



RCRA Permit Appeal Fact Sheet

1989

FACILITY: Texaco Refining and Marketing Inc. (Texaco)
Puget Sound Plant
Anacortes, Washington
WAD 009 276 197
RCRA Appeal No. 89-12

PETITIONER: Texaco

PETITION FILED: May 15, 1989

STATUS OF PETITION: See Permit Appeal Status Report

ISSUES:

- RFI conditions are not justified
- RFI conditions are technically inappropriate
- Miscellaneous other issues (personal liability)

Summary of Petition:

The petitioner objects to several corrective action conditions of the permit and to one other permit condition concerning personal liability. Texaco requests that the conditions of its land treatment permit that are under petition be deleted from the permit.

- **RFI Conditions are not Justified.** The RFI conditions under petition concern the provisions relating to the facility's Oily Sewer.
 - The petitioner questions the justification for including RFI conditions in the permit for the Oily Sewer. Texaco argues that the RCRA facility assessment conducted at the facility did not provide sufficient evidence of past releases to justify inclusion of the Oily Sewer in the RFI.
 - The petitioner further contests the classification of the Oily Sewer as a solid waste management unit.
- **RFI Conditions are Technically Inappropriate.** Texaco argues that the practical quantitative limit (PQL), referred to in the permit as the reference values against which water sample values are to be compared when determining if significant contamination has occurred, are for clean water samples and not complex mixtures. The petitioner notes that



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the PQLs of some parameters on the list are as low as the detection limit of the laboratory currently in use and lower than the facility's previous laboratory. The petitioner suggests that PQLs are not valid triggers for comparison of water sample analyses.

- **Personal Liability.** The petitioner argues that the personal liability requirement, which states that the permittee shall hold harmless the State, EPA, et al., is not required under either State or Federal regulations and, therefore, should not be included as a condition of the permit.

S. Michael

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

In the Matter of:)	
)	
Texaco Refining and Marketing, Inc.)	RCRA Appeal No. 89-12
(Anacortes, Washington))	
)	
RCRA Permit No. WAD 009 276 197)	

ORDER DENYING REVIEW

By petition dated May 12, 1989, Texaco Refining and Marketing, Inc. ("Texaco") seeks review of the federal portion of a RCRA permit jointly issued by U.S. EPA Region X and the Washington Department of Ecology for Texaco's refinery in Anacortes, Washington. Texaco challenges the permit sections requiring corrective action for the refinery's "oily sewer," and establishing Practical Quantitation Limits ("PQLs") as the standards for determining if significant contamination has occurred.^{1/} As requested by the Agency's Chief Judicial Officer, Region X submitted a response to the petition on June 29, 1989, defending the permit as written.

Under the rules that govern this proceeding, there is no automatic administrative appeal from the Region's permit deci-

^{1/} Texaco also challenged section I.B. of the permit, which originally provided that "[t]he Permittee shall hold harmless and indemnify the United States, the Agency, the State of Washington, the Department, and officers, employees and agents of the United States or the State of Washington from any claim, suit, or action arising from the activities of the Permittee or its contractors, agents, or employees under this permit." Region X has agreed to withdraw this condition of the permit, and has so advised Texaco. Region's Response to Petition for Review, p.5.

sion. Ordinarily, a RCRA permit determination will not be reviewed unless it is based on a clearly erroneous finding of fact or conclusion of law, or involves an important matter of policy or exercise of discretion that warrants review. See 40 CFR §124.19; 45 Fed. Reg. 33,412 (May 19, 1980). The preamble to §124.19 states that "this power of review should be only sparingly exercised," and that "most permit conditions should be finally determined at the Regional level * * *." Id. The burden of demonstrating that review is warranted is on the petitioner. See 40 CFR §124.19. For the reasons set forth below, I conclude that Texaco has not met this burden.

Texaco challenges permit conditions V.B.1, V.B.2, and V.B.3, which require corrective action for the facility's oily sewer. Specifically, these permit sections require Texaco to include the oily sewer in its RCRA Facility Investigation ("RFI") workplan. Texaco is to "develop the RFI workplan necessary to determine whether the oily sewer has allowed leakage of contaminants to soil and groundwater." Permit section V.B.3. The results of the RFI will be used to determine what, if any, specific corrective action measures are required to protect human health and the environment.

Texaco states that under RCRA §3004(u), corrective action is limited to solid waste management units ("SWMU"),^{2/} and that

^{2/} RCRA §3004(u) provides that permits issued after November 8, 1984, shall require

corrective action for all releases of hazardous
(continued...)

Region X erroneously concluded that Texaco's oily sewer is a SWMU. Texaco also argues that the results of the RCRA Facility Assessment ("RFA") do not provide sufficient evidence of past releases to justify an RFI for the oily sewer.

As noted by Region X, Texaco failed to preserve these issues for review. Pursuant to the rules governing this proceeding, a petition for review must show that "any issues being raised were raised during the public comment period (including any public hearing) to the extent required by these regulations * * *." 40 CFR §124.19(a). The regulations require that interested parties "raise all reasonably ascertainable issues and submit all reasonably available arguments supporting their position" by the close of the public comment period on the draft permit. 40 CFR §124.13. "These rules help to ensure that the Region has an opportunity to address any concerns raised by the permit, thereby promoting the Agency's longstanding policy that most permit issues be resolved at the Regional level." Shell Oil Company, RCRA Appeal No. 88-48, p.3 (March 12, 1990). In this case, Texaco's only comment concerning permit sections V.B.1, V.B.2 or V.B.3 was an unrelated reference to the misspelling of "waste

^{2/} (...continued)

waste or constituents from any solid waste management unit at a treatment, storage or disposal facility seeking a permit under this subchapter, regardless of the time at which waste was placed in such unit.

water" in section V.B.1 of the draft permit.^{3/} This comment obviously did not preserve any issues for review pertaining to the oily sewer's status as a SWMU and whether it was the source of past releases.^{4/}

^{3/} See Region X's Response to Comments, p.14 (Region's Response to Petition for Review, Exhibit 1).

^{4/} Even if Texaco had preserved these issues for review, it would not meet its burden of demonstrating that the Region's permitting decision was clearly erroneous. The arguments advanced here by Texaco were rejected in Shell Oil, *supra*. In Shell Oil, I concluded that an oily sewer is a SWMU. The oily sewer in Shell Oil consisted "primarily of underground, vitrified clay pipes used to collect wastewater from process areas and * * * other parts of the facility." Shell Oil, p.4. Texaco's oily sewer is strikingly similar, consisting primarily of underground concrete and vitrified clay pipes which collect process wastewater from all portions of the refinery as well as leaks or spills from the operating units. RCRA Facility Assessment ("RFA"), p.13 (Region's Response to Petition for Review, Exhibit 2). There being no apparent reason to distinguish these two cases, the reasoning of Shell Oil applies here. Texaco's oily sewer is a SWMU subject to corrective action under RCRA §3004(u).

Texaco's argument that corrective action cannot be required because the RFA does not provide sufficient evidence of past releases to justify an RFI is also without merit. The RFA concluded that

The sewer system is 30 years old, without having had integrity or leak testing, and with maintenance only during turn-around or construction involving excavation of sewer pipes. It is likely that there have been past releases and ongoing releases to soil or groundwater from this unit. Although these may be de minimis losses from any one unit, a significant amount of liquid containing hazardous constituent may have been released from this unit over a period of years.

RFA pp.13-14. (Region's Response to Petition for Review, Exhibit 2).

As noted in Shell Oil, "[t]o require an owner/operator to conduct further investigation of a SWMU, the Region need not have conclusive evidence of a release, but instead only evidence of a
(continued...)

Petitioner also challenges the use of PQLs^{5/} in section V.B.9 of the permit. This section details the corrective action necessary for Texaco's Equalization Basin and No.1 Overflow Basin. Texaco is required to develop a RFI workplan to determine whether leakage of specific hazardous constituents has occurred or is occurring. If the hazardous constituents "are not present * * * at concentrations above the [PQLs] specified in Table 2 of Permit Attachment 3, then ongoing monitoring is not required." In other words, if the constituents are present at concentrations above the PQLs, ongoing monitoring is required.

Texaco contends that because the PQLs listed in the permit are for clean water and not for "complex mixtures" they should serve only as guidelines or targets for the laboratory. These unsupported assertions,^{6/} however, do not satisfy Texaco's burden of demonstrating that the basis for the requirement is clearly erroneous or otherwise warrants review.^{7/}

^{4/} (...continued)

likely or suspected release." Shell Oil, p.6. See also Sun Refining and Marketing Co., RCRA Appeal No. 88-46, p.2 (April 20, 1990). The RFA demonstrates the likelihood of past releases, and Texaco failed to meet its burden of showing that this finding is clearly erroneous.

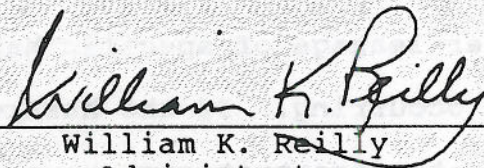
^{5/} PQLs are "the lowest level[s] [of pollution detection] that can be reliably achieved within specified limits of precision and accuracy during routine laboratory operation conditions. PQLs thus represent a level considered to be achievable on a routine basis." 52 Fed. Reg. 25,699 (July 8, 1987).

^{6/} Texaco does not explain what it means by "complex mixture," nor does it propose another set of standards to apply.

^{7/} Texaco also notes that some of the PQLs are as low or lower than the detection limits of laboratories they have used. This
(continued...)

For the foregoing reasons, and for those set forth in Region X's Response to the Petition for Review, review is denied.

So ordered.



William K. Reilly
Administrator

Dated: NOV 6 1990

^{2/}(...continued)

is not a reason not to use PQLs. The Agency "expects that PQLs * * * will push laboratories to perform at a higher level than they would otherwise." 52 Fed. Reg. 25,700 (July 8, 1987).

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Order Denying Review in the matter of Texaco Refining and Marketing, Inc., RCRA Appeal No. 89-12, were sent by First Class Mail to the following persons:

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Dated: NOV - 7 1990