CFR §124.9(b)(6); 44 Fed. Reg. 34,247 (June 14, 1979).

requirement. [3/] Moreover, the record shows that Region IX did consider alternatives to the project during the course of the permitting process. [4/] Petitioners further argue that Region IX failed to respond adequately to public comments on the draft permit regarding the NEPA issues, alternatives to the project, and instances of noncompliance with environmental regulations by CTTS and its parent company, Security Environmental Systems, Inc. ("SES"). The record demonstrates, however, that Region IX thoroughly considered and responded to these matters. See, e.g., Response to Public Comments on the Draft RCRA Permit, at pp. VIII.17-19, IX.1, XII.1-6, XIV.1-5 (November 10, 1988).

Finally, by letters dated March 2 and 9, 1989, Petitioners seek to reopen the record to include additional information regarding noncompliance and dioxin/furan emissions. [5/] The proffered information on noncompliance is set forth in a

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[3/] Although the functional equivalency doctrine has been developed through case law under NEPA §102(2)(C), the language and rationale of the relevant federal court cases, as well as NEPA's legislative history, indicate that the doctrine should also be applied to the alternatives-study requirement under NEPA §102(2)(E). See Region Response at 9-11. It would make little sense to apply the functional equivalency doctrine to the EIS requirement -- which includes a directive to discuss "alternatives to the proposed action" (§102(2)(C)(iii)) -- but not to the alternatives-study requirement under §102(2)(E).

[4/] See, e.g., Response to Public Comments on the Draft RCRA Permit, at pp. VIII.17-19, XII.1-6, XIV.1-5. As noted by the Region, the Agency has considered a variety of regulatory options and alternatives in developing rules governing incineration and the management of hazardous waste generally. See Region Response at 11-12.

[5/] By letter dated April 4, 1989, CTTS opposed Petitioners' attempt to supplement their submissions and to reopen the record.

December 29, 1988 newspaper article purportedly compiled primarily from the files of the South Coast Air Quality Management District ("SCAQMD"). The article discusses, among other things, violations of SCAQMD rules resulting from SES's operation of infectious waste incinerators in Long Beach and Garden Grove, California. [6] Region IX reviewed SES's history of noncompliance with SCAQMD regulations, but responded that the Vernon incinerator will have much more sophisticated emission controls than those at the Long Beach and Garden Grove facilities. See Response to Public Comments on the Draft RCRA Permit at VIII.17-19. The Region concluded that SES's past noncompliance, while a matter of concern, could be adequately addressed through strict protective measures in the permit. Id. [7] In my view, Petitioners have failed to show that this

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[6] The article notes that SES representatives have denied a number of the allegations and have stated that trained technicians (not SES officials) will operate the Vernon incinerator.

[7] For example, CTTS will be required to install and maintain a remote computer station in Region IX offices to allow the Region to monitor the incinerator's performance on a continuing basis. The permit also imposes limits on metal emissions and products of incomplete combustion, even though such limits are not expressly required for all incinerators under the RCRA regulations. CTTS must also screen and test for dioxins and furans, even though the permit does not allow incineration of F020 series dioxin-containing waste. Region IX has also required CTTS to prepare periodic risk assessments to reflect new circumstances such as population shifts as well as changes in toxicology or risk assessment methodology.

determination warrants review or that the newly proffered evidence justifies a reopening of the record. [8/]

The newly proffered emissions data are derived, not from hazardous waste incinerators, but from hospital and municipal waste incinerators. Given the protective measures in the permit, Petitioners have failed to show that the new data warrant a reopening of the record or undermine the Region's determination that the permit protects human health and the environment. CTTS will be required to conduct further risk assessments in light of the incinerator's actual performance during the trial burn and periodically thereafter. Any remaining concerns regarding any risk posed by dioxins and furans would be best addressed by the Region based on actual performance after the trial burn, rather

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[8/] In addition, to the extent that the proffered news article contains information not considered by the Region, Petitioners' attempt to supplement the record is procedurally deficient. The overwhelming majority of the allegations regarding noncompliance involve events that occurred prior to the close of the public comment period. Petitioners have failed to show that this information was not reasonably ascertainable during the comment period, and thus it should have been submitted for consideration at that time. See 40 CFR §124.13.

I agree with Region IX that SES's history of noncompliance is a matter of serious concern. Although the Agency has the authority to deny a permit where necessary to protect human health and the environment (see 50 Fed. Reg. 28,723), the primary means of deterring future noncompliance is through enforcement. The Region is directed to adopt an aggressive enforcement posture and to initiate permit revocation proceedings immediately if any future noncompliance indicates that CTTS cannot or will not operate the incinerator in a manner protective of human health and the environment.

than on existing data of uncertain significance from different types of facilities. [9/]

In short, Petitioners have failed to show that Region IX's permit determination is clearly erroneous or otherwise warrants review. Although Petitioners' arguments warrant only a brief response, I am sensitive to the concerns Petitioners have voiced throughout the permit process. Despite Petitioners' continued request for an EIS, however, the record shows that Region IX has already provided an independent and comprehensive review of environmental concerns under the federal hazardous waste laws. The Region not only scrutinized the environmental and health issues raised during the public comment period, but responded with a variety of creative protective measures to protect human health and the environment that go well beyond those ordinarily required by the Agency's rules. See note 7, supra.

[9/] Additional confidence in this determination may be gleaned from the documents Petitioners seek to add to the record. This material states that SCAQMD's current guidelines for best available control technology ("BACT") for acid gas and particulate control have proven to be "extremely effective" in reducing emissions of dioxins and furans. See January 13, 1989 Pease Memorandum (attached to March 9, 1989 Letter from the City of Los Angeles to USEPA). SCAQMD has refused to extend the state air permits for the project until CTTS demonstrates compliance with this BACT criteria. By letters dated June 12 and 26, 1989, Petitioners indicate that a state court has upheld SCAQMD's action in this regard.

For the reasons set forth above and in the Region's response to the petitions, review is denied. [10/]

So ordered.

Dated: FEB 1 1990

William K. Reilly
Administrator

[10/] On December 27, 1988, Petitioners supplemented their submissions to note that after Region IX issued the RCRA permit, SCAQMD refused to extend certain state air quality permits for the project absent an environmental impact report. SCAQMD's action has been the subject of litigation in California state courts. By letter dated January 13, 1989, Petitioner Art Torres requested that the instant proceeding be stayed "until all necessary [state] air permits have been acted on." In my view, the issues before me are sufficiently distinct to warrant their resolution now. Although the Region considered information prepared in connection with the SCAQMD proceeding, it did not rely on permitting decisions by SCAQMD in deciding whether to issue the RCRA permit. See Region Response at 13. Nothing in today's decision should be interpreted as bearing on the requirements of state law or on the issues raised in the parallel state proceedings.

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Order Denying Review in the matter of California Thermal Treatment Services, Inc., RCRA Appeal No. 88-47 were sent by First Class Mail to the following persons:

Honorable Edward R. Roybal
House of Representatives
Washington, D.C. 20515

Honorable Matthew G. Martinez
House of Representatives
Washington, D.C. 20515

Honorable Augustus F. Hawkins
House of Representatives
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Dated: Feb. 2, 1990

Brenda H. Selden, Secretary to the Chief Judicial Officer