UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
BEFORE THE ADMINISTRATOR

In the Matter of	)	
	)	
Howmet Corporation,	)	**Docket Nos. RCRA 02-2004-7102**
	)	**RCRA 06-2003-0912**
	)	
Respondent	)	

INITIAL DECISION

I. Introduction

In this consolidated action under the Resource Conservation and Recovery Act ("RCRA"),42 U.S.C. § § 6901-6991, this Initial Decision is issued following the Court's April 25, 2005 Order on Motions, granting the Complainant's motion for partial accelerated decision. In the Order on Motions, the Court found the Respondent in violation of the regulatory provisions cited in the Complaints, upon determining that the Respondent's material was discarded hazardous solid waste and that it had violated the provisions cited. On June 15, 2005 the Court sent a Notice of Hearing scheduling a hearing for the penalty phase of the proceeding, which proceeding was to commence on September 8, 2005. Subsequent to that notice, the parties filed a Joint Stipulation on Penalty Amount, dated August 25, 2005. Thereafter, on August 30, 2005, the parties filed a Joint Motion Requesting Issuance of an Initial Decision. This Initial Decision is issued as a consequence of that motion.

II. Background

On September 26, 2003, the United States Environmental Protection Agency, Region VI ("EPA" or "Complainant") filed a complaint against Howmet Corporation ("Howmet" or "Respondent") for violations under the Resource Conservation and Recovery Act, 42 U.S.C. 6901 *et seq*. ("RCRA" or "Act"). On October 31, 2003, EPA Region II also filed a complaint against Howmet for similar RCRA violations. The two cases were then consolidated on September 16, 2004.[1] In its defense, the Respondent raised fundamental questions about the scope of EPA's enforcement authority regulating wastes.

[1] Docket No. RCRA 06-2003-0912 was filed by Region VI and Docket No. RCRA 02-2004-7102 was filed by Region II.

Respondent is an owner and operator of facilities in Wichita Falls, Texas and in Dover, New Jersey, which facilities produce aluminum investment castings. Howmet uses liquid potassium hydroxide ("KOH") as a cleaning agent for its metal castings. When the KOH can no longer be used as a cleaning agent, Respondent either sent the KOH to a permitted hazardous waste facility or to Royster-Clark, Inc., a fertilizer manufacturer ("Royster"). Respondent's alleged violations arose out of its deliveries to Royster. For Docket No. RCRA 06-2003-0912, EPA alleged three violations during the period from March 1999 through September 2000. First, in shipping the KOH to Royster, Howmet shipped to a facility that did not have an EPA identification number. Second, Howmet did not prepare a hazardous waste manifest for the KOH shipment to Royster. Third, Howmet did not send the notice to Royster informing it that the waste did not meet a treatment standard and that the waste was subject to land disposal restrictions. For Docket No. RCRA 02-2004-7102, EPA alleged four violations. First, Howmet was sending KOH to Royster which has no EPA identification number authorizing its storage, treatment or disposal. The second count alleged that Howmet's use of a transporter that did not have an EPA identification number. Third, Howmet did not have a manifest for such hazardous shipments to Royster. The fourth count pertains to Howmet's failure to send a land ban notification to Royster and its failure to keep a copy of this notification at its facility.

After the Court issued its Order on Motions, Complainant and Respondent entered into a Joint Stipulation on Penalty Amount. The stipulated penalty amount totaled $309,091, with $151,433 ascribed to the Counts associated with the Complaint issued from EPA's Region II and $157,658 for the Complaint issued from Region VI. Thereafter, on August 30, 2005, the parties, having concluded that all matters had been resolved, but with the Respondent intending to file an appeal of this Court's legal determinations regarding liability, as set forth in its Order on Motions, filed a Joint Motion Requesting Issuance of an Initial Decision.[2]

On September 1, 2005, the Court expressed its concerns over whether the joint stipulations were sufficient for purposes of issuing an initial decision and providing adequate information for the EAB to formulate a decision. The Court observed that here is no evidentiary record for this matter, other than the stipulations and the admissions in the answers. It also noted that, typically, in a proceeding in which liability previously has been determined, at the outset of the penalty determination phase of the proceeding, the parties will, by agreement, introduce the exhibits that will constitute the evidentiary record for purposes of appeal. With those concerns in mind, the Court advised, but did not command, the parties to review and consider the prehearing exchange materials, declarations and affidavits, and consider whether such documents are necessary or whether their stipulations were sufficient without their inclusion. Thereafter, the parties filed a supplemental Joint Stipulation, dated September 2, 2005, "in lieu of a penalty hearing."

[2] The Court notes that the parties did not file their motion until a week before the hearing. The late filing occurred even though the parties had been fully aware of the date of the hearing for months and although it was made long after the cutoff date for filing of additional motions.

Accordingly in this case the parties consciously decided that the record for appeal purposes would not include any exhibits. Instead they agreed that the "record" would consist of their stipulations and this Court's Order on Motions. Since Respondent intends to appeal the Court's legal determination of liability, as set forth in the Order on Motions, this Initial Decision highlights the parties agreed upon record, with the intent of avoiding the possibility, however remote it may be, that the Environmental Appeals Board ("EAB") could decide that a remand on evidentiary matters is necessary.

Given that the parties have expressed that their only remaining concern is the legal determination as to the status of Respondent's KOH at the time it was sent to Royster, the Court issues this Initial Decision, which incorporates by reference each of the following documents: the Court's April 25, 2005 Order on Motions, the August 25, 2005 Joint Stipulation on Penalty Amount and the parties Joint Stipulations, dated September 2, 2005.

III. Conclusion

As described above, this Court finds that the Respondent committed the violations of RCRA, as alleged in the administrative complaints, and that the parties have stipulated to the penalty amount, should the liability determination be upheld upon appeal(s).

ORDER

Pursuant to 40 C.F.R. § 22.27(c), this Initial Decision shall become a final order 45 (forty-five) days after its service upon the parties and without further proceedings unless: (1) a party moves to re-open the hearing within 20 (twenty) days after service of the Initial Decision pursuant to 40 C.F.R. § 22.28(a); (2) an appeal to the EAB is taken from it by a party to this decision within 30 (thirty) days after the Initial Decision is served upon the parties pursuant to 40 C.F.R. § 22.30(a); or (3) the EAB elects, upon its own initiative, to review the Initial Decision pursuant to 40 C.F.R. § 22.30(b).

So Ordered.

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William B. Moran
United States Administrative Law Judge

September 30, 2005
Washington, D.C.