

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

FILED

2018 FEB 03 00

UNITED STATES OF AMERICA,

Plaintiff,

CIV. NO. 93-482-WDS

v.

Judge Stiehl

CHEMETCO, INC.,

Defendant.

NOTICE OF LODGING OF CONSENT DECREE

Plaintiff United States by and through its undersigned attorneys, respectfully lodges the attached proposed consent decree with this Court.

1. Plaintiff United States filed a Complaint in this action against Defendant Chemetco, Inc. ("Chemetco" or "Defendant"), alleging civil violations of the Clean Air Act, 42 U.S.C. §§ 7401 *et seq.* ("CAA" or "Act"), and the Federally approved and enforceable regulations comprising the State of Illinois Air Pollution Implementation Plan ("Illinois SIP"), codified at 40 C.F.R. § 52.720-52.742, at the Defendant's secondary copper smelting facility in Hartford, Illinois..

2. The United States and Chemetco have entered into, and the United States has lodged with this Court, a proposed consent decree that would resolve the United States' claims alleged in the Complaint.

3. In accordance with 28 C.F.R. § 50.7 the United States will publish notice of the lodging of the consent decree in the Federal Register to commence a thirty (30)-day public comment period.

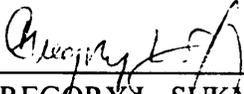
4. The Court should not approve or sign the proposed consent decree until the public has had an opportunity to comment and the United States has addressed those comments, if any.

5. The United States may withhold its consent to the proposed consent decree if the comments disclose facts or considerations which indicate that the proposed consent decree is improper, inappropriate, inadequate, or not in the public interest.

6. At the conclusion of the public comment period, the United States will: (1) file with the Court any written comments that it received pertaining to the proposed consent decree; and (2) either notify the Court of its withdrawal of the proposed consent decree, or respond to comments received and request this Court to sign and enter the proposed consent decree.

Respectfully submitted,

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CHEMETCO, INC.,

Defendant.

CONSENT DECREE

A. Plaintiff, United States of America, on behalf of the Administrator of the United States Environmental Protection Agency ("U.S. EPA"), filed a Complaint in this action against Defendant, Chemetco, Inc. ("Chemetco" or "Defendant"), alleging civil violations of the Clean Air Act, 42 U.S.C. §§ 7401 et seq. ("CAA" or "Act"), and the Federally approved and enforceable regulations comprising the State of Illinois Air Pollution Implementation Plan ("Illinois SIP"), codified at 40 C.F.R. § 52.720-52.742.

B. Pursuant to the authority of CAA Section 113(b), 42 U.S.C. § 7413(b), the Complaint seeks injunctive relief and the imposition of civil penalties for violations of the Act;

C. At all times relevant to the Complaint, Chemetco has been the "operator," within the meaning of CAA Section 113, 42 U.S.C. § 7413, of a secondary copper smelter at a Facility located on Illinois Route 3 at Oldenburg Road, City of Hartford, Madison County, Illinois;

D. The Facility is a "stationary source" within the meaning of CAA Section 302(z), 42 U.S.C. § 7602(z), because it emits lead and particulate matter into the environment;

E. Illinois Pollution Control Board ("IPCB") Rule 101 defines "existing emission source" as any emission source, the construction or modification of which commenced prior to May 31, 1972, the effective date of IPCB Rule 101. See 35 Ill. Adm. Code § 212.322;

F. The Facility has been a "major stationary source" as defined in CAA Section 302(j), 42 U.S.C. § 7602(j), because it has emitted more than one hundred tons per year of an air pollutant;

G. Defendant's secondary copper smelter at the Facility is comprised, in part, of four furnaces ("Furnace Nos. 1, 2, 3, and 4") (also known as "converters"), which process scrap materials (including brasses and bronzes that contain lead) and which generate particulate matter emissions in varying amounts.

H. Furnace Nos. 1, 2, and 3 at the Facility were operated prior to May 31, 1972, and are "existing emission sources" within the meaning of the IPCB Rule 101, 35 Ill. Adm. Code § 212.322.

I. IPCB Rule 101 defines "new emission source" as any emission source the construction or modification of which commenced after May 31, 1972, the effective date of IPCB Rule 101. See 35 Ill. Adm. Code § 212.321.

J. Furnace No. 4 at the Facility was constructed after May 31, 1972, and is a "new emission source" within the meaning of the IPCB Rule 101, 35 Ill. Adm. Code § 212.321.

K. IPCB Rule 103 prohibits any person from causing or allowing the operation of any new emission source or new air pollution control equipment, for which a construction permit is required by IPCB Rule 103, without first obtaining an operating permit from IEPA. See 35 Ill. Adm. Code § 201.143.

L. As discussed in detail herein, as part of this settlement, Chemetco has agreed to install and operate a continuous particulate mass monitoring system ("CPMMS") at its Facility. The parties agree that the purposes of such system include, but are not limited to:

Providing Chemetco with near real time emissions data for improving operation and maintenance of the Furnaces and the associated air pollution control devices at the Facility;

Minimizing the number of required stack tests that would otherwise be necessary for determining "continuous compliance;"

Providing Chemetco and U.S. EPA with continuous particulate mass emissions information in standard units of measurement, thereby minimizing reliance on surrogate measurements of emissions from the Facility's emission points (stacks), such as opacity and pressure drop across control devices, that have been contested in other cases as not accurately reflecting the existence of particulate limit excursions; and

Providing an agreed source of credible evidence for demonstrating continuous compliance with particulate emission limits.

M. Chemetco previously paid the State of Illinois a total of \$305,000 in settlement of some of the violations set forth in the United States' Complaint.

N. The parties recognize and the Court, by approving and entering this Consent Decree, finds that this Consent Decree has been negotiated by the Parties in good faith, and implementation of this Consent Decree will avoid prolonged and complicated litigation between the Parties, and that this Consent Decree is fair, reasonable, and in the public interest.

NOW, THEREFORE, IT IS ADJUDGED, ORDERED, AND DECREED THAT:

I. JURISDICTION AND VENUE

1. The Complaint in this action states a claim upon which relief can be granted under the Act.

2. This Court has jurisdiction over the subject matter and parties to this action pursuant to CAA Section 113(b), 42 U.S.C. § 7413(b).

3. Venue properly lies in this Judicial District under 28 U.S.C. §§ 1391(b) and 1395(a).

II. DEFINITIONS

4. The terms used in this Consent Decree that are defined in the Clean Air Act, 42 U.S.C. §§ 7401 et seq., and the Federally approved and enforceable regulations comprising the Illinois SIP, 40 C.F.R. §§ 52.720-52.742, have the meanings contained therein.

5. Whenever the terms listed below are used in this Consent Decree or in any of the Appendices hereto the following definitions shall apply:

- a. "Defendant" shall mean "Chemetco, Inc." or "Chemetco;"
- b. "BACT" shall mean "Best Available Control Technology," as defined in Clean Air Act Section 169(3), 42 U.S.C. § 7479(3);
- c. "Clean Air Act," "Act" and "CAA" shall mean the Clean Air Act, 42 U.S.C. § 7401, et seq.;
- d. "Consent Decree" shall mean this Consent Decree and all appendices hereto, including all modifications to the Consent Decree that are made pursuant to Paragraph 55 hereof;
- e. "Continuous Particulate Mass Monitoring System" or "CPMMS" shall mean the system that measures the particulate matter that is released from the emission points (stacks) at the Hartford Facility into the ambient air: the system includes, but is not limited to, a continuous

particulate mass monitor (Mass Monitor), and a monitoring device or system for measuring or computing the exhaust gas flow on an hourly basis (Flow Monitor);

f. "Daily Weighted Average" shall mean the average of the zinc and/or lead percentages of all the Furnace Charges in one day, taking into account the weight of the material comprising each Furnace Charge;

g. "Direct Injection System" or "DI System" shall mean the system by which copper bearing fines are injected directly into a Furnace: the system includes the conveyor system, sizing machine, kiln dryer, pneumatic transporters, storage silo, and a large injector;

h. "Facility" or "Plant" shall mean Defendant's secondary copper smelter, and all associated processing, transfer, storage operations and equipment located on Illinois Route 3 at Oldenburg Road, City of Hartford, County of Madison, State of Illinois;

i. "Fines" shall mean all scrap materials acquired at the Facility that are stored, dried, screened or processed in any way for direct injection through the DI System into any of the Furnaces;

j. "Foundry" shall mean the building in which the Hartford Facility's Furnaces are located;

k. "Furnace" shall mean any rotary copper smelting device at the Facility;

l. "Furnace Charge" or "Charge" shall mean any material placed into a Furnace for processing;

m. "Furnace Mode" or "Mode" shall mean any of the four phases of processing in any Furnace, which include Slag Treatment (Mode 1); Refining (Cold Charge) (Mode 2); Smelting

(Smelt) (Mode 3); and Injection (Mode 4);

n. "IEPA" shall mean the State of Illinois Environmental Protection Agency and any successor departments or agencies of the State of Illinois;

o. "Illinois SIP" shall mean the State of Illinois Air Pollution Implementation Plan, codified at 40 C.F.R. §§ 52.720-52.742;

p. "IPCB" shall mean the State of Illinois Pollution Control Board;

q. "Malfunction" shall mean any sudden, infrequent, and not reasonably preventable failure of air pollution control equipment, process equipment, or a process to operate in a normal or usual manner. Failures that are caused in part by poor maintenance or careless operation are not malfunctions (See 40 C.F.R. § 60.2);

r. "National Ambient Air Quality Standards" or "NAAQS" shall mean the standards set forth at 40 C.F.R. §§ 50.1-50.12;

s. "Paragraph" shall mean a portion of this Consent Decree designated by an Arabic numeral outside of a parentheses, e.g., "19";

t. "Pressure Drop" shall mean the decrease in pressure between two monitoring points;

u. "Pressure Drop Monitor" shall mean any device(s) installed and operated to determine the Pressure Drop that occurs between any two points;

v. "Process Weight" shall mean the total weight in pounds, of all material charged to a Furnace during a Furnace Mode;

w. "Process Weight Rate" shall have the same meaning as set forth in 35 Ill. Adm.