

ILLINOIS POLLUTION CONTROL BOARD
October 6, 1983

ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
)
Complainant,)
)
v.) PCB 83-2
)
CHEMETCO, INC.,)
)
Respondent.)

INTERIM ORDER OF THE BOARD (by W. J. Nega):

Although the proposed settlement agreement appears to be generally acceptable, it contains various deficiencies which necessitate its rejection by the Board. The Board notes that the imposition of a \$20,000.00 stipulated penalty appears inappropriate under the Act in light of the Board's inability to find violations, since a) the Agency has not withdrawn any of the charges or allegations made in Counts I, II, III, and IV of the January 6, 1983 Complaint*; and b) the Respondent, although agreeing to the imposition of a penalty, has nonetheless steadfastly denied that any violations occurred (including possible "technical" violations due to permit expiration). Further, paragraph 4 on page 7 of the Settlement Agreement includes the phrase "such Compliance Program to be amended only by written agreement of the Parties" (which constitutes an improper attempt to restrict the purview of the Board's variance authority and compliance program review (the 8th paragraph on page 5 of the Settlement Agreement also conflicts with paragraph 4 on page 7 in that "final settlement of all issues" precludes any later changes in the compliance program solely at the discretion of the parties).

*The Board notes that the Respondent's operations involve a secondary smelter which probably uses scrap metals of undetermined content and may emit arsenic vapors which are human carcinogens. We assume that the Agency has taken into consideration the possibility of carcinogens being released into the atmosphere from arsenic-bearing materials and that all necessary steps will be taken to eliminate any such emissions. The Board is vitally concerned about the health and safety of people who live near metal reclamation and smelting facilities.

Thus, the second Settlement Agreement filed on April 12, 1983 is hereby rejected and this cause is remanded to the parties for further action. If, within 60 days of the date of this Order, either an amended stipulation is not filed, or a hearing is not scheduled on the merits of this action to be held within 90 days of the date of this Order, this action will be subject to dismissal.

IT IS SO ORDERED.

I Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify that the above Interim Order was adopted on the 6th day of October, 1983 by a vote of 4-0.



Christan L. Moffett, Clerk
Illinois Pollution Control Board