

ILLINOIS POLLUTION CONTROL BOARD
December 7, 1995

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

ORDER OF THE BOARD (by M. McFawn):

This matter is before the Board on a two-count complaint filed October 10, 1995 by the Attorney General of the State of Illinois, on behalf of the People of the State of Illinois and the Illinois Environmental Protection Agency, against Chemetco, Inc. (Chemetco), a Delaware corporation authorized to do business in Illinois. The complaint alleges that Chemetco has violated Section 21(f)(2) of the Illinois Environmental Act (Act) (415 ILCS 5/21(f)(2)(1994)) and 35 Ill. Adm. Code 725.190(b), 725.192(a), 725.213, 725.175, 725.194(a)(2)(B), 725.242(a), 725.243, 725.245, 725.247(a)(b) (1994). These sections refer to the alleged violations of Chemetco's closure plan corrective action program and Chemetco's failure to establish financial assurance for closure and post-closure of Chemetco's smelting facility located near Hartford, Madison County, Illinois.

On October 20, 1995, Chemetco filed a Motion to Dismiss arguing that because the Circuit Court of Madison County entered a consent order on June 30, 1988 between the People of the State of Illinois and Chemetco, jurisdiction over the instant complaint continues in the circuit court rather than the Board. Complainant filed a Response to the Motion to Dismiss on October 27, 1995 arguing, among other reasons, that the 1988 consent order does not preclude prosecution of any charges in the complaint dated October 10, 1995 before the Board. Subsequently, on November 7, 1995, Chemetco filed a request for oral argument to expand on the meaning and scope of the consent order.

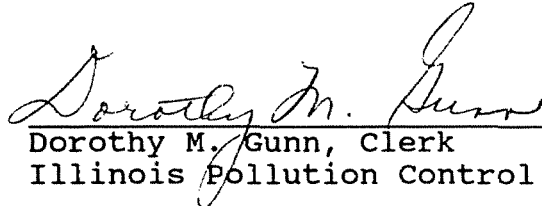
After reviewing both the motion to dismiss and the response motion, the Board recognizes that neither party has cited any persuasive authority in support of either granting or denying Chemetco's Motion to Dismiss. As a result, the Board directs Chemetco to file a memorandum of law with supporting caselaw by December 29, 1995 on the issue of whether the 1988 consent order divests the Illinois Pollution Control Board of jurisdiction regarding future matters of dispute among the parties. Additionally, Chemetco may wish to supply the Board with caselaw on whether the Board may or may not enforce the consent decree

and/or the extent Chemetco views the 1995 allegations to be separate or similar to the 1988 consent order. The People of the State of Illinois may file a response to Chemetco's Memorandum which should be submitted to the Board by January 12, 1996.

Consequently, the Board will not rule on Chemetco's Request for Oral Argument until the Board has received the parties' memoranda of law with the supporting caselaw. Chemetco's Request for Oral Argument is therefore held pending receipt of the parties' memoranda of law.

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 December, 1995, by a vote of 6-0.


 Dorothy M. Gunn, Clerk
 Illinois Pollution Control Board