UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY

BEFORE THE ADMINISTRATOR

In the Matter of	)	
	)	
RAPID CIRCUITS, INC.,	)	Docket No. RCRA-III-214
	)	
Respondent	)	

ORDER GRANTING IN PART COMPLAINANT'S AND RESPONDENT'S MOTIONS FOR PARTIAL ACCELERATED DECISION CONCERNING LIABILITY

This proceeding commenced on February 22, 1991 with the filing by Region III, U.S. Environmental Protection Agency (sometimes EPA or complainant), of a four count complaint against Rapid Circuits, Inc. (respondent) alleging, in part, violations of section 3008(a)(1) and (g) of the Resource Conservation and Recovery Act, as amended, (RCRA), 42 U.S.C. § 6928(a)(1) and (g). Complainant alleges that respondent violated notification and recordkeeping requirements pursuant to RCRA subtitle C, 42 U.S.C. §§ 6921-6939b and the federal land disposal restriction (LDR) regulations thereunder at 40 C.F.R. Part 268. Specifically, complainant alleges that respondent, a generator of hazardous waste, has failed to properly notify its treatment or storage facility in writing of the appropriate treatment standards for each shipment of various hazardous wastes as required by 40 C.F.R. § 268.7(a)(1) and has failed to retain copies of LDR notifications sent to its treatment, storage and disposal (TSD) facility pursuant to 40 C.F.R. § 268.7(a)(1) and (2). Pursuant to § 3008(a)(3) and (g) of RCRA,

42 U.S.C. § 6928(a)(3) and (g), complainant proposes the assessment of a civil penalty in the amount of $60,725 against respondent.

The primary issue under the first two counts of the complaint is whether respondent has properly given its TSD facility notice by reference under 40 C.F.R. § 268.7(a)(1)(ii). Reduced to its most basic components, complainant maintains that respondent must specifically detail each treatment standard for each hazardous waste that respondent sends to its TSD facility.[1] In the alternative, even if referencing were appropriate, respondent has not referenced the appropriate sections in the pertinent regulations or the statute.[2] Respondent, however, urges that by completing the form supplied to it by its TSD facility, it has given the facility proper notice by reference of the appropriate standards for each hazardous waste.[3]

In its third count, complainant alleges that respondent has failed to provide notification with each shipment of Spent Solder Stripping Solution which also violates 40 C.F.R. § 268.7(a)(1). Respondent maintains that the spent solder stripping is exempted from notification requirements under § 260.2(e) as a recyclable

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[1]Complainant's memorandum in opposition to respondent's motion for accelerated decision at 5.

[2]Id. at 6.

[3]Memorandum in support of respondent's motion for accelerated decision at 3-5.

material.[4] Complainant maintains that respondent has misconstrued the regulation.[5]

Respondent has conceded that it violated 40 C.F.R. § 268.7(a)(7) by failing to retain, on sight, copies of two manifests it was required to produce as alleged in Count IV of the complaint.[6]

Motion for Partial Accelerated Decision

On August 31, 1992, pursuant to 40 C.F.R. § 22.20, complainant moved for an accelerated decision on issues of liability with regard to Counts I (with the exception of three violations associated with certain shipments of hazardous wastes made by respondent on February 23, 1990, August 15, 1989, and March 24, 1989) and to the other three counts of the complaint.

On August 31, 1992, respondent moved for an accelerated decision of Counts II, III and a portion of Count I of the complaint. In support of its motion, respondent maintained that "(1) the charges are incorrect; (2) the Complainant has wrongly interpreted or overlooked certain relevant Code sections; and (3) Complainant is equitably estopped from asserting certain of the violations as set forth in the Complaint."

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[4]Id. at 6.

[5]Complainant's memorandum in opposition to respondent's motion for accelerated decision at 9-10.

[6]Memorandum in support of respondent's motion for accelerated decision at 8.

On September 15, 1992, complainant filed a supplemental cross-motion for accelerated decision, revising its original motion to include the three violations of Count I excepted in its original motion for accelerated decision. Complainant explained that it did not include the three violations in its original motion because it thought the parties would be able to resolve that portion of the complaint, but these hopes did not materialize.[7] Both parties maintain that there are no genuine issues of material fact, and each urge it is entitled to judgment as a matter of law. In addition, both parties' motions for accelerated decision are limited to liability and do not address the question of penalties. The parties filed stipulations of fact on May 29, 1992.

Brief Overview of the Land Disposal Ban Requirements

Congress amended RCRA by the Hazardous and Solid Waste Amendments (P.L. 98-616) on November 8, 1984. The amendments set strict schedules for EPA to promulgate land disposal ban regulations. EPA codified or incorporated the 1984 amendments into EPA regulations (50 Fed. Reg. 28702, July 15, 1985). The amendments created five major categories of hazardous wastes for purposes of the land disposal ban provisions. The first of these regulations, set out in 51 Fed. Reg. 40572 (November 7, 1986), covered spent solvent and dioxin-bearing wastes, mentioned in 42 U.S.C. § 3004(e). The second set of land disposal ban regulations,

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[7]Complainant's memorandum in opposition to respondent's motion for an accelerated decision at 2.

52 Fed. Reg. 25760 (July 8, 1987), covered the "California List" wastes mentioned in 42 U.S.C. § 3004(d). On appeal, these regulations were unsuccessfully challenged.[8] The three other statutory categories are "other listed wastes," "characteristic wastes," and "new listed or identified wastes" § 3004(g). EPA was required to meet deadlines for all ranked and listed wastes. The schedule was divided into thirds. Roughly each year for three years, EPA was required to promulgate regulations until all of the land ban disposal wastes were regulated. The First Third of the scheduled wastes became effective August 8, 1988, 53 Fed. Reg. 31138 (August 17, 1988). The Second Third became effective on June 8, 1989, 54 Fed. Reg. 26954 (June 23, 1989). The third one-third of the schedule restricted hazardous wastes became effective on May 8, 1990, 55 Fed. Reg. 22520 (June 1, 1990). The Third Third scheduled wastes were amended on January 31, 1991, effective the same date as promulgated, 55 Fed. Reg. 3864.

Some, but not all, of the above listed regulations amended 40 C.F.R. § 268.7(a)(1). Where there were amendments to 40 C.F.R. § 268.7(a)(1), the only subparagraph changed was 40 C.F.R. § 268.7(a)(1)(ii) which requires notification of the treatment standards, the crux of this complaint.

COUNT I "CALIFORNIA LIST WASTES" (CLW)

Complainant alleges that respondent's land disposal notifications

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[8]Hazardous Waste Treatment Council v. Thomas, 885 F.2d 918 (D.C. Cir. 1989). The Court held that plaintiff did not have standing to sue.

for shipments of CLW set out in 40 C.F.R. § 268.32, failed to provide the appropriate prohibition levels applicable to the wastes as required by 40 C.F.R. § 268.7(a)(1).[9] Further, complainant argues that respondent is not entitled to reference treatment standards for CLW.[10] Respondent maintains that the notifications were sufficient in that they specifically referenced, without setting forth in full, the applicable treatment standards for CLW.[11]

1. June 20, 1990 Off-site Waste Shipment.

The first issue under Count I is resolved easily. Complainant maintains that respondent has failed to identify the prohibition levels applicable to the June 20, 1990 off-site waste shipment. Respondent has stipulated that the LDR notification it provided with this shipment of hazardous waste mistakenly and erroneously indicated an extant variance in connection with Manifest No. PAC 2167896.[12] This notification was incorrect. It is concluded that respondent was in violation concerning this shipment.

2. February 23, 1990, August 15, 1989 and March 24, 1989 Off-Site Waste Shipments.

The four wastes relating to these shipments (a waste nitric acid solution, a waste solder bath, a waste solder strip, and a

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[9]Complainant's memorandum in support of complainant's motion for partial accelerated decision at 22.

[10]Complainant's memorandum in opposition to respondent's motion for accelerated decision at 4-6.

[11]Respondent's memorandum in support of respondent's motion for accelerated decision at 3.

[12]Joint Stipulation, number 12.

waste solder brightener), are classified as CLW because of their lead content and pH level. Respondent argues that the land disposal notifications which "specifically referenced, without setting forth in full, the applicable treatment standards for CLW, did not violate 40 C.F.R. § 268.7(a)(1)."[13] Respondent notes correctly that this regulation required respondent to notify the particular treatment facility involved of the appropriate treatment standards of subpart D of that section and to inform it of any applicable prohibition levels set forth in 40 C.F.R. § 268.32 or § 3004(d) of RCRA.[14] The question is whether a copy of the LDR Notification/Certification, accompanied with Manifest #PAC 1205385, which references the appropriate C.F.R. sections rather then explicitly setting forth the standards, satisfies the requirement of 40 C.F.R. § 268.7(a)(1).[15] Although the current language of this regulation indicates clearly that generators are not permitted to reference treatment standards for CLW, previous versions are somewhat murky with respect to notice by reference.[16]

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[13]Respondent's memorandum in support of respondent's motion for accelerated decision at 3.

[14]Id.

[15]See exhibit A of respondent's motion for accelerated decision.

[16]40 C.F.R. § 268.7(a)(1). (1993). In particular, note the language of paragraph (ii) which reads:

> The **corresponding treatment standards for** wastes F001-F1005, F039, and wastes prohibited pursuant to § 268.32 [**California list wastes**] or RCRA section 3004(d). **Treatment standards for all other restricted wastes must either be included, or be referenced** by including on the notification the applicable wastewater . . . or

(continued...)

The LDR regulations have been amended at least five times since their initial appearance in November 1986. Therefore, it is necessary to determine which amendments have altered section 268.7(a)(1), the effective dates of those amendments and which versions apply to each of respondent's shipments. All of these amendments, both prior to and subsequent to the version of the rule which pertains to respondent, will provide a clearer indication of the meaning of section 268.7(a)(1) as applied to respondent. To be determined first is what information respondent has supplied with each shipment of waste. Then it is necessary to determine which version of the regulation pertains to each shipment. If any of the shipments are subject to different versions of section 268.7(a)(1), the requirements of each, applicable to respondent, will be determined upon which the conclusions shall be based.

Findings of Fact

Respondent's LDR Notification/Certification for CLW clearly includes the EPA Hazardous Waste Number as required by 40 C.F.R. § 268.7(a)(1)(i) and the manifest number associated with the shipment of waste as required by subsection (a)(1)(iii).[17] These two

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[16](...continued)
nonwastewater . . . category, the applicable subdivisions made within a waste code based on waste-specific criteria . . . and the CFR section(s) and paragraph(s) where the applicable treatment standards are expressed as specified technologies in § 368.42, the applicable five-letter treatment code found in Table 1 of § 268.42 (e.g., INCIN, WETOX) also must be listed on the notification. (emphasis added).

[17]See exhibit A to respondent's motion for accelerated decision.

requirements are consistent throughout each version of subsections (a)(1)(i) and (a)(1)(iii) and are not at issue here. In addition, the form referring to the CLW contains a box which is clearly marked by respondent indicating that the waste is restricted and requires treatment. The category on the form next to the marked box reads as follows:

> 1. Restricted Waste Requires Treatment
>
> I am the generator of an untreated waste identified above which must be treated to the appropriate treatment standard set forth in 40 CFR 268 Subpart D, or where no treatment standard exists for the California List waste, the waste must be treated at levels specified under 40 CFR 268.32.[18]

Respondent points out that the back of the two-sided form describes and lists various CLW. The form also makes reference to 40 C.F.R. § 268.32 and § 3004(d) of RCRA.[19] Notably absent from the form are any specific treatment standards for each CLW. Also noted is that each form appears to be based on the November 7, 1986 final regulation. The form does not mention any of the amendments of the regulation. Nevertheless, respondent is bound by the version of the rule actually in effect at the time of each shipment.

Section 268.7(a)(1)

The following notification requirements are listed under 40 C.F.R. § 268.7(a)(1): (i) EPA Hazardous Waste Number; (iii) the

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[18]Id.

[19]Respondent's memorandum in support of respondent's motion for accelerated decision at 4.

Manifest number; and (iv) the waste analysis data, where applicable. Section 268.7(a)(1)(ii), which is at issue here, requires additional information which must be included in the notice. The original November 7, 1986 provision was unspecific with respect to exactly what information must be included to give proper notice of the appropriate standard. This provision simply read:

> (ii) The corresponding treatment standard.[20]

The July 8, 1987 rule for the first time mentioned EPA's willingness to allow notice by reference, but in its comments EPA did not give specific instructions for properly referencing standards.

> Other revisions to § 268.7 involve modifications and the notice and certification provisions to require reference to the applicable prohibition levels where no treatment standards are established. The remainder of § 268.7 is unchanged.[21] (Emphasis added.)

Here, EPA has indicated its intent to allow at least some referencing under § 268.7.

The August 17, 1988 version was amended as follows:

> (ii) The corresponding treatment standards and all applicable prohibitions set forth in § 268.32 or RCRA section 3004(d);[22] (emphasis added).

Although there is no mention of reference, EPA must be deemed to not have changed its policy of allowing referencing unless it

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[20]51 Fed. Reg. 40641 (November 7, 1986).

[21]52 Fed. Reg. 25780 (July 8, 1987).

[22]53 Fed. Reg. 31213 (August 17, 1988).

has clearly indicated as such. The Supreme Court has ruled that "while the agency is entitled to change its view . . ., it is obligated to explain its reasons for doing so."[23]

The June 1, 1990 rule significantly amended subparagraph (ii) to explicitly allow referencing of appropriate treatment standards.[24] The amendment also provided a helpful explanation of its reasons for doing so.

> In today's final rule, the Agency is amending § 268.7 to allow referencing of the treatment standards. The following information must be included in the reference: EPA Hazardous Waste Number, the subcategory of the waste code (e.g., D003, reactive cyanide (subcategory), the treatability group(s) of the waste(s) (e.g., wastewater or non-wastewater), and the section where the treatment standards appear. <u>This change does not apply to</u> spent solvents (F001-F005), multi-source leachate (F039), or <u>California list wastes because these waste categories each contain a number of individual constituents or waste groups</u>.[25] (Emphasis added.)

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[23]Motor Vehicle Manufacturers Association of the United States, Inc. v. State Farm Mutual Automobile Insurance Company, 463 U.S. 29, 56, 1983.

[24]The June 1, 1990 version of 40 C.F.R. § 268.7(a)(1)(ii) states:

> The corresponding treatment standards for wastes F001-F005, F039, and wastes prohibited pursuant to § 268.32 or RCRA section 3004(d). Treatment standards for all other restricted wastes may be referenced by including on the notification the subcategory of the waste, the treatability group(s) of the waste(s), and the CFR section(s) and paragraphs where the treatment standards appear. Where the applicable treatment standards are expressed as specified technologies in § 268.42, the applicable five-letter treatment code found in Table 1 of § 268.42 (e.g., INCIN, WETOX) also must be listed on the notification.

[25]55 Fed. Reg. 22688 (June 1, 1990).

While explaining the amendment, EPA has clearly indicated its intention not to allow notice by reference for CLW under the June 1, 1990 regulation and has provided a rational explanation for reaching its decision. This regulation became effective on May 8, 1990. Had respondent attempted to provide notice by reference after this date, it would have been a violation. However, each of respondent's shipments occurred before the effective date of the June 1, 1990 regulation. Because there were no changes to 40 C.F.R. § 268.7(a)(1) in the June 23, 1989 version of the regulation, for each shipment at issue, respondent was required to comply with § 268.7(a)(1) under the August 17, 1988 regulation, not the June 1, 1990 regulation.

Although EPA's June 1, 1990 regulation seems clear as to future notice by reference requirements, it is unclear as to how prior versions of the regulation should be interpreted, namely the August 17, 1988 regulation. EPA's June 1, 1990 explanation could be interpreted in two completely different ways. First, as complainant would adopt, the June 1, 1990 amendment for the first time allowed notice by reference and provided clear guidelines for generators to follow if they desired to follow this procedure. Hence, any such notice by reference prior to this regulation would have been invalid.

A second completely contrary interpretation, which respondent may espouse, is that the prior versions of the regulation were unclear as to notice by reference. The argument follows -- the June 1, 1990, version amended the prior regulations to alleviate

this ambiguity. Therefore, it would be inappropriate to hold respondent liable under such an ambiguous clause.

A closer look at EPA's reasoning in amending section 268.7(a)(1)(ii) gives further insight into its rationale for providing notice by reference for certain wastes.

> The Agency had received, prior to the Third Third proposed rule, a number of questions on whether the actual treatment standards (i.e., the actual number or method) must be placed on the generator notification form, or if it is sufficient to reference the appropriate treatment standards by citation of the applicable part of 40 CFR 268.41, .42 or .43. EPA's interpretation has been that all applicable treatment standards must be listed completely on the generator notification form sent to the treatment, storage or disposal facility. A number of these pre-proposal commenters had indicated that they believe the current regulations can be interpreted to allow referencing, rather than listing the specific treatment standards as part of the generator notification. The commenters argued that referencing the standards serves the same purpose as listing the specific treatment standards. Furthermore, they stated that the notification forms are becoming longer, more complicated, and unwieldy as new wastes and corresponding treatment standards are added to the list of wastes restricted from land disposal, and thus listing each treatment standard on the notification form imposes an unnecessary burden on generators. As proposed in the Third Third notice on November 22, 1989 (54 FR 48496), the Agency today is amending 40 CFR 268.7 to allow referencing the Code of Federal Regulations (CFR) rather than listing each treatment standard . . . . The comments EPA received on the proposal were overwhelmingly in favor of allowing referencing the CFR (emphasis added).[26]

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[26]55 Fed. Reg. 22668 (June 1, 1990).

EPA stated above that its interpretation previous to the June 1, 1990 regulation had been that "treatment standards must be listed completely." However, there is no evidence offered by complainant that this interpretation has indeed been expressed prior to the June 1, 1990 regulation. While complainant has stated sound reasons for not allowing reference of CLW treatment standards in support of EPA's June 1, 1990 regulation, these justifications would not necessarily be obvious to generators of hazardous waste, particularly when respondent has provided the EPA Waste Number, manifest number and listed concentration levels to a licensed treatment, storage and disposal facility.[27] None of the alleged violations occurred after the effective date of May 8, 1990. In addition, complainant has incorrectly cited 40 C.F.R. § 268.7(a)(1)(ii).[28]

Complainant argues that even if referencing were appropriate, respondent's forms refer only to 40 C.F.R. Part 268, Subpart D and to 40 C.F.R. § 268.32.[29] Complainant is mistaken on this point. As observed earlier, the back of the two-sided form does indeed

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[27]See exhibit A of respondent's motion for accelerated decision.

[28]See Complainant's memorandum in opposition to respondent's motion for accelerated decision at 4. Complainant cites 40 C.F.R. § 268.7(a)(1)(ii) as: "The corresponding treatment standards and, for California List Wastes, all applicable prohibitions set forth in RCRA Section 3004(d) and 40 C.F.R. § 268.32. (emphasis added). The 1989 regulation does not specifically include "for California List Wastes" in the provision as complainant has suggested.

[29]Complainant's memorandum in opposition to respondent's motion for accelerated decision at 6.

refer to section 3004(d) of RCRA, 42 U.S.C. § 6924(d). There is no reason why the reverse side of the form should not be given full effect even if it does appear to be a mimeograph of a page from a preamble of one of the LDR rulemakings as complainant maintains.[30]

Administrative law judges have little occasion to address the question of "notice" as applied to 40 C.F.R. § 268.7(a)(1). However, one decision sheds some light on the present issue. It has been noted that the agency must be clear in its requirements under § 268.7. In Chemical Reclamation Services, Inc., Chief Administrative Law Judge Frazier found that § 268.7 was not applicable to waste that was intended for disposal by deep-well underground injection, as opposed to land disposed wastes.

> EPA may have intended that all generators of hazardous wastes meet the waste analysis, notice and recordkeeping requirements of section 268.7(a)(1) regardless of whether or when such wastes are ultimately land disposed, including disposal by injection well, as Complainant contends. However it should have stated so in more explicit terms.[31]

The decision regarding Counts I and II is based in most part on the interpretation of 40 C.F.R. § 268.7(a)(1)(ii) and its various amendments which are by no means obvious. Partly for this reason, it is concluded that respondent is not liable with respect to alleged deficient notification requirements for its February 23, 1990, March 24, 1989 or its August 15, 1990 shipment of hazardous

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[30]Complainant's memorandum in opposition to respondent's motion for accelerated decision, footnote 6 at 5.

[31]In the Matter of Chemical Reclamation Services, Inc., Avalon, Texas, Docket No. RCRA-VI-825-H at 8 (June 12, 1989).

wastes. EPA has not been nearly as clear as it could have been with regard to notice by reference. This conclusion is supported by the number of commentators who were confused by the earlier versions of the regulation. (See supra at 13.) While EPA has since remedied any confusion and has promulgated clear regulations with regard to generator notification requirements, respondent was not able to benefit from these clarifications as the amendment was expressed after respondent's alleged violations occurred. Consistent with Chemical Reclamation Services (at 9), where EPA has not clearly expressed its intentions with respect to 40 C.F.R. § 268.7(a)(1), such ambiguity should be resolved in favor of respondent.

COUNT II "Hard Hammer Wastes"

The parties stipulate that on August 15, 1989, respondent shipped off-site 330 gallons of pit sludge, a restricted waste under 40 C.F.R. Part 268 and that this waste did not meet the applicable treatment standards for nonwastewater F006 hazardous wastes set forth in Subpart D of Part 268.[32] It was considered Hard Hammer waste. Respondent provided its treatment or storage facility receiving the waste with a written notification.[33] Again, the issue is whether it was proper for respondent to provide notice by reference. Complainant concedes that under the current

[32]Joint Stipulation, number 14.

[33]See exhibit A of respondent's motion for accelerated decision.

regulations, incorporation by reference of the treatment standards for F006 waste is permitted. However, complainant maintains that the notification respondent provided was insufficient under those revised regulations.[34] Whether or not respondent has satisfied the notice requirements by referencing the standards under the current version of 40 C.F.R. § 268.7(a)(1) is irrelevant because respondent was required to satisfy this section at the time of the shipment -- August 15, 1989. For the same reasons stated in favor of respondent in Count I of the complaint, it is concluded that respondent has provided sufficient notice by reference for its shipment classified as F006 waste code. EPA's ambiguity with respect to notice by reference for prior versions of 40 C.F.R. § 268.7(a)(1) should be resolved in favor of respondent.

COUNT III RECYCLABLE MATERIALS

Count III also raises a notification issue. However, here the issue is not whether proper notice was given by respondent, but whether notice is required at all for a recyclable material. The parties stipulate that respondent generates a spent solder stripping waste which is a hazardous waste as that term is defined at 25 PA Code § 260.2 and 40 C.F.R. §§ 260.10 and 261.3 bearing the hazardous waste number D008.[35] The parties also stipulate that respondent's spent solder stripping wastes constituted recyclable

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[34]Complainant's memorandum in opposition to respondent's motion for accelerated decision at 8.

[35]Joint Stipulation, number 16.

materials as that term is defined at 40 C.F.R. § 261.6(a)(1), and that as a liquid hazardous waste in that it contains lead or compounds of lead at concentrations greater than 500mg/l, the applicable prohibition level for liquid hazardous wastes containing lead set forth in 40 C.F.R. § 268.32 and § 3004(d) of RCRA, 42 U.S.C. § 6924(d).[36]

Complainant argues that respondent's failure to provide notifications with each shipment of spent solder stripping solution violated 40 C.F.R. § 268.7(a)(1).[37] Respondent maintains that because respondent's spent solder stripping waste is a recyclable material under 40 C.F.R. § 261.6(a)(1), respondent was not required to provide the receiving facility with the notifications or certifications required by section 268.7(a)(1). Respondent contends that because the receiving facility was recycling the solution, it was not a solid waste, and not being such, no manifest was necessary and thus no notification could be required.[38] Respondent's argument seems legitimate but for a fundamental error in its first premise. Respondent mistakenly assumes that because a solution will be recycled, it is not a waste before it enters the recycling process. In addition, as complainant points out, respondent has already stipulated that the spent stripping solution

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[36]Joint Stipulation, number 17.

[37]Complainant's memorandum in opposition to respondent's motion for accelerated decision at 9.

[38]Respondent's memorandum in support of respondent's motion for accelerated decision at 6-7.

is a hazardous waste.[39] In that the waste is "reclaimed" by the manufacturer, and not "reused" by respondent, the exemptions in 40 C.F.R. § 261.2(e) are not applicable. Spent materials which are reclaimed rather than reused are solid wastes under 40 C.F.R. § 261.2(c)(3) and thus are subject to notification requirements under § 268.7(a)(1).

Respondent implies an estoppel defense stating that the EPA inspector "could have and should have alerted respondents" that the spent solder stripping solution required land disposal restriction notifications.[40] Complainant cites impressive authority demonstrating that the defense of estoppel may only be asserted upon a showing that the government is "guilty of intentional conduct while knowing the Respondent would be misled into detrimental reliance."[41] Here, the inspector's conduct, assuming it is accurately characterized by respondent, should not have misled respondent into detrimental reliance. There can be no reliance when an inspector indicates that it was "possible" that the notifications should be provided.[42] Respondent has failed to show a proper defense of estoppel.

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[39]Complainant's memorandum in opposition of respondent's motion for accelerated decision, footnote 8 at 10, referring to Joint Stipulation, number 16.

[40]Respondent's memorandum in support of respondent's motion for accelerated decision at 7-8.

[41]Immigration and Naturalization Service v. Miranda, 459 U.S. 14,16-17 (1982).

[42]Respondent's memorandum in support of respondent's motion for accelerated decision at 7.

COUNT IV FAILURE TO RETAIN COPIES OF LDR NOTIFICATIONS

Respondent has conceded that it failed to retain the necessary copies of LDR notifications sent by it to facilities receiving two shipments of its resin wash waste water.[43]

IT IS ORDERED that:

1. Complainant's motion for accelerated decision on the issue of liability for Count I is **GRANTED** with respect to the June 20, 1990 off-site waste shipment and **DENIED** with respect to the off-site shipments of February 23, 1990, August 15, 1989 and March 24, 1989.

2. Respondent's motion for accelerated decision on the issue of liability for Count I is **GRANTED** with respect to the off-site shipments of February 23, 1990, August 15, 1989 and March 24, 1989 shipment.

3. Complainant's motion for accelerated decision on the issue of liability for Count II is **DENIED**.

4. Respondent's motion for accelerated decision on the issue of liability for Count II is **GRANTED**.

5. Complainant's motion for accelerated decision on the issue of liability for Count III is **GRANTED**.

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[43]Joint Stipulation, number 24.

From the date of each of the shipments identified in Paragraph 23, above, [January 8, 1988 and January 31, 1989] until at least as late as February 21, 1991, Respondent inadvertently failed to retain on-site copies of any written notifications and/or certifications described in 40 C.F.R. § 268.7 provided by Respondent with respect to such shipments to the receiving treatment, storage or disposal facility.

6. Respondent's motion for accelerated decision on the issue of liability for Count III is **DENIED**.

7. Complainant's motion for accelerated decision on the issue of liability for Count IV is **GRANTED**.

8. The parties shall enter forthwith into good faith negotiations concerning the penalty amount in this case.

9. Should this matter not be settled within 30 days of the service date of this order, complainant shall arrange for a telephone conference between the parties and the Administrative Law Judge for the purpose of setting a hearing date.

Frank W. Vanderheyden
Administrative Law Judge

Dated October 26, 1993

IN THE MATTER OF RAPID CIRCUITS, INC., Respondent,
Docket No. RCRA-III-214

Certificate of Service

I certify that the foregoing Order, dated 10/26/93, was sent this day in the following manner to the below addressees.

Original by Regular Mail to:

Ms. Lydia Guy
Regional Hearing Clerk
U.S. Environmental Protection
Agency, Region III
841 Chestnut Building
Philadelphia, PA 19107

Copy by Regular Mail to:

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Dated: Oct. 26, 1993