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

Filed
JUL 5 2016
Clerk, Environmental Appeals Board
INITIALS

In re:	)	RCRA (9006) Appeal No. 16-01
Stockton Oil Company	)	
Docket No. RCRA-08-2014-0002	)	

FINAL ORDER SETTING ASIDE ALJ'S DEFAULT ORDER AND INITIAL DECISION AND CONCLUDING PROCEEDINGS

In March 2016, the Environmental Appeals Board ("Board") issued an order electing to exercise its sua sponte review authority under 40 C.F.R §§ 22.27(c), .30(b) of a Default Order and Initial Decision ("Initial Decision") issued by Administrative Law Judge Christine Donelian Coughlin ("ALJ") in an enforcement action brought under the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. §§ 6901-91. Thereafter, the parties informed the Board that they had reached a settlement and executed a Consent Agreement. The Board issued a limited remand of this matter for the sole purpose of allowing EPA Region 8 (either the Regional Administrator or the Regional Judicial Officer) to consider ratification of the Consent Agreement. The parties have now notified the Board of the Region 8 Regional Judicial Officer's order approving and incorporating by reference the terms of the Consent Agreement.

The Board exercised its sua sponte review authority in this case because of concerns including discrepancies both with respect to the applicable version of the penalty guidance document used by Region 8 and the ALJ, and the correct formula for calculating avoided costs. In particular, the ALJ found two UST penalty guidance documents that are publicly available

and presumably in use. Additionally, the Board found three formulas for determining the avoided costs in those UST penalty guidance documents, each with a different order of operations that renders different results. The ALJ identified some of these inconsistencies, but neither the Region's submissions to the ALJ nor the ALJ's Initial Decision explained why it was appropriate to use the version of the penalty policy and specific formula relied on by the Region in its complaint.

With the subsequent approval of the Consent Agreement in this matter by the Region 8 Judicial Officer on June 24, 2016, the Board does not need to resolve the concerns that prompted it to exercise its sua sponte authority. Nevertheless, given those concerns and in light of the settlement of this case by the parties, the Board concludes it is appropriate to set aside the ALJ's Initial Decision in accordance with 40 C.F.R. § 22.30(f) and conclude the proceedings in this case.

So ordered.[1]

ENVIRONMENTAL APPEALS BOARD

Dated: JUL 5 2016

By: Mary K Lynch

Mary Kay Lynch
Environmental Appeals Judge

[1] The three-member panel deciding this matter is comprised of Environmental Appeals Judges Mary Kay Lynch, Kathie A. Stein, and Mary Beth Ward. *See* 40 C.F.R. § 1.25(e)(1).

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing *Final Order Setting Aside ALJ's Default Order and Initial Decision and Concluding Proceedings* in the matter of Stockton Oil Company, RCRA (9006) Appeal No. 16-01, were sent to the following persons in the manner indicated:

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