

ILLINOIS POLLUTION CONTROL BOARD
March 19, 2009

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

OPINION AND ORDER OF THE BOARD (by G.T. Girard):

On October 10, 1995, the Office of the Attorney General, on behalf of the People of the State of Illinois (People), filed a two-count complaint against Chemetco, Inc. (Chemetco) concerning its copper smelter (smelter) located on approximately 12 acres in the Southeast quarter, Section 16, Township 4 North, Range 9 West near Hartford, Madison County. On April 8, 1998, the People filed an amended complaint (Am. Comp.) against Chemetco alleging further violations regarding the smelter.¹ The parties now seek to settle without a hearing. For the reasons below, the Board accepts the parties' stipulation and proposed settlement.

Under the Environmental Protection Act (Act) (415 ILCS 5 (2006)), the Attorney General and the State's Attorneys may bring actions before the Board on behalf of the People to enforce Illinois' environmental requirements. *See* 415 ILCS 5/31 (2006); 35 Ill. Adm. Code 103. In this case, the People allege that Chemetco violated Section 21(f)(2) (415 ILCS 5/21(f)(2) (2006)) of the Act, and Sections 725.242(a) - (c) and 725.244(a) - (c) of the Board's regulations regarding Interim Status Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities (35 Ill. Adm. Code 725.242(a)-(c), and 725.244(a)-(c) (2006)) by failing to provide detailed written cost closure estimates, failing to maintain a written estimate of the cost of its hazardous waste unit post-closure plans, and failing to annually update its cost estimates for inflation or for modification of its hazardous waste management unit closure and post-closure plans. Am. Comp. at 2-5.

On February 11, 2009, the People and Chemetco filed a stipulation and proposed settlement, accompanied by a request for relief from the hearing requirement of Section 31(c)(1) of the Act (415 ILCS 5/31(c)(1) (2006)). This filing is authorized by Section 31(c)(2) of the Act (415 ILCS 5/31(c)(2) (2006)), which requires that the public have an opportunity to request a

¹ On February 19, 1998, the Board filed an interim opinion and order granting the complainant partial summary judgment on counts I and II. The order severed complainant's claims regarding Chemetco's failure to provide written closure cost estimates and directed the parties to proceed to hearing on that issue, along with the proper penalties for the adjudicated violations. Am. Comp. at 2-3.

hearing whenever the State and a respondent propose settling an enforcement action without a public hearing. *See* 35 Ill. Adm. Code 103.300(a). The Board provided notice of the stipulation, proposed settlement, and request for relief. The newspaper notice was published in the *Illinois Post Dispatch* on February 16, 2009. The Board did not receive any requests for hearing. The Board grants the parties' request for relief from the hearing requirement. *See* 415 ILCS 5/31(c)(2) (2006); 35 Ill. Adm. Code 103.300(b).

Section 103.302 of the Board's procedural rules sets forth the required contents of stipulations and proposed settlements. *See* 35 Ill. Adm. Code 103.302. These requirements include stipulating to facts on the nature, extent, and causes of the alleged violations and the nature of Chemetco's operations. Section 103.302 also requires that the parties stipulate to facts called for by Section 33(c) of the Act (415 ILCS 5/33(c) (2006)), which bears on the reasonableness of the circumstances surrounding the alleged violations. Chemetco neither admits nor denies the alleged violations. The stipulation also addresses the factors of Section 42(h) of the Act (415 ILCS 5/42(h) (2006)), which may mitigate or aggravate the civil penalty amount. Chemetco agrees to pay a civil penalty of \$2,000,000.00. The People and Chemetco have satisfied Section 103.302. The Board accepts the stipulation and proposed settlement.

This opinion constitutes the Board's findings of fact and conclusions of law.

ORDER

1. The Board accepts and incorporates by reference the stipulation and proposed settlement.
2. Chemetco must pay a civil penalty of \$2,000,000.00 pursuant to a determination in respondent's bankruptcy proceeding. Chemetco must pay the civil penalty by United States Trustee check payable to the Illinois Environmental Protection Trust Fund. The case name, case number, and Chemetco's Federal Employer Identification Number must appear on the check.
3. Chemetco must submit payment of the civil penalty to:

Illinois Environmental Protection Agency
Fiscal Services Division
1021 North Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794-9276

Chemetco must send a copy of the United States Trustee check and any transmittal letter to:

James L. Morgan
Assistant Attorney General
Attorney General's Office
Environmental Bureau

500 South Second Street
Springfield, IL 62706

4. Penalties unpaid within the time prescribed will accrue interest under Section 42(g) of the Environmental Protection Act (415 ILCS 5/42(g) (2006)) at the rate set forth in Section 1003(a) of the Illinois Income Tax Act (35 ILCS 5/1003(a) (2006)).
5. Chemetco must cease and desist from the alleged violations.

IT IS SO ORDERED.

Section 41(a) of the Environmental Protection Act provides that final Board orders may be appealed directly to the Illinois Appellate Court within 35 days after the Board serves the order. 415 ILCS 5/41(a) (2006); *see also* 35 Ill. Adm. Code 101.300(d)(2), 101.906, 102.706. Illinois Supreme Court Rule 335 establishes filing requirements that apply when the Illinois Appellate Court, by statute, directly reviews administrative orders. 172 Ill. 2d R. 335. The Board's procedural rules provide that motions for the Board to reconsider or modify its final orders may be filed with the Board within 35 days after the order is received. 35 Ill. Adm. Code 101.520; *see also* 35 Ill. Adm. Code 101.902, 102.700, 102.702.

I, John Therriault, Assistant Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above opinion and order on March 19, 2009, by a vote of 5-0.



John Therriault, Assistant Clerk
Illinois Pollution Control Board