BEFORE THE
POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

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| IN THE MATTER OF<br>INTALCO ALUMINUM CORPORATION,<br><br>Appellant,<br><br>vs.<br><br>STATE OF WASHINGTON,<br>DEPARTMENT OF ECOLOGY,<br><br>Respondent. | PCHB Nos. 184 and 208<br><br>FINDINGS OF FACT,<br>CONCLUSIONS AND ORDER |

These matters, appeals of Notices of Penalty No. DE 72-157 and 176 having been consolidated for hearing, came on before the Board in Olympia, Washington on February 1, 1973, appellant appearing through its attorneys Lane, Powell, Moss and Miller, by Robert R. Davis, Jr., respondent appearing through its attorney by Wick Dufford, Assistant Attorney General, and the Board having heard the testimony, reviewed the transcript thereof, considered the exhibits and arguments, and being fully advised, makes and enters the following:

FINDINGS OF FACT

I.

Intalco Aluminum Corporation operates and maintains a primary aluminum plant near Ferndale, Whatcom County, Washington. It has the largest capacity of any such plant in the United States and when the plant was constructed, expended approximately ten and one-half million dollars on the air scrubbing system. There are 720 separate furnaces in six separate buildings. After the plant became operative, appellant in 1969 determined that additional air cleaning systems were necessary to collect and further reduce emissions and air pollution from the furnaces, and made diligent and expensive efforts to research and design a system and method of doing so.

II.

On April 17, 1970, respondent assumed jurisdiction over emissions from primary aluminum reduction plants in order to provide for the reduction and control of air pollution in such industry, established standards deemed to be technically and reasonably attainable and adopted regulations to require, in accordance with a specific program and timetable for each operating plant, the highest and best practicable control of emissions of air pollutants and, on February 4, 1971 adopted regulatory fluoride standards. Respondent's regulations governing compliance schedules established procedures for the determination of the initial compliance schedule date, and amendments or changes of such date, but in no case was full compliance to be later than July 1, 1972. Respondent's Regulation, WAC 18-60-040, adopted February 9, 1971, provides, in part:

"Any person who violates a regulatory order issued pursuant hereto shall be subject to the sanctions provided in Chapter 70.94 RCW."

III.

Respondent and appellant jointly determined the method and time of compliance and as a result thereof, respondent issued its Regulatory Order No. 52-4, establishing a schedule and other requirements of compliance with Chapter 18-52 WAC. Such order required compliance for fluoride emissions to be completed by July 1, 1972 and was issued on March 31, 1971. Appellant in good faith believed that it would be able to comply with such compliance schedule. However, notwithstanding its diligence, appellant encountered engineering problems in design and construction time and as a consequence, respondent issued amended Regulatory Orders, which Orders revised portions of the compliance schedule but reaffirmed the date of July 1, 1972 as to compliance for fluoride emissions.

IV.

Appellant could not and did not timely and fully comply with respondent's compliance schedule for fluoride emissions, but was in compliance by November 1, 1972.

V.

Respondent advised appellant of the availability to appellant of the legal devices of a variance or an assurance of discontinuance either of which, if granted by respondent, would have excused appellant's non-compliance with the fluoride standards. However, appellant chose not to take advantage thereof during the period for which the civil penalties

were assessed because to have done so would have had a prejudicial affect upon numerous civil actions pending against appellant in which eight million dollars in damages were sought. Appellant did thereafter offer its assurance of discontinuance and it was accepted by respondent.

VI.

Respondent issued its Notices of Penalty against appellant on August 7, 1972 in the amount of $100.00 per day for the period of July 1, 1972 through July 31, 1972 and on October 5, 1972 in the same amount for the period of August 1 through August 31, 1972. The total penalties were $6,200.00. Such penalties were $150.00 per day less than the $250.00 maximum because of the recognition by respondent of appellant's good faith efforts to achieve compliance.

VII.

The imposition of such penalties did not hasten the day of compliance and appellant's final entire system for the control of air pollution when completed will be one of the best pollution control facilities of any smelter in North America involving a capital expenditure of in excess of 14 million dollars and a net equipment operating cost of nearly 3 million dollars per year.

From the foregoing the Board enters the following

CONCLUSIONS OF LAW

I.

That appellant did violate respondent's Regulatory Orders and such was unlawful.

II.

In view of mitigating circumstances not entirely in the control

of the appellant, the amount of the penalties are deemed to be excessive.

From which follows this

DECISION

The penalty assessment under respondent's Docket No. DE 72-176 and DE 72-157 are each reduced to $100.00 for the first day's violation therein and $1.00 per day thereafter being total combined penalties of $269.00.

DONE at Lacey, Washington this _____ day of _____, 1973.

POLLUTION CONTROL HEARINGS BOARD

WALT WOODWARD, Chairman

W. A. GISSBERG, Member

JAMES T. SHEEHY, Member

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Pollution Control Hearings Board
By Dolores Oslavik
Clerk

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STATE OF WASHINGTON )
) as
COUNTY OF THURSTON )

WICK DUFFORD, being first duly sworn on oath deposes and says:

I am the Assistant Attorney General for the State of Washington and hereby acknowledge receipt from Intalco Aluminum Corporation in the sum of $269 in consideration for satisfaction of the penalty assessed under respondent's docket No. DE 72-176 and DE 72-157 as reduced in accordance with the Findings of Fact, Conclusions, Order and Decision of the Pollution Control hearings board entered on June 27, 1973. The said penalty assessment is hereby fully released, discharged and satisfied.

EXECUTED this 20th day of July, 1973

ATTORNEY GENERAL
STATE OF WASHINGTON

By Wick Dufford
Wick Dufford, Assistant
Attorney General



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