RCRA Permit Appeal Fact Sheet **1988**

FACILITY: Marathon Petroleum Company (Marathon)
Robinson, Illinois
ILD 005 476 882
RCRA Appeal No 88-24

PETITIONER: Marathon

PETITION FILED: November 1, 1988

STATUS OF PETITION: See Permit Appeal Status Report

ISSUES:
- RFI conditions are too vague
- RFI conditions are not justified
- RFI conditions are technically inappropriate
- Other corrective action issues (applicability of RCRA corrective action)

Summary of Petition:

The petitioner objects to the conditions in the permit which require the petitioner to use the corrective action plan for investigative purposes (i.e., to document the absence or presence of hazardous wastes or hazardous constituents) at several identified solid waste management units (SWMUs). Marathon contends that such a requirement is contrary to the language in Section 3004(u) of RCRA which requires corrective action for all releases of hazardous waste or constituents from any SWMU.

- **RFI Conditions are too Vague.** The petitioner argues that Attachment I to the permit, concerning the required scope of work for RFIs, does not reflect the specific characteristics of each SWMU, although this scope of work is intended to apply to every SWMU identified for corrective action. Marathon contends that the attachment is a "non-specific work plan applicable to nine separate and distinct SWMUs that gives no flexibility for site-specific considerations...." The petitioner further asserts that the scope of work, and EPA's reasons for imposing it, are in conflict with RCRA Section 3004(u) by requiring the documentation of the absence or presence of hazardous waste or hazardous constituents.

- **RFI Conditions are not Justified.** The petitioner argues that there is no evidence of a release from any of the SWMUs that are subject to an RFI under the terms of the permit. Marathon cites sections of Visual Site Inspection (VSI) reports as well as RCRA facility assessment (RFA) reports to support its claim.

- **RFI Conditions are Technically Inappropriate.** At three of the SWMUs identified for corrective action in the permit, retrofitting is currently in progress. The petitioner argues that by requiring the installation of double liners and a leachate collection system in addition to requiring these same SWMUs to be included in a generic corrective action plan, EPA has created impractical and inconsistent requirements for these units: The petitioner argues that it will be difficult to perform an RFI prospectively on the retrofitted SWMUs without damaging their liner and leachate collection systems.

- **Applicability of RCRA Corrective Action**. The petitioner cites sections of the RFAs for several of the identified SWMUs which state that these units "may be subject to RCRA," and that "U.S. EPA Enforcement is investigating the possibility that these units are RCRA regulated." Thus, the commenter claims that EPA has not concluded with certainty that these units are subject to RCRA, let alone to RCRA corrective action.

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

In the Matter of:	)	
Marathon Petroleum Company Robinson, Illinois	)	RCRA Appeal No. 88-24
RCRA Permit No. ILD005476882	)	

DENIAL OF PETITION FOR REVIEW

By petition submitted on October 31, 1988, Marathon Petroleum Company seeks review of the federal portion of a permit issued in September of 1988 by Region 5 under the Resource Conservation and Recovery Act of 1976 (RCRA), as amended, 42 U.S.C.A. §§6901-6992k. That portion of the permit imposes corrective action requirements under the Hazardous and Solid Waste Amendments of 1984 (HSWA), Pub. L. No. 98-616, 98 Stat. 3221.[1/] Based on the results of the RCRA Facility Assessment (RFA), the permit establishes corrective action requirements for twenty-one solid waste management units (SWMUs) which the Region identified as having significant potential for releases. As requested by the Agency's Chief Judicial Officer, the Region submitted a response to the petition together with relevant portions of the administrative record ("Region Response").

[1/] The non-HSWA portion of the permit was issued by Illinois, an authorized State under RCRA §3006(b). Since Illinois has not yet received authorization to administer the HSWA portion of the permit, EPA establishes the requirements mandated by HSWA. Only after both the State and federal portions of the permit have been issued does the permittee have a full RCRA permit.

Petitioner makes essentially two arguments on appeal: (1) that all but seven of the SWMUs targeted for inclusion in the corrective action program should be deleted from the permit on the ground that the Region failed to establish that there has been a release of hazardous waste or hazardous constituents from these SWMUs; and (2) that the required Scope of Work (SOW) for the RCRA Facility Investigation (RFI) should be amended or deleted because it is unduly generic and does not allow the RFI to reflect the specific characteristics of each SWMU. For the reasons stated below and in the Region's response, these arguments are rejected and the petition for review is denied.

Analysis

Under the rules governing this proceeding, the Region's permit decision is not subject to automatic review. See 40 C.F.R. §124.19 (1989). 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.[2/] The preamble to section 124.19 states that "this power should be only sparingly exercised," and that "most permit conditions should be finally determined at the Regional level * * *." 45 Fed. Reg. 33,412 (May 19, 1980). Thus, the burden of demonstrating that review is warranted is on the petitioner.

[2/] See In re Hoechst Celanese Corporation, RCRA Appeal No. 87-13, at 2 (February 28, 1989); In re Highway 36 Land Dev. Co., RCRA Appeal No. 87-5, at 2 (September 2, 1987).

The permit requires, inter alia, that Marathon submit to the Regional Administrator within 120 days of the effective date of the permit an RFI Phase I Workplan to document the absence or presence of hazardous wastes or hazardous constituents in the groundwater, surface water, and soils from the identified SWMUs. See Permit Cond. II.B.[3/] If the Regional Administrator determines, based on the data obtained from the Phase I Workplan, that there has been no release, no further action will be required. Permit Cond. II.C.[4/]

Marathon contends that the RCRA Facility Assessment (RFA) conducted by the Region does not provide sufficient evidence of a release to justify further investigation of the SWMUs listed in the permit. While Petitioner is correct that the Region's

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[3/] The identified SWMUs include: an area adjacent to the garage which contained a 300 gallon underground tank; a closed landfarm located in the northeast section of the facility; oily sludge, DAF skimmings, and bulk waste pits; a stormwater pond located in the northwest corner of the facility; aeration and surge impoundments which are part of the wastewater treatment plant; the West Impoundment including the Wabash Pond; five bio-sludge impoundments and sludge drying pit; a waste pile area at the West Impoundment; and five weathering pad areas. Marathon contends that all but the five weathering pads, the waste pile at the West Impoundment, and the closed landfarm should be deleted from the permit.

[4/] If, however, a release is detected, the permittee must submit an RFI Phase II Workplan to determine the rate and extent of migration and the concentrations of hazardous waste or hazardous constituents in the ground water, surface water, and soil. Depending on the results of these investigations, the Regional Administrator will determine whether corrective action measures are necessary. If corrective action is determined to be necessary, the permittee will be required to prepare a Corrective Measure Study to develop and evaluate corrective action alternatives. The Regional Administrator will then select the appropriate corrective measures and the permit will be modified accordingly.

limited sampling in performing the RFA does not reveal conclusive proof of a release from many of the SWMUs, such proof is not required. Rather, it is well established that a RCRA permit applicant may be required to conduct various preliminary detection activities where necessary to determine whether a potential or suspected release from a SWMU requires a more complete investigation.[5/] Although Petitioner contests the Region's conclusions regarding the likelihood of a release, these are the kind of technical judgments that are best resolved at the Regional level, and they will be reviewed only for clear error or abuse of discretion. Shell Oil, supra, at 6.

Contrary to Marathon's contention, RCRA §3004(u) does not mandate that the Region show conclusive proof of a release before requiring the permittee to conduct various preliminary site

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[5/] See In re Shell Oil Co., RCRA Appeal No. 88-48 at 6 (March 12, 1990) ("To 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 likely or suspected release."); In re Amerada Hess Corp., Port Reading Refinery, RCRA Appeal No. 88-10 at 4-5 (August 15, 1989) (suspected release justifies preliminary investigation); 40 C.F.R. §270.14(d)(3) (Region may require a permit applicant to conduct verification monitoring where necessary to fill data gaps and to allow Region to make initial release determination); 52 Fed. Reg. 45,788-89 (December 1, 1987) (same); 50 Fed. Reg. 28,714 (July 15, 1985) (where insufficient information regarding releases exists at the time of permitting, permit may include time frame by which permittee must provide information necessary to determine the extent of corrective action required, if any); cf. In re Hoechst Celanese Corp., RCRA Appeal No. 87-13 at 6, 9 (February 28, 1989) (corrective action often a phased process since at time of permit issuance there might not be sufficient information to identify necessary corrective action measures; given RCRA permitting deadlines Region should be given flexibility in devising appropriate corrective action provisions).

investigations.[6/] Although the section mandates corrective action for "releases," it recognizes that gaps in available information may require a phased approach and the inclusion of schedules of compliance. In my view, the authority in RCRA §3004(u) to require corrective action for a release includes the authority to require an applicant or permittee to determine whether a suspected release has actually occurred.[7/] In the present case, there is insufficient information for the Region to make that determination. The permit does not, therefore, impose any final corrective action measures, but requires the permittee to collect additional information regarding potential releases. If these investigations reveal that a release has indeed occurred, only then will specific corrective action obligations be required of the permittee and incorporated into the permit. Section 3004(u) clearly contemplates such an approach. See 50 Fed. Reg. at 28,714 (July 15, 1985) ("The legislative history [of §3004(u)] explains that where insufficient information exists at

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[6/] Section 3004(u) provides that permits issued after November 8, 1984

> shall require corrective action for all releases of hazardous 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. Permits issued under * * * this title shall contain schedules of compliance for such corrective action (where such corrective action cannot be completed prior to issuance of the permit) and assurance of financial responsibility for completing such corrective action.

[7/] See note 5, supra.

the time of permitting to specify in the schedule of compliance the corrective action required (if any) * * *, the schedule of compliance included in the permit may establish a time frame by which the information necessary to determine the extent and cost of corrective action will be obtained * * *. Once the necessary information has been acquired, the permit is amended * * *, to institute the appropriate corrective action.").

The record in the present case supports Region V's concern about potential releases from the various SWMUs and its conclusion that further investigation is warranted. The Region's conclusions for each of the SWMUs at issue in the petition for review are as follows:

300 Gallon Tank

This tank, which was removed several years earlier, had been used to store waste oils and lubricants from cars and trucks used at the facility. Limited soil samples taken by the Region detected high levels of lead and other contaminants, but the Region was unable to determine whether these findings were the result of passing vehicles or leakage from the tank. Further investigation is therefore required to determine the source and seriousness of the release.[8/]

Oily Sludge Pit, DAF Skimming Pit, and the Bulk Waste Pit

At the time the RFA was conducted, these were all unlined

[8/] As Marathon points out, this tank was mistakenly identified in the RFA as a 3000 gallon tank. The finding that hazardous constituents were present in the soil around the tank, however, was unaffected by the Region's misidentification of its size.

impoundments used to store refinery waste until landfarmed. They are presently being retrofitted with double liners and a leachate collection system pursuant to RCRA §3004(o)(1)(A). The RFA noted that there has been no adequate analysis of the soil under the impoundments and that such an analysis should be conducted prior to any retrofitting.[9/] The Region therefore concluded that an RFI for these units is necessary in order to determine whether there have been any releases into the soil or groundwater.

In its petition, Marathon argues that performing an RFI on these pits once they are retrofitted would cause damage to the plastic liner and collection system, and that by designating these pits as SWMUs the Region has created impractical and inconsistent requirements. Marathon also contends that because it has proposed in its approved closure plans that the units be closed "clean" at the end of their operating lives, an RFI is inappropriate. For the reasons stated by the Region, both of these arguments lack merit. As the Region notes, Marathon was aware that sampling might be required prior to retrofitting the

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[9/] Marathon contends that its own groundwater sampling data show that no significant releases have occurred. As the Region notes, however, Marathon was the subject of a RCRA complaint in August of 1988 alleging that its ground water monitoring system was inadequate to detect a release into the ground water or soil. (The complaint was settled by consent agreement in 1989.) Inspections as late as April 1988 revealed that Marathon's monitoring system was substandard. In addition, the RFA concluded that ground water monitoring at the site was confused and inadequate. The Region was not therefore obligated to rely on that data as a basis for determining whether any releases had occurred. The Region also notes that the data submitted by Marathon revealed the presence of some hazardous constituents in the wastes of these units.

impoundments. In addition, it would not be difficult for Marathon to conduct tests from the soils already removed from the units prior to disposal. A permittee's corrective action obligations are not obviated by the fact that a SWMU is being retrofitted or will be closed at some point in the future.

Stormwater Pond

This impoundment collects runoff from the production area of the facility. The Region's Visual Site Inspection (VSI) noted some erosion at the bottom of the pond and a coating of oily material on the sediment. While little information is available on the constituents of the runoff, the Region believes that because hazardous waste might be generated at the production area, the possibility of contamination needs to be addressed. The record supports this concern.

Aeration and Surge Impoundments, Bio-Sludge Impoundment and Sludge Drying Pit

These units are associated with wastewater treatment at the facility and are the subject of an NPDES permit under the Clean Water Act.[10/] While no sampling has been done at these units, the Region notes that all are unlined and that the RFA revealed some evidence of visual surface contamination.

West Impoundment & Wabash Pond

Both of these impoundments collect refinery runoff and limited sampling by the Region revealed the presence of several

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[10/] Marathon's suggestion that the existence of an NPDES permit for its point source discharges exempts potential releases from corrective action measures is without merit. See 40 C.F.R. §261.4.

hazardous constituents.

As a general matter, the Region notes in its RFA that the drinking water for the residents of the nearby city of Robinson comes almost exclusively from groundwater and that many drinking water wells are only 3000 feet from the facility. In addition, given the shallow water table, any release of hazardous constituents would likely reach the ground water. The Region's concerns regarding potential releases from the disputed SWMUs are therefore supported by the record. Marathon's assertions to the contrary fail to show that the Region's decisions in this regard are clearly erroneous or otherwise warrant review.

Marathon also argues that Attachment I of the permit, the Required Scope of Work for a RCRA Facility Investigation (SOW), should be deleted or amended because it does not allow the RFI to be tailored to the specific SWMUs under investigation. For the reasons stated in the Region's response, this argument is also rejected. The SOW is sufficiently general to allow Marathon to conduct a site specific investigation for each SWMU and to terminate the investigation if no evidence of a release is found. For example, section III.D. provides that "[t]he Permittee shall prepare detailed site-specific sampling plans which address all field activities needed to obtain site-specific data . . . [and] [t]he specific constituents sampled and analyzed will be determined separately for each affected SWMU." Moreover, if soil sampling at any SWMU reveals that no releases have occurred, ground water monitoring will not be required. (Permit Cond.

III.D.1.). Thus, the investigation can be tailored to the particular SWMU and the tasks required may or may not entail extensive study.

Petitioner has thus failed to meet its burden of demonstrating clear error or the existence of any important consideration requiring review.

Conclusion

For the reasons set forth above and in the Region's response, review is unwarranted and the petition is therefore denied.

So ordered.

Dated: NOV 16 1990

William K. Reilly
Administrator

CERTIFICATE OF SERVICE

I hereby certify that copies of the forgoing Denial of Petition for Review in the matter of Marathon Petroleum Co., RCRA Appeal No. 88-24, were sent to the following persons:

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