

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY

BEFORE THE ADMINISTRATOR

In the Matter of:)
)
Motiva Enterprises LLC, Texaco Inc.,) Docket No. RCRA-3-2000-0004
Shell Oil Company & Saudi Refining Inc.,)
)
Respondents.)

Order on Respondent's Motion to Dismiss Texaco, Inc.,
Shell Oil Company and Saudi Refining, Inc. as Improper Parties

This is a proceeding under Sections 3008(a)(1) and (g) of the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. § 6928(a)(1) and (g). and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation, Termination or Suspension of Permits ("Rules of Practice"), 40 C.F.R. Part 22. Complainant, the United States Environmental Protection Agency, filed on March 31, 2000, a Complaint charging Respondents, Motiva Enterprises, LLC, Texaco, Inc., Shell Oil Co., and Saudi Refining, Inc., with five counts alleging violations of RCRA and implementing state and federal regulations. On May 10, 2001, Respondent Motiva filed a Motion to Dismiss Texaco Inc., Shell Oil Company, and Saudi Refining, Inc. as Improper Parties ("Motion to Dismiss"). Complainant does not oppose the Motion to Dismiss.

The Motiva Delaware City Refinery, the Facility in question, is located on 2000 Wrangle Hill Road in Delaware City, Delaware and underwent a RCRA Compliance Evaluation Inspection by the United States Environmental Protection Agency and the Delaware Department of Natural Resources and Environmental Control on August 25, 1999. Complaint ¶¶ 5, 13. EPA's Complaint alleges that Motiva, Texaco, Shell, and Saudi Refining are each "person[s]" as defined in Section 1004(15) of RCRA, 42 U.S.C. § 6903(15), and the Delaware Regulations Governing Hazardous Waste ("DRGHW") § 260.10 (40 C.F.R. §260.10), who are and have been at all times relevant to the Complaint, the collective "owner" and "operator," as those terms are defined in DRGHW § 260.10 (40 C.F.R. § 260.10), of the Facility.¹ Complaint ¶¶ 1-4, 6-7.

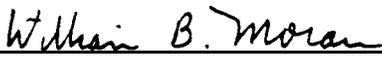
Respondent Motiva urges this Court to dismiss Respondents Texaco, Shell. and Saudi

¹ The relevant regulation defines an owner as "the person who owns a facility or part of a facility" and an operator as "the person responsible for the overall operation of a facility." 40 C.F.R. § 260.10.

Refining as improper parties because Motiva, as a limited liability company formed under the laws of the State of Delaware, was the sole owner and operator of the Facility at all times relevant to the Complaint. Motion to Dismiss at 2. Motiva is comprised of the former assets of Texaco, Shell, Saudi Refining; and their businesses in the Gulf Coast and Eastern United States, including the Facility. *Id.* at 2. However, Respondent Motiva points out that under Delaware law, obligations and liabilities of a limited liability company are the sole responsibility of the company and members or managers of the company are not liable for the obligations and liabilities of the company solely by reason of being members or acting as managers of the company.² See DEL. CODE ANN. tit. 6 § 18-303(a) (2000). Motiva argues that as Motiva was and continues to be the sole owner and operator of the Facility, and Texaco, Shell, and Saudi Refining cannot be held liable for the alleged RCRA violations at the Facility under Delaware law, Motiva is the only proper party to this civil penalty proceeding. Motion to Dismiss at 2.

Complainant's May 24, 2001 Response to Respondent Motiva's Motion to Dismiss states that the EPA does not oppose the motion. The Response states, "In reliance on Respondents' representations in the Motion to Dismiss and the attachments thereto, Complainant does not oppose this Motion to Dismiss." Complainant's Response to Respondent's Motion to Dismiss at 1-2. Upon review of Motiva's arguments, Delaware's applicable statutory provision, and EPA's acquiescence to Motiva's position, Respondent Motiva's Motion to Dismiss Texaco Inc., Shell Oil Co., and Saudi Refining, Inc. as Improper Parties is granted. This civil penalty proceeding will continue with Motiva Enterprises, LLC as the sole Respondent, and, hereafter, the caption shall reflect this amendment to the named Respondents.

So Ordered.



William B. Moran
United States Administrative Law Judge

Dated: August 17, 2001

² The text of the relevant law is as follows:

Except as otherwise provided by this chapter, the debts, obligations and liabilities of a limited liability company, whether arising in contract, tort or otherwise, shall be solely the debts, obligations and liabilities of the limited liability company, and no member or manager of a limited liability company shall be obligated personally for any such debt, obligation or liability of the limited liability company solely by reason of being a member or acting as a manager of the limited liability company.

DEL. CODE ANN. tit. 6, § 18-303(a) (2000)

In the Matter of Motiva Enterprises LLC. Texaco Inc.. Shell Oil Company & Saudi Refining Inc., Respondents
Docket No. RCRA-3-2000-0004

CERTIFICATE OF SERVICE

I hereby certify that this foregoing Order on Respondent's Motion to dismiss Texaco, Inc., Shell Oil Company and Saudi Refining, Inc., as Improper Parties, was sent this day in the following manner to the addressees listed below:

Original + 1 copy by Pouch Mail to:

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Regional Hearing Clerk
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Philadelphia. PA 19103-2029

Copy by Regular Mail & Facsimile to:

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Legal Staff Assistant

August 17, 2001