

ILLINOIS POLLUTION CONTROL BOARD  
February 4, 1982

ILLINOIS ENVIRONMENTAL )  
PROTECTION AGENCY, )  
 )  
Complainant, )  
 )  
v. ) PCB 80-152  
 )  
APEX INTERNATIONAL ALLOYS, INC., )  
a Delaware corporation, )  
 )  
Respondent. )

MR. WILLIAM J. BARZANO, JR., ASSISTANT ATTORNEY GENERAL,  
APPEARED ON BEHALF OF COMPLAINANT;

MR. RICHARD J. TROY, TROY AND SNIEDER, APPEARED ON BEHALF  
OF RESPONDENT.

OPINION AND ORDER OF THE BOARD (by D. Anderson):

This matter comes before the Board upon a complaint filed August 19, 1980 by the Illinois Environmental Protection Agency (Agency) naming as Respondent Apex International Alloys, Inc., a Delaware corporation (Apex). The complaint alleges violations of Sections 9(a) and 9(b) of the Illinois Environmental Protection Act (Act) and Rules 103(b)(1), 103(b)(2), 202(b) and 203(a) of Chapter 2: Air Pollution, in connection with the operation of an aluminum smelter. A public hearing was held in Chicago on December 16, 1981, at which time the parties presented stipulation, statement of facts and proposal for settlement. No citizens appeared and there has been no public comment (R. 6).

Apex operated an aluminum smelter described only as located in the City of Chicago, Cook County.\* It includes the following emission sources: 4 aluminum reverberatory furnaces; a rotary borings dryer; a scrap crusher; one aluminum alloy melt furnace; 2 zinc alloy melt furnaces; and various air pollution control equipment, including afterburners and scrubbers.

Although some or all of the emission sources and air pollution control equipment were in existence prior to 1973, much of it was not utilized from 1973 until sometime after March, 1979. As a result, physical changes in, or changes in

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\*The Chicago phone directory indicates that Apex operates a plant at 2537 West Taylor, Chicago.

the method of operation of, the emission sources and air pollution control equipment occurred which increased contaminant emissions. The sources and equipment therefore constitute new sources and equipment as defined by Rule 101 of Chapter 2.

The complaint alleged the following violations:

<u>Count</u>	<u>Section/Rule</u>	<u>Summary</u>
I	§9(b) Rule 103(b) (1)	Operation of new source or equipment without a permit
II	§9(b) Rule 103(b) (2)	Alternative to Count I: operation of existing source or equipment without a permit after November 1, 1972
III	§9(a) Rule 203(a)	Emission of particulates from a new source in excess of allowable rates on 5 dates from May through November, 1979
IV	§9(a) Rule 203(a)	Alternative to Count III: Rules 203 (b) and 203(c) require existing process emission sources to comply with Rule 203(a)
V	§9(a) Rule 202(b)	Emission of smoke with opacity greater than 30% on 5 dates between May and November 1979.

Rule 203(a) sets mass emission limitations based on process weight rate. There is no indication of the process rate of the facility or the allowable emission level.

Based on the stipulated facts, the Board finds that the emission sources and air pollution control equipment constitute new sources. Alternative Counts II and IV are therefore dismissed, pursuant to the Agency's motion contained in the stipulation.

Apex admits that: it did not possess operating permits for any of the sources or equipment at this facility at any time subsequent to March, 1979; that it caused or allowed emission of particulate matter in excess of emission rates allowable under Rule 203(a); and that it caused or allowed emission of smoke or other particulate matter with an opacity greater than 30%. The Board finds Apex in violation of §§9(a) and 9(b) of the Act and Rules 103(b) (1), 203(a) and 202(b), substantially as alleged in Counts I, III and V of the complaint.

Apex ceased all melting operations on October 24, 1980 and permanently closed the facility on or about January 1, 1981. Apex has agreed to obtain all necessary construction and operating permits prior to resuming any operations at the facility. Apex has agreed to pay a stipulated penalty of \$1500.

There is no evidence in the record concerning: the character and degree of injury to health and physical property; the suitability of the pollution source to the area; or the technical practicability and economic reasonableness of reducing the emissions [ §§33(c)(1), 33(c)(3) and 33(c)(4) of the Act]. The smelter apparently had social and economic value when it was operating, although this value was reduced by operation without a permit in violation of emission limitations [ §33(c)(2)].

Under normal circumstances the facts would be too sketchy to accept this stipulation. However, the facility has already voluntarily closed. There will be an opportunity for a thorough review of the facts should a permit application be filed. The Board accepts the settlement pursuant to Procedural Rule 331. The Board finds the penalty of \$1500 necessary to aid enforcement of the Act where a facility has ignored a long standing permit requirement.

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

#### ORDER


1. Respondent Apex International Alloys, Inc. has violated §§9(a) and 9(b) of the Act and Rules 103(b)(1), 202(b) and 203(a) of Chapter 2: Air Pollution, substantially as alleged in Counts I, III and V of the Complaint.
2. Counts II and IV are dismissed without leave to refile.
3. Respondent shall apply for all necessary construction and operating permits prior to reopening the facility described in the Opinion and shall not reopen the facility without first receiving all necessary construction and operating permits.
4. Respondent shall comply with the terms of the settlement filed January 6, 1982 which is hereby incorporated by reference.
5. Within thirty-five days of the date of this Order Respondent Apex International Alloys, Inc. shall,

by certified check or money order payable to the State of Illinois, pay a civil penalty of \$1500 which is to be sent to:

State of Illinois  
Fiscal Services Division  
Illinois Environmental Protection Agency  
2200 Churchill Road  
Springfield, Illinois 62706

IT IS SO ORDERED.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify that the above Opinion and Order were adopted on the 4<sup>th</sup> day of February, 1982 by a vote of 4-0.

  
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Christan L. Moffett, Clerk  
Illinois Pollution Control Board