

STATE OF ILLINOIS)
)
 COUNTY OF MADISON)

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY,)
)
 Complainant,)
))
))
 -vs-))
))
 CHEMETCO, INC.,)
))
 Respondent.)

PCB 8-

C O M P L A I N T

NOW COMES the Complainant, ILLINOIS ENVIRONMENTAL PROTECTION AGENCY, by Tyrone C. Fahner, Attorney General of the State of Illinois, and complaining of the Respondent, CHEMETCO, INC., states as follows:

COUNT I

1. Complainant is an Agency of the State of Illinois created pursuant to Section 4 of the Illinois Environmental Protection Act (Ill. Rev. Stat. 1979, ch. 111 1/2, par. 1001, et seq., hereinafter "Act"), and charged inter alia, with the duty of enforcing the Act, pursuant to Title 8 thereof.

2. The Respondent, Chemetco, Inc., is and at all times relevant to the Complaint has been a Delaware corporation duly licensed by the Illinois Secretary of State to transact business in Illinois (hereinafter "Chemetco" or "Respondent").

3. At all times relevant to this Complaint, Chemetco has owned and operated a metal reclamation and smelting facility (hereinafter "plant") near Hartford in Madison County, Illinois.

4. During smelting, refining and processing at said plant, Respondent uses three 70-ton furnaces equipped with overhead hoods which contain a scrubber system to capture particulate emissions.

5. During part of the operation at Respondent's plant, each of the three furnaces are tilted, allowing the emission of odors, dust and gasses, including zinc oxides, to escape beyond the furnace hoods and roof of the plant, into the environment.

6. Section 9(a) of the Act provides:

"No person shall:

Cause or threaten or allow the discharge or emission of any contaminant into the environment in any State so as to cause or tend to cause air pollution in Illinois, either alone or in combination with contaminants from any other sources, or so as to violate regulations, or standards adopted by the Board under this Act."

Ill. Rev. Stat. 1979, ch. 111 1/2,
par. 1009(a).

7. Rule 102 of Chapter 2: Air Pollution Regulations, adopted by the Pollution Control Board ("Board") pursuant to Sections 5 and 10 of the Act, provides in part:

"No person shall cause or threaten to allow the discharge or emission of any contaminant into the environment in any

State, so as, either alone or in combination with contaminants from other sources, to cause or tend to cause air pollution in Illinois, or so as to violate the provisions of this Chapter, ..."

8. Section 3 of the Act defines "air pollution" and "contaminant" as follows:

"AIR POLLUTION" is the presence in the atmosphere of one or more contaminants in sufficient quantities and of such characteristics and duration as to be injurious to human, plant or animal life, to health or to property or to unreasonably interfere with the enjoyment of life or property."

"CONTAMINANT" is any solid, liquid, or gaseous matter, any odor, or any form of energy, from whatever source.

9. Intermittently from on or before June 14, 1978 and continuing to the filing of this Complaint, Chemetco has emitted into the atmosphere contaminants in sufficient quantities and of such characteristics and duration as to be injurious to human or plant life, to health and to property, and which unreasonably interfered with the enjoyment of life and property in that, for example, breathing is impaired and causes a burning sensation; sediment acculates on cars, houses, clothes and gardens; plant growth is affected; traffic is hampered, and rusting of certain property is accelerated.

10. In light of the above, Respondent, Chemetco, Inc., has violated and is in violation of Rule 102 of Chapter 2: Air Pollution Regulations and Section 9(a) of the Environmental Protection Act, Ill. Rev. Stat. 1979, ch. 111 1/2, par. 1009(a).

WHEREFORE, Complainant, ILLINOIS ENVIRONMENTAL PROTECTION AGENCY, prays as follows:

1. That the Board set a hearing date in this matter to be not less than twenty-one (21) days from the date of service of this Complaint at which time Respondent be required to answer the allegations herein;

2. That the Board, after due consideration of any statements, testimony and argument that shall be submitted at the hearing, or upon the default of the appearance of Respondent, issue a final Order directing Respondent to cease and desist from further violation;

3. That the Board impose upon Respondent a monetary penalty not to exceed Ten Thousand Dollars (\$10,000.00) for each violation alleged herein and an additional penalty not to exceed One Thousand Dollars (\$1,000.00) for each day said violation shall have continued; and

4. That the Board issue and enter any additional final determination, as it shall deem appropriate under the circumstances.

COUNT II

1-6. Complainant realleges and incorporates herein Paragraphs 1 through 6 of Count I of this Complaint as Paragraphs 1 through 6 of this Count II.

7. Air Rule 203(f)(1) of Chapter 2: Air Pollution Regulations adopted by the Board pursuant to Sections 5 and 10 of the Act (hereinafter "Chapter 2") provides:

"No person shall cause or allow the emission of fugitive particulate matter from any process, including any material handling or storage activity, that is visible by an observer looking generally toward the zenith at a point beyond the property line of the source."

8. Air Rule 201 of Chapter 2 defines "fugitive particulate matter" as follows:

"Fugitive Particulate Matter: Any particulate matter emitted into the atmosphere other than through a stack, . . ."

9. From on or about January 1, 1980 and continuing until the present, Chemetco has operated its plant so as to cause emissions of fugitive particulate matter visible by observers looking generally toward the zenith from a point beyond the property line of the Chemetco, Inc. plant.

10. In light of the above, Respondent, Chemetco, Inc. has violated and is in violation of Air Rules 102 and 203(f)(1) of Chapter 2 and Section 9(a) of the Environmental Protection Act, Ill. Rev. Stat. 1979, ch. 111 1/2, par. 1009(a).

WHEREFORE, Complainant prays as follows:

1. That the Board set a hearing date in this matter to be not less than twenty-one (21) days from the date of service of this Complaint at which time Respondent be required to answer the allegations herein;

2. That the Board, after due consideration of any statements, testimony and argument that shall be submitted at the hearing, or upon the default of the appearance of Respondent, issue a final Order directing Respondent to cease and desist from further violation;

3. That the Board impose upon Respondent a monetary penalty not to exceed Ten Thousand Dollars (\$10,000.00) for each violation alleged herein and an additional penalty not to exceed One Thousand Dollars (\$1,000.00) for each day said violation shall have continued; and

4. That the Board issue and enter any additional final determination as it shall deem appropriate under the circumstances.

COUNT III

1-6. Complainant realleges and incorporates herein Paragraphs 1 through 6 of Count I of this Complaint as Paragraphs 1 through 6 of this Count III.

7. Air Rule 203(b) of the Illinois Pollution Control Board's Chapter 2: Air Pollution Regulations (hereinafter "Chapter 2") adopted April 13, 1972, provides:

(b) Particulate Emission Standards and Limitations for Existing Process Emission Sources.

Except as further provided in this Rule 203, no person shall cause or allow the emission of particulate matter into the atmosphere in any one hour period from any existing process emission source which, either alone or in combination with the emission of particulate matter from all other similar new or existing process emission sources at a plant or premises, exceeds the allowable emission rates specified in Table 2.2 (Table II-C*) and in Figure 2.2 (Figure II-D*).

8. Chapter 2, Air Rule 101 defines "existing air pollution control equipment" as "any air pollution control e-

equipment, the construction or modification of which has commenced prior to the effective date of this Chapter."

9. Construction of Chemetco's three operating furnaces commenced prior to the effective date of Chapter 2.

10. Table 2.2 (Table II-C) of Chapter 2 provides, in pertinent part:

<u>Process Weight Rate</u> <u>Pounds Per Hour</u>	<u>Process Weight Rate</u> <u>Tons Per Hour</u>	<u>Allowable</u> <u>Emission Rate</u> <u>Pounds Per hour</u>
10,000	5.00	12.00
20,000	10.00	19.20

(Figure 2.2 corresponding)

11. Rule 203(c) of Chapter 2, regarding which standards apply to Respondent's furnaces, provides:

(c) Compliance by Existing Process Emission Sources.

Except as otherwise provided in this Rule 203, every existing process emission source that is not in compliance with paragraph (b) of this Rule 203 as of the effective date of Part 2 of this Chapter, shall comply with paragraph (a) of this Rule 203, unless both the following conditions are met:

(1) The source is in compliance, as of the effective date of Part 2 of this Chapter, with the terms and conditions of a variance granted by the Illinois Pollution Control Board, or, within sixty (60) days of the effective date of this Chapter, the source is the subject of a variance petition filed with the Illinois Pollution Control Board, which variance is subsequently granted by the Board; and,

(2) As of the effective date of Part 2 of this Chapter, construction has

commenced on equipment or modifications sufficient to achieve compliance with paragraph (b) of this Rule 203.

12. On or about the effective date of Chapter 2, Respondent operated each of its furnaces at a maximum process weight rate of 18,000 pounds per hour with an emission rate up to 31.0 pounds per hour, thus exceeding the allowable particulate emission rate specified in Table 2.2 (II-C) and Figure 2.2 (Figure II-D) of Rule 203(b).

13. No variance was granted by the Pollution Control Board to the Respondent, Chemetco, Inc., for said facility.

14. No construction or modification of the furnaces at said facility was commenced by the Respondent, Chemetco, Inc., prior to the effective date of Part II of Chapter 2 sufficient to achieve compliance with Paragraph (b) of Rule 203.

15. In light of Paragraphs 7 through 14 above, Rule 203(a) applies to each of Respondent's three furnaces as set forth in Rule 203(c) of Chapter 2.

16. Rule 203(a) of Chapter 2 provides:

(a) Particulate Emission Standards and Limitations for New Process Emission Sources.

Except as further provided in this Rule 203, no person shall cause or allow the emission of particulate matter into the atmosphere in any one hour period from any new process emission source which, either alone or in combination with the emission of particulate matter from all other similar new process emission sources at a plant or premises, exceeds the allowable emission rates specified in

Table 2.1 (Table II-A*) and in Figure 2.1 (Figure II-B*).

17. Table 2.1 (Table II-A) applicable to said facility provides in pertinent part:

<u>Process Weight Rate</u> <u>Pounds Per Hour</u>	<u>Process Weight Rate</u> <u>Tons Per Hour</u>	<u>Allowable</u> <u>Emission Rate</u> <u>Pounds Per Hour</u>
10,000	5.00	6.00
20,000	10.00	8.70

(Figure 2.1 corresponding)

18. Rule 203(i)(2) of Chapter 2 provides:

Except as otherwise provided in Paragraphs (d)(4), (d)(6), (i)(4) and (i)(5) of this Rule 203, every owner or operator of an existing emission source shall comply with the standards and limitations of Rule 203 by December 31, 1973.

19. Intermittently from on or about June 14, 1978 and continuing to the filing of this Complaint, Respondent has operated each of the three 70-ton furnaces at said facility so as to cause or allow the emission of particulate matter into the atmosphere in any one hour period which, either alone or in combination with the emission of particulate matter from all other similar new process emission sources at a plant or premises, exceeds the allowable emission rates specified in Table 2.1 (Table II-A) and in Figure 2.1 (Figure II-B) of Rule 203(a) of Chapter 2.

20. Intermittently from on or about June 14, 1978, and continuing to the filing of this Complaint, Respondent has violated Air Rule 102 and 203(a) of Chapter 2 by causing or allowing the above-described emission of particulates, thereby also violating Section 9(a) of the Act.

WHEREFORE, Complainant prays as follows:

1. That the Board set a hearing in this matter to be not less than twenty-one (21) days from the date of service of this Complaint at which time Respondent be required to answer the allegations herein;

2. That the Board, after due consideration of any statements, testimony and argument that shall be submitted at the hearing, or upon the default of the appearance of Respondent, issue a final Order directing Respondent to cease and desist from further violation;

3. That the Board impose upon Respondent a monetary penalty not to exceed Ten Thousand Dollars (\$10,000.00) for each violation alleged herein and an additional penalty not to exceed One Thousand Dollars (\$1,000.00) for each day said violation shall have continued; and

4. That the Board issue and enter any additional final determination as it shall deem appropriate under the circumstances.

COUNT IV

1-5. Complainant realleges and incorporates Paragraphs 1 through 5 of Count I of this Complaint as Paragraphs 1 through 5 of this Count IV.

6. Section 9(b) of the Act provides:

"No person shall:

b. Construct, install, or operate any equipment, facility, vehicle, vessel,

or aircraft capable of causing or contributing to air pollution or designed to prevent air pollution, of any type designated by Board regulations, without a permit granted by the Agency, or in violation of any conditions imposed by such permit;

Ill. Rev. Stat. 1979, ch. 111 1/2, par. 1009(b).

7. Rule 102 of Chapter 2: Air Pollution Regulations, adopted by the Pollution Control Board ("Board") pursuant to Sections 5 and 10 of the Act, provides in part:

"No person shall cause or threaten or allow the discharge or emission of any contaminant in any State, so as, either alone or in combination with contaminants from other sources, to cause or tend to cause air pollution in Illinois, or so as to violate the provisions of this Chapter, . . ."

8. Air Rule 103(b)(2) of Chapter 2 provides in pertinent part:

(2) Existing Emission Sources:

"No person shall cause or allow the operation of any existing emission source or any existing air pollution control equipment without first obtaining an Operating Permit from the Agency no later than the date shown in the following schedule:

(A) <u>Source Classification</u>	<u>Date Operating Permit Required</u>
Primary Metal Industry Operations as defined by code 30 of the "Standard Industrial Classification Manual."	by December 1, 1972

9-10. Complainant realleges and incorporates Paragraphs 8 through 9 of Count III of this Complaint as Paragraphs

9 through 10 of this Count IV.

11. Chemetco constitutes a primary metals industry as defined by code 30 of the "Standard Industrial Classification Manual."

12. Chemetco was issued a permit to operate its three 70-ton furnaces at its Hartford plant on November 16, 1972 by the Illinois Environmental Protection Agency, which permit was numbered 119 050.

13. On April 2, 1976 Chemetco was issued a renewed operating permit numbered 119 801 AAC for its three 70-ton furnaces at its Hartford plant which expired on June 5, 1978.

14. On June 27, 1978, Chemetco re-applied for a permit to operate its three 70-ton converters at its Hartford plant, which permit application was denied by the Agency on July 20, 1978.

15. On December 12, 1978, Chemetco was issued a renewed operating permit numbered 119 801 AAC for its three 70-ton furnaces at its Hartford plant.

16. From June 5, 1978 through December 12, 1978 Chemetco operated its three 70-ton furnaces at its Hartford plant without an operating permit issued by the Agency.

17. On September 18, 1980, Chemetco was issued a renewed operating permit numbered 119 801 AAC for its three 70-ton furnaces at its Hartford plant, which permit expired on December 8, 1981.

18. No renewed operating permit has been issued by the Illinois Environmental Protection Agency to Chemetco for its three 70-ton furnaces at its Hartford plant since September 18, 1980.

19. From December 8, 1981 to the date of this Complaint, Chemetco operated its three 70-ton furnaces at its Hartford plant without an operating permit issued by the Agency.

20. In light of the above, Chemetco has violated and is in violation of Air Rules 102 and 103(b) of Chapter 2 and Section 9(b) of the Act, Ill. Rev. Stat. 1979, ch. 111 1/2, par. 1009(b).

WHEREFORE, Complainant prays as follows:

1. That the Board set a hearing in this matter to be not less than twenty-one (21) days from the date of service of this Complaint at which time Respondent be required to answer the allegations herein;


2. That the Board, after due consideration of any statements, testimony and argument that shall be submitted at the hearing, or upon the default of the appearance of Respondent, issue a final Order directing Respondent to cease and desist from further violation;

3. That the Board impose upon Respondent a monetary penalty not to exceed Ten Thousand Dollars (\$10,000.00) for each violation alleged herein and an additional penalty not to exceed One Thousand Dollars (\$1,000.00) for each day said violation shall have continued; and

4. That the Board issue and enter any additional final determination as it shall deem appropriate under the circumstances.

ILLINOIS ENVIRONMENTAL PROTECTION
AGENCY

By:


TYROVE C. FAHNER
ATTORNEY GENERAL

OF COUNSEL:

Gwendolyn W. Klingler
Assistant Attorney General
Environmental Control Division
Southern Region

500 South Second Street
Springfield, Illinois 62706
(217) 782-9031

DATED: January 5, 1983

CERTIFICATE OF SERVICE

I hereby certify that I did, on the 5th day of
January, 1983, send by Certified Mail, with postage thereon
fully prepaid, a true and correct copy of the foregoing
instruments entitled NOTICE and COMPLAINT

TO: Chemetco, Inc. c/o Thomas McRaven, Registered Agent Illinois State Highway #3 Hartford, Illinois 62048	Ms. Johnnine Brown Hazard Rocks, Pitts, Fullager & Poust Xerox Center, Suite 1500 55 West Monroe Chicago, Illinois 60603
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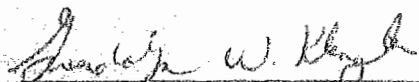
and the original and nine (9) true and correct copies of
the same foregoing instruments

TO: Pollution Control Board
309 West Washington
Chicago, Illinois 60606.

In addition to the foregoing, a copy of the said
NOTICE and COMPLAINT has been sent

TO: Mr. Don W. Weber State's Attorney Madison County Madison County Courthouse Edwardsville, IL 62025	Ms. Heidi Hanson Enforcement Division Environmental Protection Agency 2200 Churchill Road Springfield, IL 62706
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for their information.



Gwendolyn W. Klingler
Assistant Attorney General