

ILLINOIS POLLUTION CONTROL BOARD
May 7, 1998

PEOPLE OF THE STATE OF ILLINOIS,)
)
Complainant,)
)
v.) PCB 96-76
) (Enforcement - Land)
CHEMETCO, INC.)
)
Respondent.)
)

OPINION AND ORDER OF THE BOARD (by K.M. Hennessey):

Respondent Chemetco, Inc. (Chemetco) owns and operates a secondary metal smelting facility (facility) near Hartford, Madison County, Illinois. The facility has several areas that contain, or once contained, wastes that are considered hazardous. These wastes trigger various laws and regulations. In this case, the Attorney General, on behalf of the people of the State of Illinois (State), alleges that Chemetco has violated some of those laws and regulations.

Specifically, in count I of its complaint, the State alleges that Chemetco did not perform the groundwater sampling and reporting that the Illinois Environmental Protection Act, 415 ILCS 5/1 *et seq.* (1996) (Act), and Board regulations require. In count II, the State alleges that Chemetco has not provided the financial or liability assurance that the Act and Board regulations require.

On February 19, 1998, the Board granted the State partial summary judgment on liability on counts I and II, excluding the State's claim in count II that Chemetco has violated 35 Ill. Adm. Code 725.242. The Board ordered this matter to hearing on that claim and on the proper penalty amount for the violations that the Board did find.

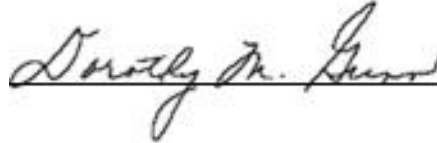
The State now moves to amend its complaint under 35 Ill. Adm. Code 103.210(a) (motion, cited as "Mot. at __."). The first amended complaint attached to the motion adds count III, which alleges that Chemetco has failed to annually update various estimates as Board regulations require. Mot. at 2. The State alleges that it learned of these additional violations during discovery and during preparation and briefing of its motion for summary judgment. Mot. at 1. The State also alleges that this claim is related to count II and will not result in surprise to Chemetco. Mot. at 2. Chemetco has not filed a response to the motion.

Under Section 103.210(a) of the Board's rules, "Proof may depart from pleadings and pleadings may be amended to conform to proof, so long as no undue surprise results that cannot be remedied by a continuance." Given that the parties are still engaged in discovery, that no hearing has been scheduled, and that the count to be added is related to an existing count, the

Board finds that no undue surprise will result if the amendment is allowed. See Gordon Krautsack et al. v. Bhogilal Patel (December 20, 1995), PCB 95-143, slip op. at 1 (granting a similar motion in similar circumstances). The Board therefore grants the motion. Chemetco may respond to the first amended complaint in accordance with the Board's procedural rules.

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above order was adopted on the 7th day of May 1998 by a vote of 7-0.

A handwritten signature in cursive script, reading "Dorothy M. Gunn", written over a horizontal line.

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board