

US EPA ARCHIVE DOCUMENT



RCRA Permit Appeal Fact Sheet

1988

FACILITY: Sun Refining and Marketing Company (Sun)
Tulsa, Oklahoma
OKD 058 078 775
RCRA Appeal No. 88-46

PETITIONER: Sun

PETITION FILED: December 6, 1988

STATUS OF PETITION: See Permit Appeal Status Report

ISSUES:

- RFI conditions are not justified
- Definition of solid waste management unit
- Due process
- Other corrective action issues (cost-effectiveness as a criterion for remedy selection)

Summary of Petition:

Sun objects to corrective action requirements in the permit issued to its hazardous waste land disposal facility. The petitioner requests that the Administrator review certain corrective action issues that fall into three general areas: (1) conditions related to RFI requirements; (2) provisions that define the solid waste management units (SWMUs) at the facility; and (3) procedures for resolution of disputes concerning the RFI.

- **RFI Conditions are not Justified.** The petitioner objects to the permit requirement that the facility monitor for certain constituents despite the lack of any analytical data indicating that these constituents are present in waste streams managed at the facility. Specifically, the petitioner contends that the only appropriate parameters for unsaturated zone and groundwater monitoring at the facility are lead, chromium, and toluene. In addition, Sun suggests that because the permit already requires that the facility monitor for constituents which might co-exist with the indicators, there is no need to monitor for both indicators and those compounds which might be present along with these indicators. The petitioner requests that the requirement to monitor for the additional parameters be deleted from the permit.
- **Definition of Solid Waste Management Unit.** Sun contends that EPA does not have authority pursuant to the corrective action provisions of RCRA to define the facility's wastewater treatment system as a SWMU. The petitioner states that the unit is not used to manage solid waste. Rather, the wastewater treatment system is used for oil recovery or the



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1988

management of recovered oil. Therefore, Sun believes that their treatment system comprises part of the ongoing refining production process at the facility. Notwithstanding the above arguments, Sun maintains that the RCRA facility assessment report contains no factual information to support a conclusion that there has been any release of hazardous waste or hazardous constituents from the wastewater treatment system. Thus, Sun claims that EPA is without authority to compel Sun to conduct an RFI at this system.

- **Due Process.** Sun requests that administrative dispute resolution procedures be incorporated into the permit. The petitioner contends that precedent exists to support this request, noting that such procedures are contained in the current draft of the Subpart S corrective action proposed regulations. In addition, Sun points out that Region 3 has included informal administrative dispute resolution procedures in an issued Part B permit, and that the Agency has promulgated final administrative dispute resolution procedures for interim status corrective action orders.
- **Cost-Effectiveness as a Criterion for Remedy Selection.** Sun requests that the Permit include provisions for the consideration of cost-effectiveness in determining the scope of analyses for the RFI and in selecting any necessary corrective measures. Sun notes that cost-effectiveness is clearly recognized as a pertinent criterion for screening and selecting remedies pursuant to CERCLA. Furthermore, the petitioner notes that the draft Subpart S corrective action proposed regulations expressly include cost as a decision factor for selecting corrective measures alternatives. If the Administrator should refuse to grant Sun's request, the petitioner demands that the requirement to develop extremely detailed cost information on each possible corrective measure alternative be deleted from the permit.

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

In the Matter of:)

Sun Refining and Marketing Co.)

RCRA Permit No. OKDO58078775)

RCRA Appeal No. 88-46

ORDER DENYING REVIEW

Sun Refining and Marketing Company has petitioned for review of a RCRA Permit authorizing operation of a land treatment unit at Sun's oil refinery in Tulsa, Oklahoma. The permit was jointly issued by U.S. EPA Region VI and the Oklahoma State Department of Health. As requested by the Agency's Chief Judicial Officer, Region VI filed a response to the petition.

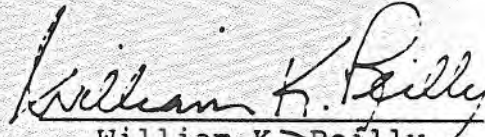
Under the rules that govern this proceeding, there is no automatic administrative appeal from the Region's permit decision. Ordinarily, a RCRA permit determination will not be reviewed unless it is clearly erroneous (factually or legally), or involves an important matter of policy or exercise of discretion 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 thus on the petitioner.

Sun's petition raises two main issues regarding requirements imposed by Region VI: (1) whether Sun's wastewater treatment

system should be investigated as part of its RCRA Facility Investigation; and (2) whether the permit should provide expressly that cost effectiveness may be considered in determining the scope of analysis and in selecting any remedial measures under the corrective action program. ^{1/} Sun has failed to show that the Region's permit decision is clearly erroneous or otherwise warrants review. For the reasons set forth in the Region's response to the petition, review is denied. ^{2/}

So ordered.

Dated: APR 20 1990


William K. Reilly
Administrator

^{1/} Sun raised an additional issue regarding procedures for resolution of disputes that might arise during the course of the corrective action process. Region VI has stated that it is willing to engage in negotiations leading to the inclusion of such procedures in the permit. At the Region's request (and with Sun's concurrence), this issue has been removed from the scope of review. See Region Response to the Petition at 2-3.

^{2/} *future releases*
Regarding the wastewater treatment system in particular, the Agency's corrective action authority under RCRA §3004(u) is not limited to confirmed releases as Sun contends, but extends to suspected and future releases as well. See generally 50 Fed. Reg. 45,789 (Dec. 1, 1987); 40 CFR §270.14(d)(3). Nor has Sun shown that any portion of its wastewater treatment system is excluded from RCRA regulation under American Mining Congress v. EPA, 824 F.2d 1177 (D.C. Cir. 1987). See generally 53 Fed Reg. 519 (Jan. 8, 1988).

A held.

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Order Denying Review in the matter of Sun Refining and Marketing Company, RCRA Appeal No. 88-46, were mailed to the following by First Class Mail, Postage Prepaid:

Lowell F. Martin
Morgan, Lewis & Bockius
1800 M Street, NW
Washington, DC 20036

George R. Alexander, Acting
Regional Counsel
U. S. EPA, Region VI
1445 Ross Avenue
Dallas, TX 75202-2733

Mark Chandler
Office of Regional Counsel
U. S. EPA, Region VI
1445 Ross Avenue
Dallas, TX 75202-2733

Allyn Davis, Director
Hazardous Waste Management Division
U. S. EPA, Region VI
1445 Ross Avenue
Dallas, TX 75202-2733

Dated: **APR 23 1990**


Brenda H. Selden, Secretary to
the Chief Judicial Officer