



RCRA Permit Appeal Fact Sheet

1988

FACILITY: Texaco Refining and Marketing Inc. (Texaco)
Houston, Texas
TXD 007 378 995
RCRA Appeal No. 88-39

PETITIONER: Texaco

PETITION FILED: December 2, 1988

STATUS OF PETITION: See Permit Appeal Status Report

ISSUES:

- RFI conditions are not justified
- Definition of solid waste management unit
- Due process
- Procedural issues
- Joint permitting

Summary of Petition:

Texaco is petitioning for review of its hazardous waste land disposal permit issued on November 2, 1988. The petitioner contends that neither the public nor the petitioner had adequate opportunity to comment on the Federal portions of the permit, because EPA did not prepare a draft permit or a statement of basis, and did not provide any public notice and comment period. The corrective action issues below are related to Federal portions of the permit, on which the petitioner claims it did not have the opportunity to comment.

- **RFI Conditions are not Justified.** The petitioner claims that an RFI is not necessary for certain tanks that are subject to closure plans awaiting approval by the Texas Water Commission. Texaco argues that these State closure plans address any releases from the tanks.
- **Definition of Solid Waste Management Unit.** Texaco claims that certain water treating sludge ponds, identified in the permit as solid waste management units (SWMUs), are actually service water ponds containing makeup water for the plant.
- **Due Process.** The petitioner contends that the permit frequently allows modifications outside the provisions of 40 CFR Section 270.41, and argues that any modification of the permit must follow existing Federal regulations.



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- Permit modification procedures under dispute include modification of the RFI work plan and a provision requiring Texaco to submit a schedule for meeting certain potentially applicable HSWA requirements.
- Texaco also objects to the wording of one Federal permit provision which would require "other action deemed necessary" by the Texas Water Commission in the event of a possible release from a SWMU. Texaco contends that both EPA and the State are constrained to operate only through existing regulations for issuance of orders or permit modifications, and can not simply require any "other action deemed necessary."
- **Procedural Issues.** The petitioner contends that Texaco and the public were denied any opportunity to comment on the Federal portion of the permit, because: (1) EPA did not prepare a draft permit as is required by 40 CFR Section 124.6; (2) EPA did not prepare a statement of basis under 40 CFR Section 124.7; and (3) EPA did not provide any public notice and comment period as is required by 40 CFR Section 124.10. In addition, Texaco states that EPA did not participate in a hearing before a Texas Water Commission examiner as part of the State permit review process, or in meetings between the petitioner and the Texas Water Commission concerning the State permit.
- **Joint Permitting.** Texaco contends that although several Federal permit provisions are enforceable only by EPA, such provisions often reference the Texas Water Commission and State rules. The petitioner argues that such conditions must be revised to cite Federal law and EPA responsibilities.

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

In the Matter of:)

Texaco Refining and Marketing Inc.)

RCRA Permit No. TXD007378995-0)

RCRA Appeal No. 88-39

REMAND ORDER

By petition dated December 1, 1988, Texaco Refining and Marketing Inc. seeks review of a RCRA permit authorizing continued hazardous waste treatment and disposal at its refinery in Amarillo, Texas. The permit was issued jointly by Region VI and the Texas Water Commission ("TWC"). Using consolidated permitting procedures, Region VI issued the portion of the permit that imposes requirements under the Hazardous and Solid Waste Amendments of 1984 ("HSWA"), and TWC issued the balance of the permit. ^{1/}

Although the Agency encourages the use of consolidated permitting procedures where appropriate, the EPA Region must ensure that its portion of the permit is issued in accordance with the procedures specified in Part 124 of the Agency's rules. Region VI failed to do so here. The public notice of the draft permit was issued by TWC and purports to satisfy the notice requirements of 40 CFR §124.10, but it fails to provide basic

^{1/} The State of Texas is authorized under RCRA §3006(b) to administer its state hazardous waste program in lieu of the federal program, except for those requirements imposed under HSWA.

information relating to the HSWA portion of the permit, including the name and address of the office processing the HSWA conditions (namely Region VI) as required by §124.10(d)(1)(i). Although the public notice states that written comments on the draft permit should be directed to TWC, TWC staff evidently indicated to Texaco that TWC would address only the state-issued portion, not the HSWA portion, of the permit. See Petition at 1-2. The public notice also specifies the date for a public hearing, but no Region VI representative attended the hearing, and TWC personnel at the hearing again refused to receive comments on the HSWA portion of the permit, stating that TWC had no authority to act on behalf of Region VI. See id. ^{2/} Moreover, no Fact Sheet or Statement of Basis accompanied the draft permit as required by §§124.7 and 124.8, but instead the Fact Sheet was prepared only after the close of the consolidated comment period. ^{3/}

^{2/} The December 9, 1988 draft Joint Permitting Agreement between TWC and Region VI requires that public notices state that "[p]ersons wishing to comment or request a hearing on a HSWA requirement should also notify, in writing, the Director of the Hazardous Waste Management Division, EPA Region 6, Dallas, Texas 75202." See Region VI Response to Petition for Review, Exh. 3 at 9. The public notice in this case did not identify Region VI or provide a Region VI address for submission of written comments. The draft Agreement also states that TWC will receive comments on the entire permit and prepare a response to any HSWA comments, which will then be reviewed by Region VI. See id. at 7-8 (¶¶ 7-10). As noted above, it is undisputed that TWC staff in this case refused to receive HSWA comments, and that Region VI staff did not participate at the public hearing.

^{3/} See Region VI Response to Petition for Review, Exh. 4 (Fact Sheet). Although the Fact Sheet is undated, it refers to issuance of the state portion of the permit on August 23, 1988 (id.), which was well after the close of the consolidated public comment period. The very purpose of a fact sheet or statement of basis

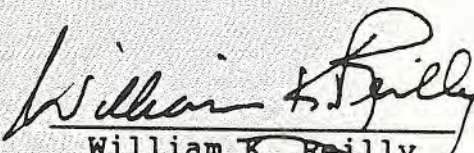
(continued...)

Due to these serious procedural flaws, the public had no adequate opportunity for informed comment on the HSWA portion of the permit as required by the Agency's rules. Accordingly, this proceeding is remanded to Region VI with instructions to reissue the HSWA portion of the permit in full compliance with the Part 124 procedures. In view of the procedural defects below and the resulting remand, it is unnecessary to address Texaco's substantive challenges to the permit.

The Region shall give public notice of this decision under Section 124.19(c). The entire HSWA portion of the permit is stayed until properly reissued. Given the scope of the remand, administrative appeal of the decision on remand will be required to exhaust administrative remedies under 40 CFR §124.19(f)-(1)(iii).

So ordered.

Dated: FEB 1 1990


William K. Reilly
Administrator

^{3/}(...continued)

is to provide the Agency's reasons for the proposed permitting action, as well as the basic information needed to judge the adequacy of the draft permit, thereby allowing for informed public comment. See 44 Fed. Reg. 32880-81 (June 7, 1979).

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Remand Order in the matter of Texaco Refining and Marketing Inc., RCRA Appeal No. 88-39, were sent by First Class Mail to the following persons:

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Dated: FEB - 5 1990


Brenda H. Selden, Secretary
to the Chief Judicial Officer