

As Director of the Department of Environmental Management I have reviewed the proposed decision of Hearing Officer Malcolm J. Grant on Motion of Rhode Island Solid Waste Management Corporation for Reconsideration/Modification of Certain Permit Conditions Relating to Quonset Point Resource Recovery Facility and Supplemental Motion related thereto. As part of my review I have read the transcript of the hearing and the relevant portions of the transcript and evidence on the record of the original hearings.

In conducting this review, it is my obligation to insure that the decision conforms to the legislative mandate as set forth in R.I.G.L. §23-19-11.1. The legislature has ordered the Solid Waste Management Corporation to implement a resource recovery system "in view of the criticality of the Solid Waste Disposal problem in the State" R.I.G.L. §23-19-11.1. This provides that the resource recovery system shall consist of three (3) publicly-owned mass burn resource recovery facilities each with a nameplate capacity not to exceed 750 tons per day and one of the facilities shall be located at Quonset Point §23-19-11.1(a)(b). In addition to the Director's responsibility to protect public health and the environment, the Director is also required to cooperate with the Solid Waste Management Corporation See, R.I.G.L. §42-17.1-2(j).

Pursuant to these obligations I concur in the Decision of the Hearing Officer except with respect to the portion of the Decision relating to PSD Condition #21, which specifies emissions limitations for several pollutants. In reviewing the testimony and evidence on this condition, I find no evidence on the record to establish maximum emissions levels. Although the average values presented in Applicant's Exhibit 69 were the only values available from the record upon which to set emissions limits, I also agree with the applicant's testimony summarized on Page 11 of the Hearing Officer's decision that:

"The emissions data in Exhibit #69 from which the Condition #21 levels are extracted are averages and are highly variable from one facility to the next. Therefore, the proposed facility would reasonably be expected to emit at both higher and lower levels at various times."

In other words an average represents a range of values and to adopt such a range as an upper limit actually shifts the range downward from those values found to be protective of the environment by the modeling of the applicant.

At the hearing of January 18, 1989 the Hearing Officer through questions to the applicant, attempted to explore the components of the average figures, but was not able to obtain usable information (see Paragraph 9 Page 16). Ultimately in Paragraph 10 on Pages 16 and 17 of the Decision, the Hearing Officer expresses frustration at the level of information

provided on this issue and rightfully concludes that he can only use as maximums the modeled levels which have been shown to be protective of the environment.

In a matter of such far reaching importance as the disposal of solid waste in Rhode Island, I cannot as Director allow a final decision of this kind to be made based on insufficient evidence places on the record by the applicant. It is not clear whether use of the average emissions as maximums does, or does not, preclude construction of waste-to-energy facilities of the type mandated by the General Assembly. See R.I.G.L. §23-19-11.1. It is not in the public interest to risk a worsening waste disposal crisis because of a lack of information.

I find, therefore, that the proposed Quonset Point facility should be limited to the average emissions contained in Applicant's Exhibit #69 and Condition #21 of the Decision on this matter, but that the hearing shall be reopened for the sole purpose of affording the applicant an opportunity to demonstrate at the highest total levels at which the proposed facility is projected to emit any and all pollutants an ability to comply with its obligations under Air Pollution Control Regulation 7 as to impacts on terrestrial and aquatic vegetation, birds, reptiles, and marine and aquatic biota inhabiting ponds and wetlands.

CERTIFICATION

I hereby certify that a true and accurate copy of the within has been sent first class mail, postage prepaid to Mark A. McSally, Esq., McSally & Taft, P. O. Box 8830, 21 Garden City Drive, Cranston, R. I. 02920, Richard A. Sherman, Esq., Tillinghast, Collins and Graham, One Old Stone Square, Providence, R. I. 02903, George West, Esq., Manning, West, Santaniello & Pari, 711 Fleet Bank Building, Providence, R. I. 02903, Harlan M. Doliner, Esq., McGregor, Shea & Doliner, P.C., 18 Tremont Street, Suite 900, Boston, MA 02108 and Paul O. Plunkett, Concern, Inc., 2 First Street, North Kingstown, R. I. 02852 and by interoffice mail to Claude A. Cote, Esq., 9 Hayes Street, Providence, R. I. on this 7th day of February, 1989.

Barbara Moran