

9521.1986(4A)

RCRA/SUPERFUND HOTLINE MONTHLY SUMMARY

APRIL 86

3. Appeal/Recourse Process for Permit Denial

An owner/operator (o/o) of an interim status facility is seeking a final RCRA permit. If the o/o submits a complete permit application, but the state or region denies the permit, what procedural recourse or appeal process may the o/o follow? It appears that Part 124 Subparts A and E both state procedures to follow for appealing a permit denial.

If the o/o of an interim status facility submits all necessary information, then a final decision to grant or deny the permit can be made. An o/o wanting to appeal a permit denial would follow the procedure in §124.19 of Part 124 Subpart A, which addresses recourse for permit denial. This Subpart contains procedures for informal hearings. Briefly, the o/o has a 30-day period in which he may request a review by serving a notice to the Regional Administrator.

On the other hand, Part 124 Subpart E outlines a more formal appeal process for permit or interim status terminations. Thus, if the o/o of an interim status facility fails to submit adequate information for a final permit application, then its interim status could be terminated, and the Agency would follow the appeal procedures in Subpart E. Generally, the formal or "evidentiary" hearing of Subpart E is applicable to RCRA facilities only where there has been a termination of a permit based upon a RCRA violation or the termination of interim status based upon a failure to submit information necessary to make a final permit decision.

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