RCRA Permit Appeal Fact Sheet **1988**

FACILITY: Conoco, Inc. (Conoco)
Ponca City, Oklahoma
OKD 007 233 836
RCRA Appeal No. 88-44

PETITIONER: Conoco

PETITION FILED: December 14, 1988

STATUS OF PETITION: See Permit Appeal Status Report

ISSUES:

- RFI conditions are not justified
- RFI conditions are technically inappropriate
- Due process
- Other corrective action issues (groundwater monitoring parameters)
- Joint permitting
- Miscellaneous other issues (reporting frequency; receipt of wastes from other facilities)

Summary of Petition:

Conoco is petitioning for review of various corrective action provisions in the permit issued jointly by EPA Region 6 and the Oklahoma State Department of Health (OSDH) to the Ponca City refinery and hazardous waste land treatment and storage facility.

- **RFI Conditions are not Justified.** Conoco states that RFI interim measures mandate an extensive hydrogeological assessment in an area where no solid waste management units (SWMUs) are known to exist. Conoco also states that previous assessments have concluded that this area has not received releases from on-site SWMUs. These assessments were conducted, with prior approval by EPA, under the aegis of the Oklahoma Water Resources Board (OWRB) Administrative Order (AO), dated November 18, 1986.

- **RFI Conditions are Technically Inappropriate.** The petitioner argues that the vadose zone program, the facility-wide soil-gas survey, and the surface water/sediment sampling and analysis program incorporate work elements that are not related to identified SWMUs.

  - Conoco claims that soil-gas surveys are technically inappropriate in many clay vadose zones that exist at this site.

- The petitioner contends that soil analysis parameters in the permit are unacceptable in that they are excessively costly to measure and are necessarily useful.

- Conoco contends that the sample locations for sediments are void of sediments because these locations are concrete lined.

- Conoco states that the requirement to investigate particulate and gaseous releases from buried SWMUs will cause releases. Conoco proposes to conduct air contaminant surveys during individual site remediations.

- **Due Process.** Conoco requests that the permit include a dispute resolution mechanism and recommends use of either an arbitrator or some other impartial third party.

- **Groundwater Monitoring Parameters.** Whereas the permit requires Appendix IX constituent analysis for soil and water sampling, Conoco contends that the "Skinner" list of parameters is more representative of materials historically stored, used, and disposed in petroleum refineries. Because the "Skinner" list of parameters was not used, Conoco contends that the surface water/sediments sampling and analysis program mandated by the permit requires unnecessary duplication.

- **Joint Permitting.** Conoco contends that implementation of interim measure assessments specified in the permit would significantly delay cleanup programs underway in response to the OWRB AO. In addition, Conoco contends that the permit provisions which require characterization of fugitive air emissions from the site needlessly duplicate on-going State programs specifically targeted at these requirements. These State programs are conducted by the Oklahoma State Department of Health - Air Quality Service.

- **Reporting Frequency.** Conoco requests that the final permit require quarterly, as opposed to bimonthly, monthly, and quarterly, reporting.

- **Receipt of Waste from Other Facilities.** Per the petitioner's discussions with EPA, Conoco understands that the permit will allow the Ponca City facility to receive wastes from other Conoco facilities. If this is not the case, Conoco contests this provision as well.

Jim Michael

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

In the Matter of:	)	
Conoco Inc., Ponca City Refinery	)	RCRA Appeal No. 88-44
Permit No. OKD 007 233 836	)	

ORDER DENYING REVIEW

Before me is a Petition for Review filed under 40 CFR §124.19 by the Ponca City Toxic Concerned Citizens ("PCTCC"). The Petition seeks review of a permit jointly issued by EPA Region VI and the Oklahoma State Department of Health under Section 3005 of the Resource Conservation and Recovery Act of 1976 ("RCRA"), 42 U.S.C. §6925 (1988), to Conoco Inc. for Conoco's oil refinery in Ponca City, Oklahoma.

The federal portion of the RCRA permit imposes conditions under the Hazardous and Solid Waste Amendments of 1984 ("HSWA"), including corrective action requirements under RCRA §3004(u). The balance of the permit was issued by the State of Oklahoma, which is authorized under RCRA §3006 to administer its State hazardous waste program in lieu of the non-HSWA portion of the federal program.

Petitions for Review were filed by both PCTCC and Conoco. Extended settlement negotiations between Region VI and Conoco ultimately led to a withdrawal of Conoco's Petition in September 1990. It was originally believed that this settlement would also resolve the concerns raised by PCTCC. By letter dated April 19,

1991, however, Region VI stated that PCTCC had decided to continue to prosecute its appeal, and the Region represented that it would submit a response to PCTCC's Petition within fourteen days. After a series of delays, the Region finally submitted its response in October. The matter is now ready for disposition.

The central contention set forth in PCTCC's Petition is that Conoco should be denied authorization to operate its land treatment unit at the site. This issue does not concern the HSWA portion of the permit issued by Region VI, but instead relates to the State-issued portion of the permit. The Agency has repeatedly held that it has no jurisdiction to entertain challenges to RCRA permit conditions issued by an authorized State. [1/]

To support its contention that Conoco should be denied authorization for land treatment at the refinery, PCTCC recounts a long and disturbing history of environmental and health-related problems visited upon the residents of Ponca City. There is no question that these distressing events warrant not only deep sympathy and concern, but also a redoubling of federal and state regulatory efforts to ensure that continued operations at the site are conducted in a manner protective of human health and the

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[1/] See In re BP Oil Co., RCRA Appeal No. 89-13 (July 25, 1989) (issues concerning State-issued portion of a RCRA permit are not subject to federal administrative review under 40 CFR §124.19); In re Texaco Refining and Marketing Inc., RCRA Appeal No. 89-10 (June 27, 1989) (same); In re Vulcan Materials Co., RCRA Appeal No. 87-1 (September 9, 1988) (same); In re Highway 36 Land Development Co., RCRA Appeal No. 87-5 (September 2, 1987) (same); cf. RCRA §3006(b), 42 U.S.C. §6926(b) (an authorized State program operates "in lieu of" the federal program).

environment. I agree with the Region that the best way to address existing releases at the site is to allow the corrective action process under RCRA §3004(u) to continue to go forward. The law does not permit the Agency to review health-related determinations made by the State during the course of authorizing continued land treatment or developing other non-HSWA permit conditions. The Region, however, does retain overlapping enforcement authority in RCRA-authorized States, [2/] and it is hereby directed to engage in vigorous oversight of the Ponca City refinery to ensure that continued hazardous waste management at the site is conducted in a manner that is consistent with the permit and that protects human health and the environment.

For the reasons set forth above, review is denied.

So ordered.

Dated: 12-6-91

William K. Reilly
Administrator

[2/] See RCRA §3008(a)(2) (directing U.S. EPA to give notice to the State prior to instituting an enforcement action in an authorized State).

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Order Denying Review in the matter of Conoco Inc., Ponca City Refinery, RCRA Appeal No. 88-44, were sent to the following persons in the manner indicated:

By First Class Mail,
Postage Prepaid:

Marvin Benton
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Rick Klinger
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Ponca City, OK 74601

Dated: DEC 12 1991

Mildred T. Connelly, Secretary
to the Judicial Officer