

ILLINOIS POLLUTION CONTROL BOARD
May 20, 1993

PEOPLE OF THE STATE OF ILLINOIS,)
)
Complainant,)
)
v.) PCB 92-70
) (Enforcement)
)
GAS TECH, INCORPORATED,)
an Illinois corporation,)
formerly known as LINDE GASES)
OF THE MIDWEST, INC.,)
an Illinois corporation,)
)
Respondent.)

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

This matter comes before the Board upon a complaint filed May 7, 1993, on behalf of the People of the State of Illinois, by and through its attorney, Roland W. Burris, Attorney General of the State of Illinois, against Union Carbide Industrial Gases, Inc., located in, Cook County, Illinois. On January 19, 1993 a motion was filed to amend the caption to reflect the proper party respondent as Gas Tech, Incorporated (previously known as Linde Gases of the Midwest, Inc.). The complaint alleges that Union Carbide Industrial Gases, Inc., now known as Gas Tech, Inc., has violated Section 21 (i) of the Environmental Protection Act ("Act"), 415 ILCS 5/21(i)(1992), and 35 Ill. Adm. Code 722.141(a) of the Board's regulations.

Pursuant to Section 31(a)(1) of the Act, a joint Motion requesting relief from the Act's hearing requirement was filed by the parties on April 6, 1993. Notice of the waiver was published by the Board on April 15, 1993; no objection to grant of the waiver was received. Waiver of hearing is granted by the Board via today's opinion and order. The parties have submitted a Stipulation and Settlement Agreement, executed by the parties. Gas Tech, Inc. denies the past alleged violations but agrees to cease and desist from future violations of Section 21(i) of the Act and 35 Ill. Adm. Code 722.141(a). Gas Tech, Inc. agrees to pay a civil penalty of Four Thousand Five Hundred Dollars (\$4,500.00).

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

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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 Gas Tech, Inc., concerning their operations located in Cook County, Illinois. The Stipulation and Settlement Agreement are incorporated by reference as though fully set forth herein.
2. Gas Tech, Inc. shall pay the sum of Four Thousand Five Hundred Dollars (\$4,500.00) within 30 days of the date of this Order. Such payment shall be made by certified check or money order payable to the Treasurer of the State of Illinois, designated to the Illinois Hazardous Waste 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

Gas Tech, Inc. shall also write its Federal Employer Identification Number or Social Security Number on the certified check or money order.

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 5/101 et seq.), as now or hereafter amended, from the date of 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. Gas Tech, Inc. shall cease and desist from the alleged violations.

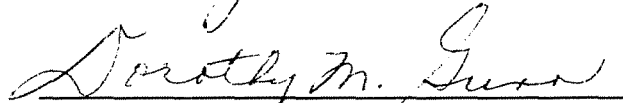
IT IS SO ORDERED.

Section 41 of the Environmental Protection Act (415 ILCS 5/41 (1992)) provides for appeal of final orders of the Board within 35 days. The rules of the Supreme Court of Illinois establish filing requirements. (But see also 35 Ill. Adm. Code

101.246, Motions for Reconsideration.)

Board Member Meyer dissented.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above Opinion and Order was adopted on the 20th day of May, 1993, by a vote of 5-1.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board