UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION IV

345 COURTLAND STREET
ATLANTA, GEORGIA 30365

JAN 06 1989

4APT-APB

RECEIVED
JAN 10 1989
DER - BAQM

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. John L. Gallagher
County Administrator
Pasco County, Florida
County Administrator's Office
7530 Little Road
New Port Richey, Florida 34654

Re: Pasco County's Resource Recovery Facility (PSD-FL-127)

Dear Mr. Gallagher:

This is to acknowledge receipt of your December 15, 1988, letter to me regarding Pasco County's objections for installing thermal de-NO_x equipment on the proposed resource recovery facility (RRF).

Although your letter attempts to demonstrate that the use of thermal de-NO_x would be economically prohibitive, we do not believe that valid, unique and convincing arguments have been presented which would clearly substantiate your contention. The arguments you presented concerning the relatively small benefits projected in ambient nitrogen dioxide concentrations may not be used as the sole reason for rejecting these controls. Finally, your letter has not convinced us that the installation of thermal de-NO_x controls on the Pasco County RRF is technically infeasible.

However, we have concluded that the specific circumstances involved in this isolated case warrant special consideration. As you indicated in your December 15 letter, Pasco County attempted to obtain all of the relevant pollution control guidelines and requirements for this proposed facility from the very beginning of the application preparation phase. On February 19, 1987, Pasco County met with EPA staff to discuss the proposed facility. Because Pasco County acted in good faith with all agencies concerned during the permitting process and because the agencies did not suggest that thermal de-NO_x controls may be required prior to the Pasco County PSD application (November 1987), we feel that it would not be equitable for EPA to insist that these controls be installed on this facility. Therefore, we will concur with the PSD final determination and permit issued to Pasco County RRF by the Florida Department of Environmental Regulation.

If you have any questions, please feel free to contact Bruce P. Miller, Chief, Air Programs Branch, of my staff at (404) 347-2864.

Sincerely yours,

Winston A. Smith

Winston A. Smith, Director
Air, Pesticides, and Toxics
Management Division

cc: Mr. Clair Fancy, P.E.
Deputy Bureau Chief
Bureau of Air Quality Management
Florida DER

Mr. David S. Dee
Carlton, Fields, Ward,
Emmanuel, Smith & Cutler, P.A.
First Florida Bank Building
P.O. Drawer 190
Tallahassee, Florida 32302

copied: Pradeep Raval
Tom Rogers
Barry Andrews
Bill Thomas, SW Dist.
CHF/BT

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION IV
345 COURTLAND STREET
ATLANTA, GEORGIA 30365

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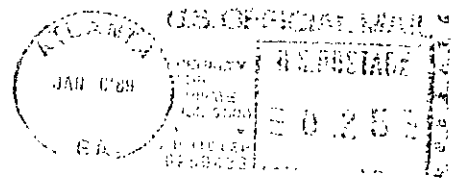

Mr. Clair Fancy, P.E.
Deputy Bureau Chief
Bureau of Air Quality Management
FL Dept. of Environmental Regulation
Twin Towers Office Bldg.
2600 Blair Stone Rd.
Tallahassee, FL 32399-2400

Florida Department of Environmental Regulation

Twin Towers Office Bldg. ● 2600 Blair Stone Road ● Tallahassee, Florida 32399-2400

Bob Martinez, Governor Dale Twachtmann, Secretary John Shearer, Assistant Secretary

December 9, 1988

Mr. Bruce Miller, Chief
Air Programs Branch
United Environmental Protection
Agency Region IV
345 Courtland Street
Atlanta, GA 30365

Dear Mr. Miller:

This is to confirm my comments during the December 1, 1988, meeting with Pasco County, the EPA Staff, and myself regarding the installation of de-NOx on the recently permitted Pasco County Waste-to-Energy Facility.

As I mentioned, Central Air Permitting did not believe that the information was available to justify de-NOx on this facility. This was discussed between Wayne Aronson and myself just before the final PSD permit was transmitted to Secretary Twachtmann for signature. The de-NOx issue was mentioned well after the Power Plant Site Certification hearing and our neogiations with the county. The county worked closely with the Department during the entire permitting process and agreed initially to installing a scrubber and baghouse on this facility.

Waste-to-Energy Facilities have been more stringently regulated during the last two years than any other source category. As I mentioned at the meeting, Florida has a significant solid waste problem and a very sensitive ground water situation that need to be addressed. Waste-to-Energy Facilities are one of the best all around solutions to these problems. Unlike many facilities, Waste-to-Energy Facilities have a definite environmental benefit in that they dramatically reduce the amount of waste needed to be landfilled and reduce potential ground water contamination

problems from waste buried in a landfill. The EPA policy of continually requiring more air pollution control on these facilities could reduce the number of these facilities built. I believe that before EPA requires any additional controls on these facilites, that sound evidence be provided that it is necessary.

I request that EPA allow Pasco County to build the Waste-to-Energy Facility in accordance with the Department of Environmental Regulation PSD Permit issued during on September 22, 1988.

Very Truly Yours,

C.H. Fancy, P.E.
Deputy Chief
Bureau of Air Quality
Management

CHF/mch

File

CARLTON, FIELDS, WARD, EMMANUEL, SMITH & CUTLER, P. A.

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PLEASE REPLY TO:

Tallahassee

MEMORANDUM

TO: John Gallagher
Ben Harrill
Bob Hauser
Don Elias
Clair Fancy

FROM: David S. Dee D. Dee

DATE: November 17, 1988

VIA: Telecopy and Hand Delivery

RE: Pasco County Resource Recovery Facility

RECEIVED
NOV 17 1988
DER - BAQM

Gentlemen:

We have scheduled a meeting with the United States Environmental Protection Agency in Atlanta, Georgia at 10 AM on December 1, 1988, to discuss EPA's recent request for additional information about the use of thermal deNOx equipment at the Pasco County resource recovery facility. The EPA representatives at the meeting will include Bruce Miller, Wayne Aronson, and Mark Armantrout. Gary McCutchen, the Chief of EPA's New Source Review Section at Research Triangle Park, will participate by telephone conference call. Winston Smith will be out-of-town

This is an extremely important meeting and I urge each of you to attend. Please call me and tell me whether you will be able to do so.

cc: Dale Twachtmann
Steve Smallwood
Bob Varner
Dan Strobridge

DSD/vc:Gallagher

2:15 flight 33 A
500 - Delta 322

before 11
and after 7
177.00
supersaver fare

CARLTON, FIELDS, WARD, EMMANUEL, SMITH & CUTLER, P. A.

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PLEASE REPLY TO:

Tallahassee

November 15, 1988

VIA TELECOPY

Bruce P. Miller
Chief
Air Program Branch
Air, Pesticides, and Toxics
Management Division
U.S. Environmental Protection Agency
Region IV
345 Courtland Street, N.E.
Atlanta, Georgia 30365

Re: Pasco County Resource Recovery Facility

Dear Mr. Miller:

This law firm represents Pasco County with regard to certain environmental law matters and we have been assisting Pasco County with its efforts to obtain the environmental permits for its proposed resource recovery facility. I am sending you this letter to confirm our understanding about the issues I discussed with Wayne Aronson this afternoon.

Today we received your letter dated November 4, 1988 to Mr. Clair Fancy at the Florida Department of Environmental Regulation. In your letter, you indicate that EPA is still trying to determine whether additional de-NOx controls are warranted at the Pasco County resource recovery facility.

On behalf of Pasco County, we were greatly surprised and disappointed to learn that EPA is still considering this issue. The County's PSD permit application was filed one year ago in November 1987. In response to EPA's request for additional information, the County submitted additional information about deNOx to EPA on March 9, 1988. The County has not received any additional requests for information from EPA since March, 1988. It was our understanding, based on our discussions with EPA and the Department of Environmental Regulation (DER), that this issue had been conclusively resolved months ago. Indeed, the DER issued a PSD permit to Pasco County on September 22,

The County is now in the critical, final stages of its negotiations with the vendors that want to construct and operate the resource recovery facility. EPA's re-evaluation of the deNOx issue now jeopardizes the County's ability to conduct or conclude its negotiations in a timely manner. Since all of the permits for the facility have been issued, EPA's action is extremely disruptive to the County's efforts to respond to its current solid waste disposal needs.

In light of these circumstances, the County respectfully requests EPA to hold an immediate meeting with the County's representatives so that the County and EPA can resolve this issue. The County further requests that the meeting include all of the appropriate decision-makers from EPA Atlanta and Washington because the County cannot afford the delays that would occur if a series of on-going meetings were necessary with Atlanta and then Washington. Of course, the County is willing to meet with EPA in Atlanta, Washington, or any other place that is convenient for EPA. It is critically important, however, that the meeting be conducted immediately. Wayne Aronson has agreed to promptly schedule this meeting with the appropriate EPA personnel.

Please call me at your earliest opportunity so that we can discuss these issues in greater detail.

Sincerely,

David S. Dee

cc: Dale Twachtmann
Winston Smith
Clair Fancy
John Gallagher
Wayne Aronson

DSd/vc/Miller

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

In the Matter of:	
Pennsauken County, New Jersey Resource Recovery Facility	PSD Appeal No. 88-8

REMAND ORDER

In separate petitions filed pursuant to 40 CFR §124.19 (1987), [1] the Township of Cinnaminson et al. [2] and Robert Filipczak requested review of a Prevention of Significant Deterioration (PSD) permit issued to the Pennsauken Solid Waste Management Authority for construction of a municipal waste combustor. The permit determination was made by the New Jersey Department of Environmental Protection (NJDEP) pursuant to a delegation of authority from EPA Region II, New York, New York. Because of the delegation, NJDEP's permit determination is subject to the review provisions of 40 CFR §124.19, and any permit it issues will be an EPA-issued permit for purposes of federal law. 40 CFR §124.41; 45 Fed. Reg. 33,413 (May 19, 1980).

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[1] All references to the Code of Federal Regulations are to the 1987 edition.

[2] The Township of Cinnaminson is joined in the petition by the Borough of Palmyra and the Borough of Riverton, which are municipalities located in Burlington County, New Jersey, and by Allied Citizens Opposing Pollution (ACOP), a civic association.

Under the rules governing this proceeding, there is no appeal as of right from the permit decision. Ordinarily, a petition for review of a PSD permit determination is not granted 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 Region level * * *." 45 Fed. Reg. 33,412 (May 19, 1980). The burden of demonstrating that the permit conditions should be reviewed is therefore on the petitioners.

Discussion

Cinnaminson et al. object to issuance of the permit because they believe NJDEP's determination of best available control technology (BACT) is deficient. [3/] According to these petitioners, NJDEP did not give adequate consideration to thermal de-NO_x

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[3/] To obtain a PSD permit, the applicant must demonstrate that the proposed facility will employ BACT for each regulated pollutant. Section 169 of the Clean Air Act defines BACT as an "emission limitation reflecting the maximum degree of reduction" that the "permitting authority," on a "case-by-case basis, taking into account energy, environmental, and economic impacts and other costs" determines is "achievable." 42 U.S.C. §7479(3). Because BACT is determined on a case-by-case basis and takes into account energy, environmental, and economic impacts and other costs, which may vary from location to location, a BACT determination for a municipal waste combustor at one site may differ from one reached at another site, even though the technology employed may be identical. In other words, the emission limitations for the sites can differ.

technology in performing the BACT analysis. Petitioners argue that NJDEP's determination not to set an emission limitation based on thermal de-NO_x technology was based on an inadequate record, resulting in part from NJDEP having made its BACT determination prior to the time of permit issuance. Petitioners also argue that the BACT analysis submitted by the permit applicant did not adequately justify use of combustion controls (the means chosen by the applicant for controlling NO_x emissions from the proposed facility) instead of thermal de-NO_x technology. NJDEP responded to these contentions by arguing that the record actually discloses that the BACT determination was made at the time of permit issuance; that the permit applicants' BACT evaluation fully evaluates alternative control technologies, including thermal de-NO_x technology; and that thermal de-NO_x technology is not yet "available" within the meaning of the statutory definition of BACT. Regarding the last point, NJDEP stated that there was just one facility in the United States (the Commerce facility in Whittier, California) employing thermal de-NO_x technology, and that it had been in operation only one year; that there is just one facility currently under construction (in Modesto, California); and that a third (in Long Beach, California) began operations after the Pennsauken permit was issued and therefore could not have been considered at the time of permit issuance. With respect to these facilities, NJDEP says they were reviewed

under legal standards [4] and NO_x control strategies [5] not pertinent to the Pennsauken facility.

An examination of the materials identified by NJDEP as representing the NO_x BACT analysis [6] generally bears out petitioners' contention that the BACT analysis on which NJDEP relied is inadequate. Specifically, the record fails to disclose that the applicant met its burden of showing that an emission limitation based on combustion controls alone represents BACT. The basic attributes of that burden are set out in Honolulu Resource Recovery Facility ("H-Power"), PSD Appeal No. 86-8 (June 22, 1987), where I interpreted the statutory definition of BACT as placing the burden on the applicant of "demonstrating that signi-

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[4] NJDEP points out that the South Coast Air Quality Management District in California (SCAQMD) treats NO_x as a non-attainment pollutant requiring lowest achievable emission rate (LAER). In point of fact, however, one of the three facilities (Modesto) is located in an area that is attainment for NO_x, and EPA issued a PSD permit for it with a BACT limitation based on thermal de-NO_x. EPA Region IX issued the permit on August 11 1986. Telephone conversations between Ronald L. McCallum, EPA Chief Judicial Officer, and Bob Baker, EPA Region IX (October 5 and November 11, 1988).

[5] According to NJDEP, the Commerce facility was permitted under California rules as innovative technology, and all of the facilities are in locations where NO_x emissions fall under the South Coast Air Quality Management District's (SCAQMD's) control strategy for ozone. Conversely, New Jersey focuses on volatile organic compounds (VOC's) for its ozone control strategy.

[6] See Final Environmental and Health Impact Statement ("FEHIS"), Volume I, at 5-36 through 5-56 (Jan. 1987); FEHIS Response to Comments, Volume I at 211-213 (June 1987); Hearing Officer's Report at 226 (June 30, 1988).

ficant technical defects, or substantial local economic, energy, or environmental factors or other costs warrant a control technology less efficient than [the most stringent available technology]." Id. at 7, 6 n.9. This interpretation was disseminated in operational guidance for municipal waste combustors on June 26, 1987, [v] and was further refined in general guidance issued by EPA's Assistant Administrator for Air and Radiation on December 1, 1987. The latter guidance refers to the applicant's burden as the "top-down" approach to BACT analysis:

> The first step in this approach is to determine, for the emission source in question, the most stringent control available for a similar or identical source or source category. If it can be shown that this level of control is technically or economically infeasible for the source in question, then the next most stringent level of control is determined and similarly evaluated. This process continues until the BACT level under consideration cannot be eliminated by any substantial or unique technical, environmental or economic objections. Thus, the "top-down" approach shifts the burden of proof to the applicant to justify why the proposed source is unable to apply the best technology available. It also differs from other processes in that it requires the applicant to analyze a control technology only if the applicant opposes that level of control; the other processes required a full analysis of all possible types and levels of control above the baseline case.
>
> The "top-down" approach is essentially required for municipal waste combustors pursuant to the June 22, 1987, Administrator's remand to Region IX of the H-Power BACT decision and the OAQPS June 26, 1987, "Operational Guidance on Control Technology for New and Modified Municipal Waste Combustors (MWC's)." It is also currently being successfully implemented by many permitting agencies and some of the

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[v] Memorandum from Gerald Emison, Director, EPA Office of Air Quality Planning and Standards (OAQPS) to EPA Regional Air Office Directors, enclosing "Operational Guidance on Control Technology for New and Modified Municipal Waste Combustors."

> Regional Offices for all sources. I have therefore determined it should be adopted across the board. [8/]

The H-Power decision, the operational guidance for municipal waste combustors, [9/] and the "top-down" guidance are all applicable to the Pennsauken permit determination. H-Power was my direct administrative interpretation of the statutory BACT requirement; the subsequent operational guidance and "top-down" guidance implement H-Power through statements of Agency policy. All three documents antedate issuance of the permit. [10/] These

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[8/] Memorandum from J. Craig Potter, Assistant Administrator, to Regional Administrators (Regions I-X) at 4 (Dec. 1, 1987) (the Potter Memorandum).

[9/] The Operational Guidance expressly states that it applies to all PSD permits issued through State and local agencies pursuant to delegation agreements made under 40 CFR §52.21(u), except where a final permit was issued and administrative appeals under 40 CFR Part 124 were exhausted prior to June 26, 1987. Operational Guidance at 7; see also 52 Fed. Reg. 25399, 25406 (July 7, 1987); 52 Fed. Reg. 47826 (December 16, 1987). The "top-down" guidance contains statements to the same effect. Potter Memorandum 4.

[10/] The chronology of the Pennsauken permit is as follows: the permit application was filed in January 1987; it was supplemented with a BACT analysis for NO_x in June 1987 (including an evaluation of thermal de-NO_x technology); NJDEP completed its BACT assessment in December 1987; hearings were held and public comment was solicited in January-February 1988, in which commenters questioned the absence of an NO_x emission limitation based on application of thermal de-NO_x technology; and lastly, the permit was issued in July 1988, specifically rejecting thermal de-NO_x as representing BACT for this facility.

interpretations and policy statements were therefore available to the applicant and NJDEP for the Pennsauken permit. [11/]

The permit applicant's burden of showing that a more stringent technology is not BACT obviously does not come into existence unless the so-called "more stringent" technology is available. If the technology is not available, the permit applicant is under no duty to consider it in the BACT analysis. Here, NJDEP contends that thermal de-NO_x technology is not available; however, there is nothing of substance in the applicant's BACT analysis to bear out this contention. If anything, it is

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[11/] As a practical matter, BACT determinations will ordinarily be made at some time prior to actual issuance of the permit, for there is always a lag between closure of the administrative record (usually the close of the public comment period) and the time when the permit determination is announced. As noted in Vermont Yankee Nuclear Power Corp. v. NRDC, 435 U.S. 519 (1978), quoting ICC v. Jersey City, 332 U.S. 503 (1944):

> Administrative consideration of evidence * * * always creates a gap between the time the record is closed and the time the administrative decision is promulgated [and, we might add, the time the decision is judicially reviewed] * * *. If upon the coming down of the order litigants might demand rehearings as a matter of law because some new circumstance has arisen, some new trend has been observed, or some new fact discovered, there would be little hope that the administrative process could ever be consummated in an order that would not be subject to reopening.

435 U.S. at 554-55; see Nance v. EPA, 645 F.2d 701 (9th Cir. 1981) (quoting Vermont Yankee supra).

Absent unusual delay between the close of the public comment period and the date of permit issuance, or the presence of other extraordinary circumstances, the close of the public comment period can be used as the reference by which the adequacy of the administrative record is judged.

refuted by reference to the Commerce facility, which was in existence and operating during NJDEP's review of the permit application, and by reference to the evident willingness of the Modesto and Long Beach applicants to commence construction of their municipal waste combustors during the same period of consideration. The fact that these projects were undertaken to comply with allegedly different legal requirements (LAER or California rules) and different control strategies is not especially material to the issue of availability. [12/] The question of availability for purposes of BACT is a practical, factual determination, using conventional notions of whether the technology can be put into use. [13/] The record here raises a strong presumption in favor of concluding that thermal de-NO_x technology is available in the sense just described. The operational guidance, issued June 26, 1987, also treats thermal de-NO_x technology as an available technology that "should be considered by permitting authorities in making BACT determinations." Operational Guidance at 6. In short, the applicant's BACT analysis must evaluate thermal de-NO_x as an available technology.

The applicant's BACT analysis, however, does not contain the level of detail and analysis necessary to satisfy the applicant's

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12/ See notes 4 and 5 supra.

13/ The dictionary defines the word "available" as that which can be "used," or is "usable," or can be "got, had, or reached; * * * accessible." Webster's New World Dictionary of the American Language 96 (2d College ed. 1972).

burden, as previously described, of showing that thermal de-NO_x technology is technically or economically unachievable for this source. The applicant's assertions that the technology has not yet been demonstrated to be efficient, [14] reliable, and cost effective in controlling NO_x are merely conclusory. [15] Moreover, they were made in a January 1987 submission and are undoubtedly out-of-date in view of the rapid developments in the application of this technology. Although the BACT analysis shows control costs in the range of $1300-1500 per ton of NO_x removed, [16] there is no serious discussion of cost effectiveness. For example, the applicant estimated annual costs of removing NO_x at $200,000 to $250,000 using thermal de-NO_x technology. FEHIS (Response to Comments) at 212 (Table 16.1-1). However, there is no discussion that even purports to show that these costs are unusually high. Greater efforts must be made by the applicant to show that thermal de-NO_x is economically infeasible or otherwise not achievable in this case. This might be done, for example, by

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[14] The applicant's own submissions refute this contention. According to the applicant, NO_x emissions for the proposed facility would be 88.9 lb/hr using combustion controls compared with 35.6 to 62.2 lb/hr using thermal de-NO_x technology. FEHIS Response to comments 211-212 (Table 16.1-1 (June 1987). Pollutant reductions of this magnitude are clearly significant.

[15] See FEHIS at 5-48.

[16] When operated at the peak fuel feed rate of 500 tons per day, for 365 days per year, the total annual emissions of NO_x at the proposed facility are estimated at 389.3 tons. FEHIS at 5-37 (Table 5.3-3).

obtaining and analyzing operating data and other information from the Commerce facility -- and perhaps also from the Long Beach facility, which recently commenced operations. H-Power and EPA's guidance implementing that decision contemplate a much more thorough explanation, based on consideration of objective technical and economic data, to substantiate the contention that thermal de-NO_x is an experimental, unproven technology. In sum, the BACT analysis does not contain sufficient justification, specific to the proposed facility, to justify the level of control proposed in the permit. More detail and analysis is required.

Petitioner Robert Filipczak's fundamental objections to the Pennsauken permit are not with the control technology, but rather, with the municipal waste combustor itself. He urges rejection of the combustor in favor of co-firing a mixture of 20% refuse derived fuel and 80% coal at existing power plants. These objections are beyond the scope of this proceeding and therefore are not reviewable under 40 CFR §124.19, which restricts review to "conditions" in the permit. Permit conditions are imposed for the purpose of ensuring that the proposed source of pollutant emissions -- here, a municipal waste combustor -- uses emission control systems that represent BACT, thereby reducing the emissions to the maximum degree possible. These control systems, as stated in the definition of BACT, may require application of "production processes and available methods, systems, and techniques, including fuel cleaning as treatment or innovative

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fuel combustion techniques" to control the emissions. 42 U.S.C.A. §7479(3). The permit conditions that define these systems are imposed on the source as the applicant has defined it. Although imposition of the conditions may, among other things, have a profound effect on the viability of the proposed facility as conceived by the applicant, the conditions themselves are not intended to redefine the source, as petitioner Filipczak would have them do. In other words, the source itself is not a condition of the permit. Therefore, petitioner's objections to the permit are not within the scope of this proceeding. Other matters raised by petitioner that are arguably within the scope of the proceeding, for example, the adequacy of the BACT analysis as it relates to mercury emissions and removal of metals as a fuel cleaning procedure, have not been presented in a manner to convince me that NJDEP committed clear error or that an important issue warranting review has been raised at this time. Therefore, the petition is denied.

Conclusion

The deficiencies in the BACT analysis leave two courses of action open at this juncture of the proceedings. One is to grant review of the permit and enter into the briefing phase contemplated by 40 CFR §124.19(c). However, the deficiencies in the record can not be rectified through the submission of briefs, and any ensuing decision would likely conclude that the permit should be denied (because of the deficiencies) or that it should be remanded to the permit-issuing authority to allow the ap-

plicant to supplement the BACT analysis. Considerations of time favor remanding the permit in the first instance. Therefore, rather than receiving additional briefs on appeal, I am remanding the case to NJDEP for further consideration of the BACT analysis, solely as it relates to NO_x emissions. This remand should not be viewed as prejudging the issue. NJDEP is simply directed to reopen the permit proceeding for the limited purpose of allowing the applicant to supplement its original BACT analysis in accordance with the guidance described in this decision. If, after a full review of the data NJDEP determines that NO_x emission levels obtained from combustion controls alone represent BACT, it may reissue the permit as written. It may, of course, revise the limitations and other conditions of the permit as appropriate.

After making the determination, NJDEP should reopen the public comment period to receive any supplemental comments from petitioners Cinnaminson et al. on the issue of the NO_x limitations in the permit. NJDEP's determination on remand will be subject to review under 40 CFR §124.19, and appeal of its decision on remand will be required to exhaust administrative remedies under section 124.19(f)(1)(iii).

So ordered.

Dated: Dec. 10, 1988

Lee M. Thomas
Administrator

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Order on Petitions for Review in the matter of Pennsauken County, New Jersey, Resource Recovery Facility, PSD Appeal no. 88-8, was mail to the following by first class mail, postage prepaid.

Michael S. Caro
Deputy Attorney General
Department of Law & Public Safety
Division of Law, CN 112
Environmental Protection Section
Richard J. Hughes Justice Complex
Trenton, NJ 08625

William J. Muszynski
Acting Regional Administrator
U.S. EPA, Region II
26 Federal Plaza
New York, NY 10278

Thomas J. Germine
19 Market Street
Morristown, NJ 07960

Robert Filipczak
402 Dahlia Street
Northfield, NJ 08225

Robert P. Bedell
Myerson, Kuhn and Sterrett
1330 Connecticut Avenue, NW
Washington, DC 20036

Dated: November 10, 1988

Brenda H. Selden
Brenda H. Selden, Secretary
to the Chief Judicial Officer

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION IV

345 COURTLAND STREET
ATLANTA, GEORGIA 30365

NOV 04 1988

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CERTIFIED MAIL
RETURN RECEIPT REQUESTED

C. H. Fancy, Deputy Chief
Bureau of Air Quality Management
Florida Department of Environmental
Regulation
Twin Towers Office Building
2600 Blair Stone Road
Tallahassee, Florida 32399-2400

RE: Pasco County Resource Recovery Facility

Dear Mr. Fancy:

We have reviewed the final determination and final permit for the Pasco County Resource Recovery Facility (RRF), along with the March 9, 1988, letter from Camp, Dresser and McKee to Mr. Barry Andrews. In our opinion, your arguments for not choosing de-NO_x controls as best available control technology (BACT) for controlling NO_x emissions have not adequately addressed our concerns; therefore, we cannot concur with the final determination and final permit as issued.

Specifically, we have three concerns regarding your argument against installing a de-NO_x system. First, although a de-NO_x system--the most stringent control technology for controlling NO_x emissions--was considered, convincing arguments were not presented to show that installing such a system would be technically infeasible for Pasco County. Secondly, cost guidelines for New Source Performance Standards (NSPS) cannot be used solely to justify not using BACT for a particular emission unit; therefore, your argument that the proposed cost of $2478 per ton of NO_x removed exceeds the cost guideline for NSPS is irrelevant. Lastly, de-NO_x controls are presently operating on other municipal waste incinerators (MWI). According to the BACT/LAER Clearinghouse, both the Commerce Refuse-to-Energy-Facility and the Stanislaus County RRF are operating with de-NO_x controls. The de-NO_x controls at both facilities were required according to the BACT determinations for these facilities. Without unique and convincing arguments as to why these controls cannot be installed on Pasco County's RRF, we feel that de-NO_x can also operate successfully on this RRF.

In conclusion, we feel your arguments against choosing de-NO_x controls as BACT warrant additional consideration. Therefore, we, in consultation with EPA Headquarters, will determine whether additional de-NO_x controls are warranted. We will notify you and Pasco County RRF of our decision shortly.

If you have any questions, please contact me or Wayne J. Aronson of my staff at (404) 347-2864.

Sincerely yours,

Bruce P. Miller

Bruce P. Miller, Chief
Air Programs Branch
Air, Pesticides, and Toxics
Management Division

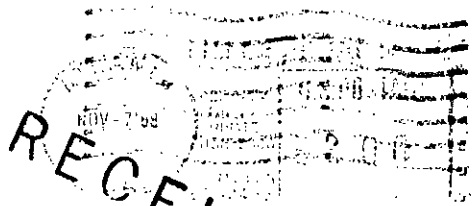
cc: Pasco County Resource Recovery Facility
7536 State Street
New Port Rickey, Florida 33553

copied: Pradeep Raval
Barry Andrews
Tom Rogers
Buck Dunn
Bill Thomas, SW Dist.
CHF/BT

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION IV
345 COURTLAND STREET
ATLANTA, GEORGIA 30365

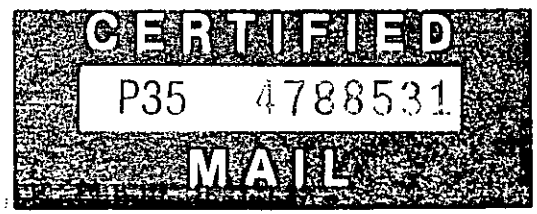
OFFICIAL BUSINESS
PENALTY FOR PRIVATE USE, $300

AIR-4



RECEIVED
NOV 10 1988
DER-BAQM

Mr. C. H. Fancy, Deputy Chief
Bureau of Air Quality Management
Florida Department of Environmental
Regulation
Twin Towers Office Building
2600 Blair Stone Road
Tallahassee, FL 32399-2400



NO_x PERMIT LIMITS FOR REPRESENTATIVE RESOURCE RECOVERY FACILITIES

Facility	Size (Tons/Day)	NO_x Permit Limit (lb/ton)	Approx. Permit Date
Alexandria, VA	975	6.6	1988
Tulsa, OK	700	6.4	1988
Bergen, NJ	3000	5.40	Spring, 1987
Camden, NJ	1400	5.08	Spring, 1988
Essex, NJ	2000	3.00	Fall, 1986
Fort Dix, NJ	40	2.40	1986
Hudson, NJ	1500	5.28	Not Yet Permitted
Passaic, NJ	1500	5.81	Scheduled Spring, 1989
Pennsauken, NJ	500	5.70	Permitted June, 1988 Permit Limits Being Reviewed Under Appeal.
Union, NJ	1500	5.20	Permit Under Review
Warren, NJ	450	5.40	Fall, 1986
Babylon, NY	650	6.6	1988
Hillsborough, FL	1200	6.4	1988
Fairfax, VA	3000	6.6	1988
Gloucester, NJ	500	5.5	Fall, 1987
Norfolk, VA		1.778	
San Juan, PR	1000		Permit Under Review
Delaware, PA	2688	235[1]	September, 1988
York, PA	1344	300[1]	May, 1987
Bay County, FL	510	None	Winter, 1984

[1] ppm dv @ 7% O_2

6.16 #/ton
Pasco County