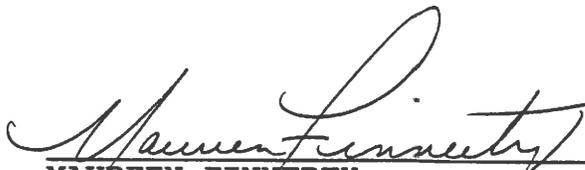
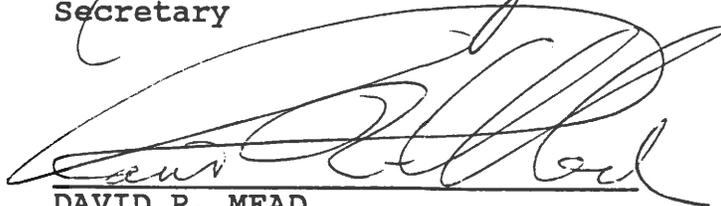




ROBERT C. STANTON
Vice Chair



MAUREEN FINNERTY
Secretary



DAVID R. MEAD



DONNA PARSONS

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 25th day of October, 1991, a true and correct copy of the foregoing Order was mailed by regular U.S. first class mail with postage prepaid thereon, to:

John C. McCreedy
Deputy Attorney General
Division of Environmental Quality
Department of Health and Welfare
1410 N. Hilton, Second Floor
Boise, Idaho 83706

Dr. Peter Rickards, D.P.M.
P.O. Box 1411
Twin Falls, Idaho 83301


WYLLA D. BARSNESS

BEFORE THE BOARD OF HEALTH AND WELFARE
STATE OF IDAHO

DR. PETER RICKARDS,)	
)	Docket No. 0101-91-02
Appellant,)	Docket No. 0101-90-44
)	
vs.)	FINDINGS OF FACT,
)	CONCLUSIONS OF LAW
IDAHO DEPARTMENT OF)	AND DECISION
HEALTH AND WELFARE,)	
)	
Respondent.)	

The Board of Health and Welfare, based upon a review of the record, and in consideration of the Proposal for Decision contained in the Hearing Officer's Report, Exceptions filed by the parties, and briefs and oral argument submitted to the Board of Health and Welfare, hereby adopts the following Findings of Fact, Conclusions of Law and Decision.

I.

Permit No. 10AP-9001 regarding the Evaporation Pond Permit issued to the U.S. Department of Energy.

Findings of Fact

1. The U.S. Department of Energy (DOE) has proposed to construct and install a lined evaporation pond to replace an existing percolation pond at the Test Reactor Area (TRA) at the Idaho National Engineering Laboratory (INEL). The evaporation pond

will receive low-level radioactive waste from the waste cleanup system at TRA. Respondent's Exhibit A.

2. On December 5, 1988, the Department received DOE's air quality application for a permit to construct the TRA Evaporation Pond. Respondent's Exhibit A.

3. On April 17, 1990, the Department issued to DOE a proposed permit to construct the TRA Evaporation Pond. Respondent's Exhibit A. After receiving public input pursuant to the Rules and Regulations for the Control of Air Pollution in Idaho (Rules and Regulations), IDAPA §16.01.1012,13, the Department issued a final permit to construct the TRA Evaporation Pond to DOE on October 26, 1990. Respondent's Exhibits B and C.

4. Operation of the TRA Evaporation Pond will result in the emission of radionuclide air contaminants. The conservative estimates and modeling of radionuclide emissions from the TRA Evaporation Pond indicate that the effective dose equivalent from radionuclide emissions will be 2.2×10^{-4} millirem per year after taking into account the proposed air pollution control technology. The air pollution control technology proposed by DOE and required in the final permit to construct for the radionuclide emissions consisted of four 50-cubic-foot ion exchange resin beds. Respondent's Exhibits A, B, and C.

5. On November 21, 1990, Appellant filed a Petition contesting Respondent's issuance of a permit to construct to DOE for the TRA Evaporation Pond.

6. DOE has proposed construction of the TRA evaporation pond to eliminate percolation of tritiated water and other radionuclides into the soil and underlying aquifer. The control technologies proposed by DOE to limit emissions of radionuclides include the use of ion exchange beds in conjunction with naturally occurring holdup time for water discharge. Certain upset condition controls, utilized in conjunction with monitoring criteria, are designed to help prevent emissions above those predicted by DOE modeling.

7. Many kinds of radioactive isotopes are present in the discharge water in trace amounts, and these are reduced to some degree by holdup time and by the ion exchange beds. The primary radionuclide component of the discharge water consists of tritium occurring as a hydrogen ion which passes through all filters and ion exchange columns.

8. All witnesses testifying on the subject of DOE modeling testified that DOE analysis overestimated true expected radiological does; that is, DOE utilized worst-case analysis scenarios for its projections and models.

9. There is no evidence that additional technology, additional monitoring controls, or any other devices or processes,

standing alone or in conjunction with the current permit conditions, would limit the availability of non-tritium radionuclides in any significant, economically feasible manner.

10. For certain kinds of pollutant emissions at certain kinds of facilities, there is generally accepted BACT; there is no substantial evidence that a generally accepted BACT has been established to radionuclide emissions from this type of facility.

CONCLUSIONS OF LAW

1. That the Board of Health and Welfare has jurisdiction over contested case proceedings involving appeals of decisions regarding Air Quality Permits pursuant to Sections 39-105(1), 39-107(6), and 39-110 through 39-112, Idaho Code.

2. That Petitioner, Dr. Peter Rickards, lacks standing to contest this permit as he has failed to allege or demonstrate that he has been aggrieved by the issuance of this permit and suffered an injury in fact, or that any property, personal or other substantial rights have been prejudiced.

3. The burden of proof to establish that the permit was not issued pursuant to and in compliance with governing law is upon the Petitioner, Dr. Peter Rickards, and the Petitioner has failed to meet that burden of proof.

4. The Division of Environmental Quality, Respondent, has established, based upon a preponderance of the evidence in the record, that the permit at issue is based upon the best available control technology and, is in compliance with governing law.

II.

Permit No. 10AP-9002 transuranic storage area retrieval enclosure and transuranic waste storage facility permit.

FINDINGS OF FACT

1. DOE has proposed to construct the Transuranic Storage Area (TSA) Retrieval Enclosure. Over the past 20 years, drums of boxes containing transuranic waste have been stored in stacks on large asphalt pads and covered with dirt at the Radioactive Waste Management Complex at the INEL. Respondent's Exhibit D.

2. On March 22, 1990, the Department received DOE's air quality application for a permit to construct the TSA Retrieval Enclosure. The Retrieval Enclosure is proposed to be build directly over the transuranic waste stacks while waste retrieval, analysis and temporary storage is conducted by DOE. Respondent's Exhibit D.

3. On September 11, 1990, the Department issued to DOE a proposed permit to construct the TSA, and after receiving public input pursuant to the Rules and Regulations, the Department issued a final permit to construct the TSA on December 12, 1990.

Respondent's Exhibit E.

4. Retrieval of transuranic waste within the TSA will result in the emission on radionuclide air contaminants. A conservative estimate of radionuclide emissions from waste retrieval in the TSA indicates that radionuclides will be emitted at the rate of 2.3×10^{-7} curies/year after taking into account the proposed air-pollution control technology. The final permit to construct limits emissions of radionuclides to 2.3×10^{-7} curies/year. Respondent's Exhibits D and E.

5. The air-pollution control technology for the TSA Retrieval Enclosure proposed by DOE and required in the final permit to construct consists of a baghouse prefilter, a roughing filter, and a high-efficiency particulate (HEPA) filter. Respondent's Exhibits D and E.

6. On January 4, 1991, Appellant filed a Petition contesting Respondent's issuance of the permit to construct to DOE for the Transuranic Storage Area (TSA) Retrieval Enclosure.

7. On February 14, 1991, Appellant's Petitions were consolidated.

8. On April 10-12, 1991, consolidated hearings were held in Twin Falls, Idaho, regarding Appellant's Petitions. Appellant appeared pro se. John C. McCreedy appeared on behalf of Respondent.

9. Plutonium inhalation is 20 times more dangerous than inhalation of beta radiation.

10. It is prudent to assume that exposure to even small amounts of radiation may result in adverse health effects in humans, with larger doses of exposure probably resulting in proportionately larger risk of adverse health effects.

11. Failure or breaches in HEPA filters are possible.

CONCLUSIONS OF LAW

1. That the Board of Health and Welfare has jurisdiction over contested case proceedings involving appeals of decisions regarding Air Quality Permits pursuant to Sections 39-105(1), 39-107(6), and 39-110 through 29-112, Idaho Code.

2. That Petitioner, Dr. Peter Rickards, has standing to contest this permit as he has alleged or demonstrated a tangible interest that he may be aggrieved by the issuance of this permit.

3. The burden of proof to establish that the permit was not issued pursuant to and in compliance with governing law is upon the Petitioner, Dr. Peter Rickards, and the Petitioner has failed to meet that burden of proof.

4. The Division of Environmental Quality, Respondent, has established, based upon a preponderance of the evidence in the record, that the permit at issue is based upon the best available control technology and, is in compliance with governing law.

DECISION

The Board of Health and Welfare has determined that it has jurisdiction over contested case proceedings involving appeals of decisions regarding air quality permits pursuant to §§ 39-105(1), 39-107(6), and 39-110 through 39-112, Idaho Code. Upon an appeal from the issuance from a permit to an applicant, the Appellant not being a party has the burden of proof pursuant to Idaho Code § 67-5211 for any contest upon an initial application regarding the issuance of a permit or a license. The Hearing Officer applied the incorrect standard regarding standing as to the Appellant's ability to contest these permits which requires the Appellant to allege or demonstrate that he has been aggrieved by the issuance of a permit and suffered an injury in fact, or that any property, personal, or other substantial rights have been prejudiced, threatened or affected. The Hearing Officer should have required some showing of standing, and may, have allowed the Appellant to amend his Petition to present a proper allegation and then apply the correct burden of proof to the Petitioner to show that he had a direct or tangible interest to maintain this appeal.

The Petitioner has failed to meet his burden of proof to demonstrate that the issuance of these permits was not in compliance with governing law and did not comply with the standard of a proposal being required to meet the best available control

technology. The Petitioner's contention that the National Environmental Policy Act should be required to be applied as a standard to these permits is not demonstrated in a statutory or regulatory provision. Idaho Code § 39-105 does not require the application of federal law in consideration of these permits and the Department's rules and regulations at IDAPA 16.01.1012.15 do not incorporate by reference any federal law. Rather, it is the finding and determination by the Board that these regulatory provisions are not a requirement for the issuance of a permit but are a disclaimer that a permit does not relieve compliance with other applicable laws.

Therefore, the Board of Health and Welfare affirms the issuance of the subject permits as being in compliance with all governing statutes and rules and regulations.

In accordance with the Idaho Administrative Procedure Act, Chapter 52, Title 67, Idaho Code, a party may seek judicial review of this Order and Decision pursuant to § 67-5215, Idaho Code.

DATED this 24th day of October, 1991.

CERTIFICATE OF MAILING

I hereby certify that on this 25th day of October, 1991, I mailed a true and correct copy of the foregoing ORDER and FINDINGS OF FACT, CONCLUSIONS OF LAW AND DECISION to the following named individuals by first class mail:

Dr. Peter Rickards
P.O. Box 1411
Twin Falls, ID 83301

John McCreedy
Deputy Attorney General
Dept. of Health and Welfare
1410 North Hilton
Boise, ID 83706

Michael DeAngelo
Chief Deputy Attorney General
Department of Health and Welfare
450 West State Street-10th FL
Boise, ID 83720

Gary Reinbold
Dept. of Health and Welfare
1410 North Hilton
Boise, ID 83706

Joe Nagel
Dept. of Health and Welfare
1410 North Hilton
Boise, ID 83706

Martin Bauer
Dept. of Health and Welfare
1410 North Hilton
Boise, ID 83706

Mary Garvey
Office of the Chief Counsel
Department of Energy
785 DOE Place - Mailstop 1123
Idaho Falls ID 83402

Jerry Jensen, Hearing Officer
1020 Main Street, Suite 400
P.O. Box 2139
Boise, ID 83701-2139



RISA D. STETZEL
Administrative Hearings Coordinator
Department of Health and Welfare