



RCRA Permit Appeal Fact Sheet

1987

FACILITY:

Vulcan Materials Company (Vulcan Materials)
Wichita, Kansas
KSD 007 482 029
RCRA Appeal No. 87-1

PETITIONERS:

- Vulcan Materials
- Donna Hinderliter
- Lauri Maddy

PETITIONS FILED:

- January 28, 1987
- January 29, 1987
- February 4, 1987

STATUS OF PETITION: See Permit Appeal Status Report

ISSUES:

- Due process
- Other corrective action issues (use of existing data and reports; compliance schedule; submittal of bi-monthly progress reports)
- Miscellaneous other issues (permitting of incinerators under TSCA; other PCB-related issues; storage of off-site wastes; clarification of waste streams)

Summary of Petition:

Vulcan Materials petitions for review of certain conditions set forth in Section VI of its permit, addressing corrective action requirements for solid waste management units. Ms. Hinderliter and Ms. Maddy object to State-issued portions of the permit and EPA issuance of TSCA approval for incineration at the facility.

- **Due Process.** Vulcan Materials seeks review of provisions depriving the facility of the right to appeal or contest any modifications to a plan, schedule, or report which are subsequently ordered by EPA and not concurred with by Vulcan Materials. The petitioner states that it is clearly erroneous for the Regional Administrator to waive appeal rights as a condition for the issuance of the permit.
- **Use of Existing Data and Reports.** Vulcan Materials believes that EPA has made major modifications to the provisions of the RFI plan and corrective measures study (CMS) plan which first appeared in the draft permit.



RCRA Permit Appeal Fact Sheet

1987

- The final permit appears to preclude Vulcan Materials from utilizing investigative data accumulated by the petitioner and EPA over a period of several years, and studies and reports based on these data. Vulcan Materials wishes to avoid the expense of duplicating such work when complying with the RFI conditions set forth in the permit. Consequently, Vulcan Materials requests that EPA assess the reliability and utility of such data before requiring Vulcan Materials to initiate additional media investigations.
- Vulcan Materials objects to portions of the CMS requirements which make no allowance for possible utilization of components of the facility's existing groundwater corrective action program.
- **Compliance Schedule.** Vulcan Materials seeks review of the timetable set forth in the permit schedule of compliance for corrective action. For example, the final permit requires one final report, six investigation plans, and two programs for the development of a plan be submitted within 60 days of permit issuance, and two additional plans be submitted within 120 days of permit issuance. Vulcan Materials does not believe that it will be able to supply the detail required and still comply with the timetable set forth in the permit. In addition, Vulcan Materials states that these requirements are more than those contained in the draft permit.
- **Submittal of Bi-Monthly Progress Reports.** Vulcan Materials objects to the requirements for bi-monthly progress reports, suggesting that this information will already be contained in the facility's work plans, remediation reports, and corrective action reports.
- **Permitting of Incinerators Under TSCA.** Both Ms. Maddy's and Ms. Hinderliter's appeal concerns issues surrounding the operation of Vulcan Materials' incinerator, which EPA has approved for disposal of polychlorinated biphenyls (PCBs) under TSCA. PCBs are a by-product of the chemical manufacturing process at this facility. These appeals are based on the following issues:
 - Conditions under which the trial burn was conducted are not those specified in the permit. For example, the PCB concentration in the waste stream used in the trial burn was 100 ppm, whereas the permit allows a concentration of 1,000 ppm. Similarly, the operating permit specifies a waste feed rate greater than 0.8 gpm and a flow rate greater than 1.0 gpm, whereas the trial burn rates were much lower. Ms. Maddy requests that the permit be rewritten as to operate the incinerator at the exact conditions that the incinerator was tested, or to re-test the incinerator at the exact operating conditions which Vulcan Materials plans to utilize.
 - It has not been demonstrated that the incinerator can meet the destruction and removal efficiency (DRE) as required by law when operating at the permitted conditions.



RCRA Permit Appeal Fact Sheet

1987

- EPA and the State did not accurately consider modification of the feed rate, the fluctuating flow rate characteristics of the hazardous waste stream, etc. and their affects on the characteristics of the stack emission products during burning of the hazardous waste stream. The trial burn did not produce dioxins and furans that posed a significant threat to public health; this may not hold true when the concentration of PCBs in the waste stream is increased to 1,000 ppm.
- Destruction by incineration of the components in the waste stream may be questionable, due to incompatibility of the waste stream.
- Ms. Hinderliter was concerned about problems reported during the trial burn tests such as condenser breaking, freezing lines, leaks, and inadvertent introduction of air into samples.
- The petitioners questioned why Vulcan Materials was able to waive out of a TSCA requirement to test PCB waste stream concentrations every 15 minutes.
- **Other PCB-Related Issues.** Ms. Maddy requests documentation presented during the EPA inspections of the Vulcan Materials facility, indicating the company has not exceeded the allowable concentration of PCB in products leaving the facility. In addition, Ms. Maddy requests that Vulcan Material's products be taken off the shelf and tested for their PCB concentration.
- **Storage of Off-Site Waste.** Ms. Maddy objects to the permit conditions in the State portion of the permit allowing Vulcan Materials to store off-site hazardous waste on the following grounds:
 - Vulcan Materials is not a commercial storage area;
 - There is no safe means of disposal for this waste; and
 - The area will have a greater exposure rate due to the accidental spills, either caused by transportation or leaking barrels.
- **Clarification of Waste Streams.** In the State portion of the permit, waste stream K016 is permitted for incineration and for deep well injection as "groundwater cleanup water." Ms. Maddy believes that the permit should distinguish between K016 for incineration and K016 for deep injection, clarifying that K016 for deep injection is not allowed to be incinerated.

Extra

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

In the Matter of:)	
)	
Vulcan Materials Company)	RCRA Appeal No. 87-1
)	
)	
RCRA Permit No. KSD 007482029)	
)	

ORDER DENYING PETITIONS FOR REVIEW

Donna Hinderliter and Laurie E. Maddy have requested review of a permit issued under the Resource Conservation and Recovery Act (RCRA), 42 U.S.C.A. §§6901-6991i, to Vulcan Materials Company for a hazardous waste facility in Wichita, Kansas. The permit determination was a joint decision made by U.S. EPA Region VII and the Kansas Department of Health and Environment (KDHE). The State of Kansas is authorized under RCRA §3006(b) to administer its own state RCRA program in lieu of the federal program, except for the corrective action requirements imposed by the 1984 Hazardous and Solid Waste Amendments, Pub. L. No. 98-616, over which EPA retains authority. ^{1/}

Based on the petitions for review and Region VII's response, I believe that the petitions must be denied. They raise matters

^{1/} Both petitions were originally sent to KDHE and EPA Region VII. Copies were subsequently forwarded to EPA headquarters. As requested by EPA's Chief Judicial Officer, Region VII submitted responses to these petitions. Vulcan also filed, but subsequently withdrew, a petition for review of the permit decision.

relating exclusively to the state-issued portion of the permit and are thus not subject to an administrative appeal within U.S. EPA. See, e.g., In re Highway 36 Land Development Co., RCRA Appeal No. 87-5, at 1 (Sept. 2, 1987) ("conditions in the state-issued portion of the permit are appealable only to the State"); In re Northside Sanitary Landfill, Inc. (Order on Reconsideration), RCRA Appeal No. 84-4, at 4-9 (Nov. 27, 1985) (only state may determine matters solely within scope of state's authorization under RCRA §3006(b)), affirmed, 804 F.2d 371 (7th Cir. 1986). Accordingly, review is denied. ^{2/}

So ordered.



Lee M. Thomas
Administrator

Dated: 9/8/88

^{2/} In addition to issuing the federal portion of the permit, EPA approved Vulcan's request to dispose of PCBs through incineration under the Toxic Substances Control Act (TSCA), 15 U.S.C.A. §§2601-2629, and 40 CFR Part 761. The Maddy petition states that it serves as an appeal from this TSCA approval as well. The administrative appeal provisions do not apply, however, to TSCA approvals. See 40 CFR Parts 124 and 761.