

**BEFORE THE ENVIRONMENTAL APPEALS BOARD  
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C.**

In re:	)	
Oklahoma Metal Processing Company, Inc. d/b/a Houston Metal Processing Company	)	
and	)	TSCA Appeal No. 97-5
Newell Recycling Company, Inc.,	)	
Respondents.	)	
TSCA Docket No. VI-659C	)	

**ORDER DISMISSING APPEAL**

On June 10, 1997, respondent Newell Recycling Company, Inc. (Newell) filed with the Environmental Appeals Board a Notice of Appeal and Appellate Brief, seeking to challenge the presiding officer's April 28, 1997 Partial Accelerated Decision on the Issue of Liability (Partial Accelerated Decision). In the complaint (see Appellate Brief Exhibit G), EPA Region VI proposes the assessment of a \$1,345,000 civil penalty against Newell and against respondent Oklahoma Metal Processing Company, Inc. d/b/a Houston Metal Processing Company. The Partial Accelerated Decision does not address the Region's civil penalty proposal. In its Notice of Appeal, Newell states that the Partial Accelerated Decision "resolved all liability issues in the case against [Newell] and constituted an 'initial decision' as defined in 40 C.F.R. § 22.20(b), and is therefore the proper subject for appeal pursuant to 40 C.F.R. § 22.30." Notice of Appeal at 1.

We conclude, however, that no appealable initial decision has yet been issued in this matter, and we therefore dismiss Newell's appeal.

A partial accelerated-decision in which the presiding officer decides some -- or even all -- liability issues in favor of the complainant, without addressing the amount of any penalty to be assessed, does not resolve "all the issues and claims in the proceeding" and is therefore not an initial decision of the kind described in 40 C.F.R. § 22.20(b) (1). Rather, an order granting the complainant's motion for partial accelerated decision as to liability only is an interlocutory ruling of the kind described in 40 C.F.R. § 22.20(b) (2), resolving "less than all issues or claims in the proceeding."

Because the presiding officer's Partial Accelerated Decision is neither an initial decision nor a default order, it is not immediately appealable to the Board under 40 C.F.R. § 22.30. To pursue an immediate appeal, Newell was required to proceed under 40 C.F.R. § 22.29, by requesting the presiding officer to certify his order to the Board for interlocutory review.<sup>1</sup> Newell, however, has apparently made no attempt to comply with section

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<sup>1</sup>Section 22.29(a) states, in relevant part, that absent certification by the presiding officer, "appeals to the Environmental Appeals Board shall obtain as a matter of right **only from** a default order, an accelerated decision or decision to dismiss issued under § 22.20(b) (1), or an initial decision rendered after an evidentiary hearing." Other orders or rulings may be appealed only pursuant to the procedures in section 22.29.

22.29,<sup>2</sup> and Newell therefore cannot obtain review of the presiding officer's liability determination until after an initial decision is issued.

Because there is no appealable order before the Board, TSCA Appeal No. 97-5 is dismissed. Once an initial decision is issued, Newell may ~~appeal~~ appeal the presiding officer's liability, ruling in the manner contemplated by 40 C.F.R. § 22.30.

So ordered.

ENVIRONMENTAL APPEALS BOARD

By: \_\_\_\_\_  
Kathie A. Stein  
Environmental Appeals Judge

Dated: *June 11, 1997*

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\*Although the entire record is not before us, we have found nothing in Newell's Notice of Appeal and Appellate Brief, or in the portions of the record submitted therewith, to suggest that Newell requested certification of the presiding officer's April 28, 1997 decision for interlocutory review.