UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

BEFORE THE ADMINISTRATOR

In the Matter of	)	
	)	
Hawaiian Western Steel, Limited, Inc., and The James Campbell Estate,	)	Docket No. RCRA-IX-87-0006
	)	
	)	
Respondents	)	

INITIAL DECISION/ORDER

This proceeding under section 3008(a) of the Solid Waste Disposal Act, as amended (42 U.S.C. § 6928), commonly referred to as RCRA, was initiated on July 9, 1987, by the filing of a Determination of Violation, Compliance Order and Notice of Right To Request A Hearing (complaint) charging Respondents, Hawaiian Western Steel, Limited, Inc. (HWS) and the James Campbell Estate (Estate) with violations of the Act and applicable regulations. HWS and the Estate filed answers, essentially denying the alleged violations and requested a hearing.

Complainant served a motion for leave to file a Second Amended Complaint on January 25, 1990. This complaint contained a single count, which charged HWS as operator and the Estate as owner of the land with operation of a hazardous waste disposal unit (landfill) without a permit in violation of 40 CFR § 270.1(c). The Second Amended Complaint reduced the proposed penalty from $522,000 to $141,636 and required Respondents to, inter alia, submit a closure plan, to perform closure and post-closure of the landfill, to

provide financial assurance for closure, etc., in accordance with all applicable RCRA regulations and within specified periods from the effective date of the complaint [compliance order]. The motion to file the Second Amended Complaint was granted by an order, dated April 26, 1990. Respondents filed answers substantially identical to their answers to the initial complaint and requested a hearing.

On October 29, 1992, Complainant submitted a motion to withdraw the complaint without prejudice insofar as it seeks closure of the landfill and penalties against HWS. The motion sought leave to withdraw the complaint with prejudice insofar as it sought penalties against the Estate. The purpose of the motion was to allow the claims herein to be combined with other claims against HWS and the Estate arising from activities at the HWS plant, which is located on land owned by the Estate and occupied by HWS under a long-term lease, which were pending in federal district court.[1/] Respondents opposed the motion, alleging, inter alia, that Complainant was engaged in blatant forum shopping, that withdrawal without prejudice and beginning anew in federal court would further delay resolution of this long-delayed proceeding and be prejudicial (Reply Brief Regarding Motion For Accelerated Settlement Conference, dated November 4, 1992; HWS's Memorandum In Opposition

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[1/] United States of America v. Hawaiian Western Steel, Limited, Inc. and the Estate of James Campbell, U.S. District Court For The District of Hawaii, Civil No. 92-00587, filed September 9, 1992. The complaint seeks injunctive relief with respect to conditions at the HWS plant, closure of the landfill and penalties from both defendants.

To Complainant's Motion For Withdrawal Of Complaint, dated November 9, 1992).

In supplemental memoranda, the Estate did not oppose the motion to withdraw the complaint with prejudice insofar as it seeks penalties against the Estate, provided "prejudice" was defined and agreed that it would now be appropriate for the ALJ to issue an initial decision/order requiring Respondents to close the landfill in accordance with RCRA requirements (Memorandum In Opposition to Complainant's Motion To Withdraw Complaint, dated November 17, 1992). The claim for penalties against HWS would be the only matter remaining for resolution requiring a hearing. HWS has concurred in the Estate's Memorandum (Supplemental Memorandum In Opposition To Complainant's Motion For Withdrawal Of Complaint, dated November 17, 1992). By orders, dated November 19 and 30, 1992, the former order in confirmation of decisions telephonically conveyed to counsel on that date, Complainant's motion to withdraw the complaint without prejudice was denied and the motion to withdraw the complaint with prejudice insofar as the claim for penalties against the Estate is concerned was granted.

Based on the record herein, including the pleadings, admissions, memoranda and briefs submitted by the parties, I make the following:

FINDINGS OF FACT

1. Hawaiian Western Steel, Limited, Inc. (HWS), a Delaware Corporation, operates a facility (secondary steel mill) located at 91-150 Hanua Street, Ewa Beach, County of Oahu, Hawaii. HWS also operates a landfill located approximately at the intersection of Malokole Road and Hanua Street in Campbell Industrial Park, Ewa Beach, County of Oahu, Hawaii.

2. The James Campbell Estate (Estate) is a testamentary trust formed to execute the will of James Campbell, which owns the land upon which the steel mill and landfill referred to in finding 1 are located.

3. HWS and the Estate are persons as defined in RCRA section 1004(15) (42 U.S.C. § 6903(15)) and 40 CFR §§ 260.10, 270.2 and 122.2 and are thus subject to RCRA and applicable regulations.

4. During all times pertinent to the complaint, the State of Hawaii had not been authorized to administer and enforce a hazardous waste program pursuant to section 3006 of RCRA. Accordingly, federal hazardous waste regulations are applicable.

5. HWS has occupied the property described in finding 1 upon which its steel mill is located since 1959 under a 55-year lease. HWS began operation of its steel mill sometime in 1960.

6. With the knowledge and approval of the Estate, HWS deposited nonhazardous slag at the landfill described in finding 1. At

some point, not precisely determinable from the record, HWS also disposed of baghouse dust at the landfill.[2/] The baghouse dust was deposited at the landfill without the knowledge or approval of the Estate. The Estate learned of the baghouse dust at the landfill sometime in 1986. The baghouse dust contained lead and cadmium in concentrations equal to or in excess of the EP toxicity limits specified in 40 CFR § 261.24 and is, therefore, a characteristic hazardous waste.

7. The landfill referred to in the previous findings covers approximately 4.5 acres and was in existence on November 19, 1980, the effective date of the RCRA hazardous waste regulations. Neither HWS nor the Estate filed a timely Notification of Hazardous Waste Activity or a Part A permit application and, consequently, did not achieve "interim status" therefor in accordance with section 3005(e) of RCRA. Neither HWS nor the Estate has ever been issued a RCRA permit for the operation of the landfill as a hazardous waste disposal unit or facility.

8. Although HWS and the Estate, in answers to the Second Amended Complaint, essentially denied the alleged violations, denied responsibility for closure of the landfill and for penalties,

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[2/] Administrative Order On Consent (Order No. 92-10, February 24, 1992), issued pursuant to CERCLA §§ 104 and 106, states that beginning not later than 1974, HWS disposed of approximately 40,000 tons of waste at the RCRA Landfill Area, of which at least ten percent was baghouse dust.

they have now acknowledged that entry of an order requiring closure in accordance with RCRA requirements is appropriate (Memorandum In Opposition To Complainant's Motion To Withdraw Complaint, dated November 17, 1992; Hawaiian Western Steel, Limited, Inc.'s Supplemental Memorandum In Opposition To Complainant's Motion For Withdrawal of Complaint, dated November 17, 1992).

C O N C L U S I O N S

1. RCRA section 3005(a) (42 U.S.C. § 6925) provides that after the effective date of regulations promulgated by the Administrator requiring each person owning or operating an existing facility or planning to construct a new facility for the treatment, storage or disposal of hazardous waste to have a permit, the treatment, storage or disposal of hazardous waste except in accordance with such a permit is prohibited. Regulations contemplated by RCRA section 3005(a) became effective on November 19, 1980 (45 Fed. Reg. 33066, May 19, 1980).
2. HWS disposed of baghouse dust containing concentrations of lead and cadmium equal to or in excess of EP toxicity limits specified in 40 CFR § 261.24 on property (landfill) owned by the Estate. The baghouse dust was and is a characteristic hazardous waste.
3. The landfill upon or into which the baghouse dust was deposited was in existence on November 19, 1980.

4. Although neither HWS nor the Estate acquired "interim status" to operate the landfill as a hazardous waste disposal unit in accordance with RCRA section 3005(e),[3/] nor have either HWS or the Estate been issued a permit to operate the landfill as a hazardous waste disposal unit, the obligation to close the facility in accordance with 40 CFR §§ 265.111 through 265.115 and to provide post-closure care in accordance with 40 CFR §§ 265.116 through 120 is not dependent upon whether the landfill was a permitted facility. See 40 CFR § 265.1(b).

5. HWS and the Estate have consented to the issuance of an order requiring closure of the landfill in accordance with all applicable RCRA requirements and it is now appropriate to issue the Compliance Order in the Second Amended Complaint insofar as applicable to closure and post-closure.

[3/] Even if interim status had been achieved, it would have terminated 12 months after November 8, 1984, unless Respondents were in compliance with, inter alia, all groundwater monitoring and financial responsibility requirements (RCRA § 3005(e)(2)).

O R D E R[4/]

To the extent that they have not already done so, HWS and the Estate shall, within the following time limits, accomplish the following with regard to the landfill described herein:[5/]

1. Respondents shall perform closure and post-closure of the landfill in accordance with all applicable requirements contained in 40 CFR Parts 264 and 265, Subparts F, G, H, and N and Part 270.

2. All hazardous waste generated during closure must be handled in accordance with 40 CFR § 262.

3. Within 45 days of the effective date, Respondents must submit a Closure Plan for the landfill in accordance with 40 CFR § 265.112 - § 265.116, Subpart G and § 265.310, Subpart N that satisfies the Closure Performance Standard of § 265.111.

4. The Closure Plan shall include but not necessarily be limited to the following:

   A. a site security plan which, at a minimum, will comply with 40 CFR § 265.14;

   B. a description of the exact size of the landfill on both sides of Hanua Street including depth and total volume of material on each sides which will be subject to closure requirements; and

   C. a description of steps necessary to prevent wind dispersal of hazardous waste and constituents during closure activities.

5. The Closure Plan which shall be in accordance with the requirements of 40 CFR § 265.112 - 116 and § 265.310 shall include and have a schedule for but not be limited to the following intervening activities:

[4/] In accordance with RCRA section 3008(c) (42 U.S.C. § 6928(c)), Respondents may be liable for a penalty of up to $25,000 per day for noncompliance with this order. Any action to assess such a penalty would be a separate proceeding.

[5/] This initial decision/order is effective upon service by the RHC and will become the final order of the EAB in accordance with 40 CFR § 22.27(c).

A. a plan and schedule for sampling and testing surrounding soils and description of the analytical methods that will be utilized;

B. a detailed description of the leachate collection strategy and system; and

C. a detailed description of the methods to be utilized for run-on and run-off control.

6. Respondents shall prepare a Groundwater Monitoring Plan in accordance with 40 CFR § 265.90 and a schedule for all activities related to compliance with 40 CFR § 265.90.

7. The Closure Plan shall provide a detailed description of the final cover design which shall include but not be limited to the following:

A. area covered

B. cover characteristics

1. material type
2. permeability
3. depth
4. slope
5. drainage structures
6. vegetation
7. installation procedures and time requirements

8. The final cover must be designed and constructed to comply with the requirements of 40 CFR § 265.310 which, at a minimum, shall:

A. provide long-term minimization of migration of liquids through the closed landfill;

B. promote drainage and minimize erosion or abrasion of the cover;

C. function with minimum maintenance;

D. accommodate settling and subsidence so that the cover's integrity is maintained; and

E. have a permeability less than or equal to the permeability of any bottom liner system or natural soils present.

9. The Closure Plan must include a cost estimate for closure in accordance with 40 CFR § 265.142.

10. Within 60 days of the effective date, Respondents shall establish a mechanism for financial assurance for closure in accordance with 40 CFR § 265.143.

11. Within 14 days of the approval of the Closure Plan, Respondents shall amend financial assurance mechanism if needed.

12. Within 60 days of completion of closure, closure shall be certified in accordance with 40 CFR § 265.115.

13. Upon certification of closure, Respondents shall submit a survey plat to the appropriate authorities in accordance with 40 CFR § 265.116.

14. Within 60 days after the certification of closure, Respondents shall comply with the provisions of 40 CFR § 265.119.

15. Sixty days prior to completion of closure activities, or 120 days after approval of the closure plan, Respondents shall submit a post-closure plan in accordance with 40 CFR §§ 265.117 - 120 and § 265.310. Post-closure care shall begin after closure of the landfill and continue 30 years after that date.

16. The Post-Closure Plan shall:

    A. specify use of the property subsequent to closure which will not under any circumstance be allowed to disturb the integrity of the final cover, liners or other components of the containment system or the function of the monitoring system;

    B. identify the activities that will be carried on after closure of the landfill and frequencies of these activities; and

    C. contain a description of the planned monitoring activities that will be performed to comply with Part 264, Subparts F and N.

17. The Post-Closure Plan shall contain a description of maintenance activities and frequencies that will:

    A. ensure the integrity and effectiveness of the cap and final cover including making repairs to the cover as necessary to correct the effects of settling, subsidence, erosion or other events;

    B. prevent run-on and run-off from eroding or otherwise damaging the final cover;

C. maintain and monitor the groundwater monitoring system and comply with all other applicable requirements of Subpart F; and

D. protect and maintain surveyed benchmarks in accordance with 40 CFR § 265.309.

18. The Post-Closure Plan shall contain a cost estimate for post-closure in accordance with 40 CFR § 265.144.

19. Within 15 days of the due date for the Post-Closure Plan, Respondents shall establish a mechanism for assurance for post-closure in accordance with 40 CFR § 265.145.

20. 40 CFR § 270.1 requires that a post-closure permit be obtained for units that close after January 26, 1983. Therefore, Respondents shall obtain a post-closure permit which must, at a minimum, address:

A. applicable Part 264 groundwater monitoring;
B. unsaturated zone monitoring; and
C. applicable post-closure care requirements.

21. Respondents shall submit the post-closure permit application that meets the applicable requirements of 40 CFR § 264 and § 270 within 30 days after the approval of the Post-Closure Plan.

22. The submittals and certifications required by the above Compliance Order shall be sent to the following:

Chief, Waste Compliance Branch (H-4)
Hazardous Waste Management Division
EPA, Region IX
75 Hawthorne Street
San Francisco, CA 94105

Arlene Kabei
Hazardous Waste Program Manager
Hawaii Department of Health
P.O. Box 3378
Honolulu, HI 96801

Dated this 3rd day of December 1992.

Spencer T. Nissen
Administrative Law Judge