

ILLINOIS POLLUTION CONTROL BOARD
August 26, 1993

PEOPLE OF THE STATE)	
OF ILLINOIS,)	
)	
Complainant,)	
)	
v.)	PCB 93-134
)	(Enforcement)
ECOLOGIC, INC., a Delaware)	
corporation, and HORSEHEAD)	
INDUSTRIES, INC., a Delaware)	
corporation, d/b/a ZINC)	
COMPANY OF AMERICA,)	
)	
Respondents.)	

OPINION AND ORDER OF THE BOARD (by C.A. Manning):

This matter comes before the Board upon a complaint filed July 22, 1993 on behalf of the People of the State of Illinois ("People"), by and through its attorney, Roland W. Burris, Attorney General of the State of Illinois, against Ecologic, Inc., and Horsehead, Industries, Inc., Delaware Corporations, doing business as Zinc Company of America located in DePue, Bureau County, Illinois. The complaint alleges that Ecologic, Inc. and Horsehead Industries, Inc. has violated Section 9(a) of the Illinois Environmental Protection Act ("Act"), 415 ILCS 5/9(a) and 9.1(d)(1)¹, and 35 Ill. Adm. Code 201.141 of the Board's rules.

Pursuant to 415 ILCS 5/31(a)(1), a joint Motion requesting relief from the Act's hearing requirement was filed by the parties on July 22, 1993. Notice of the waiver was published by the Board on July 27, 1993; no objection to grant of the waiver was received. Waiver of hearing is hereby granted.

A Stipulation and Settlement Agreement was filed by the parties on July 22, 1993. The Stipulation sets forth facts relating to the nature, operations and circumstances surrounding

¹ Section 9.1(d)(1) of the act provides:

d. No person shall:

1. Violate any provisions of Sections 111, 112, 165 or 173 of the Clean Air Act, as now or hereafter amended, or federal regulations adopted pursuant thereto; or

the claimed violations. Ecologic, Inc. and Horsehead Industries, Inc. deny the alleged violations. Ecologic, Inc. and Horsehead Industries, Inc. agree to pay a civil penalty of Nineteen Thousand Five Hundred Dollars (\$19,500.00).

The Board has authority to impose a penalty where the parties have stipulated to a penalty, but not to a finding of violation. See, Chemetco, Inc. v. Illinois Pollution Control Board, 140 Ill. App.3d ,283, 488 N.E.2d 639, 643 (5th Dist. 1986); and Archer Daniels Midland v. Pollution Control Board, 140 Ill.App.3d 823, 489 N.E.2d 887 (3rd Dist. 1986).

The Board finds the Settlement Agreement acceptable under 35 Ill. Adm. Code 103.180. This Settlement Agreement in no way affects respondent's responsibility to comply with any federal, state or local regulations, including but not limited to the Act and the Board's pollution control regulations.

This opinion constitutes the Board's findings of fact and conclusions of law in this matter.

ORDER

- 1) The Board hereby accepts the Stipulation and Settlement Agreement executed by the People of the State of Illinois and Ecologic, Inc. and Horsehead Industries, Inc., concerning their operations located in DuPue, Bureau County, Illinois. The Stipulation and Settlement Agreement are incorporated by reference as though fully set forth herein.
- 2) Ecologic, Inc. and Horsehead Industries, Inc. shall pay the sum of Nineteen Thousand Five Hundred Dollars (\$19,500.00) as provided in paragraphs (a) and (b) below. Such payment shall be made by certified check or money order payable to the Treasurer of the State of Illinois, designated to the Environmental Protection Trust Fund, and shall be sent by First Class mail to:

Illinois Environmental Protection Agency
Fiscal Services Division
2200 Churchill Road
P.O. Box 19276
Springfield, IL 62794-9276

Ecologic, Inc. and Horsehead Industries, Inc. shall also write their Federal Employer Identification Number or Social Security Number on the certified check or money order.

- a) \$9,750 shall be paid within thirty (30) days of the date on which the Illinois Pollution Control

Board adopts a final order approving this Stipulation and Proposal for Settlement.

- b) \$812.50 shall be paid every thirty (30) days following that date in subpart "a" above until payment is made in full.

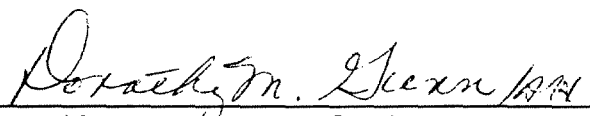
Any such penalty not paid within the time prescribed shall incur interest at the rate set forth in subsection (a) of Section 1003 of the Illinois Income Tax Act, (35 ILCS 5/1003), as now or hereafter amended, from the date payment is due until the date payment is received. Interest shall not accrue during the pendency of an appeal during which payment of the penalty has been stayed.

- 3) Ecologic, Inc. and Horsehead Industries, Inc. shall cease and desist from the alleged violations.

Section 41 of the Environmental Protection Act (415 ILCS 5/41) provides for the appeal of final Board orders within 35 days. The Rules of the Supreme Court of Illinois establish filing requirements. (See also 35 Ill. Adm. Code 101.246, Motion for Reconsideration.)

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above opinion and order was adopted on the 26th day of August, 1993, by a vote of 6-0.


 Dorothy M. Gunn, Clerk
 Illinois Pollution Control Board