BEFORE THE
POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF KAISER ALUMINUM & CHEMICAL CORPORATION, Appellant, v. PUGET SOUND AIR POLLUTION CONTROL AGENCY, Respondent.	PCHB Nos. 503 and 578 FINAL FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

THIS MATTER being an appeal from a $250.00 civil penalty for an alleged smoke emission; having come on regularly for hearing before the Pollution Control Hearings Board on the 7th day of June, 19[illegible] at Tacoma, Washington; and appellant Kaiser Alumin[illegible] & Chemical Corporation appearing through its attorney, Edward M. Lane, and respondent Puget Sound Air Pollution Control Agency appearing through its attorney, Ke[illegible] D. McGoffin; and Board members present at the hearing being W. A. Gissberg and Walt Woodward; and the Board having considered the sworn testimony, exhibits,

records and files herein and post hearing briefs of the parties and ha[illegible] entered on the 19th day of September, 1974, its proposed Findings of Fact Conclusions of Law and Order; and the Board having served said proposed Findings, Conclusions and Order upon all parties herein by certified mail, return receipt requested and twenty days having elapsed from said service; and

The Board having considered the State's Brief Amicus Curiae from the Washington State Department of Ecology and the Attorney General, and having received exceptions to said proposed Findings, Conclusions and Order from respondent and having considered and denied same; and the Board being fully advised in the premises; now therefore,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that said proposed Findings of Fact, Conclusions of Law and Order, dated the 19th day of September, 1974, and incorporated by this reference herein and attached hereto as Exhibit A, are adopted and hereby entered as the Board's Final Findings of Fact, Conclusions of Law and Order herein.

DONE at Lacey, Washington this 3rd day of December, 1974.

POLLUTION CONTROL HEARINGS BOARD

Walt Woodward

WALT WOODWARD, Chairman

W. A. Gissberg

W. A. GISSBERG, Member

S.F. No. 2238-A

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A formal consolidated hearing (on oral stipulation of the parties) was held before Board members W. A. Gissberg (presiding) and Walt Woodward at Tacoma, Washington on June 7, 1974.

Appellant appeared by its attorney, Edward M. Lane; Respondent by its attorney, Keith D. McGoffin.

Having heard the testimony and considered the exhibits and post-hearing briefs of the parties and being fully advised, the Board makes the following

EXHIBIT A

FINDINGS OF FACT

I.

On December 7, 1973, and again on April 8, 1974, Respondent's inspector observed smoke emissions (from a distance of at least 200 feet) from the southeast stack of the Appellant's Rod Mill at Tacoma, Washington. The smoke which was emitted therefrom on December 7, 1973 was for six consecutive minutes and of a 100 percent opacity and resulted in the issuance by Respondent (and service upon Appellant) of its Notice of Violation No. 8669 followed by Notice of Civil Penalty No. 1311 in the amount of $250.00, citing a violation of Respondent's Regulation I, Section 9.03(a). The smoke which was emitted therefrom on April 8, 1974 was for 16 consecutive minutes and of a 100 percent opacity and resulted in the issuance by Respondent (and service upon Appellant) of its Notice of Violation No. 9686 followed by Notice of Civil Penalty No. 1532 in the sum of $250.00, citing a violation of Respondent's Regulation I, Section 9.03 and WAC 18-52-030(3).

II.

Section 9.03(a) of Respondent's Regulation I makes it unlawful to cause or allow the emission of any air contaminant of such opacity as to obscure an observer's view to a degree equal to or greater than that designated as No. 2 (40% density) on the Ringelmann Chart for more than three minutes in any one hour. WAC 18-52-030(3) prohibits visible emissions from <u>all sources</u> of a density or equivalent opacity, for more than three minutes in any hour, greater than No. 1 on the Ringelmann Chart, or 20 percent density.

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III.

The episodes of emissions emanated from Appellant's Cast House-Rod Mill building, which is a part of but physically separated from Appellant's primary reduction plant building. A Cast House is an integral part of the Rod Mill and there must be a Cast House in order to produce aluminum. The emissions came from the Casting Mill furnaces which are located in a building commonly known as a Rod Mill.

IV.

By the adoption of WAC 18-52-010, the state assumed "state jurisdiction over emissions from primary aluminum reduction plants." Respondent did not prove, nor attempt to prove, that the Respondent had: (1) found, after public hearing, that there was a need for more stringent aluminum industry regulations than those adopted by the state; (2) proposed the adoption by the state of such more stringent rules within the geographic area of Respondent's authority. Further, there was no proof that the state had delegated the responsibility for the enforcement of the state regulations to Respondent.

V.

The term, primary aluminum plant, as defined by WAC 18-52-020(11) "means those plants . . . which operate for the purpose of or related to producing aluminum metal from alumina."

Subsection (1) of WAC 18-52-020 defines "all sources" (of pollution) as "including, but not limited to, the reduction process, alumina plant . . . cast house . . . "

VI.

On both December 7, 1973 and April 8, 1974 the emission episodes

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violated the provisions of Respondent's Regulation I, but not WAC 18-52-030(3), since full compliance with the state's standard of emissions set forth therein was not required until January 1, 1975.

VII.

Respondent, pursuant to Section 5, ch. 69, Laws of 1974, 3rd Ex. Sess., has filed with this Board a certified copy of its Regulation I containing Respondent's regulations and amendments thereto.

VIII.

Any Conclusion of Law hereinafter recited which should be deemed a Finding of Fact is hereby adopted as such.

From these Findings, the Pollution Control Hearings Board comes to these

CONCLUSIONS OF LAW

I.

Acting pursuant to the authority vested in it by RCW 70.94.395, the state undertook (by the enactment of WAC 18-52) to regulate emissions from primary aluminum reduction plants on a state-wide basis. Respondent cannot lawfully adopt more stringent regulations for such plants without complying with the provisions of the Clean Air Act. In order that regulations more stringent than those of the state may become effectual within Respondent's jurisdiction, the procedures spelled out in RCW 70.94.395 must be followed. They were not. If they had been and had more stringent standards been established by the state for the geographical area of Respondent's authority, the power of enforcement thereof would have had to have been delegated to Respondent. Under the facts of this case, the state has the exclusive jurisdiction for

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promulgation and enforcement of rules and regulations under the Clean Air Act relating to Appellant's plant.

II.

Although Appellant's emissions violated Respondent's regulations, such regulations cannot be enforced by it.

III.

Notices of Civil Penalty should be stricken.

IV.

Any Finding of Fact which shoudl be deemed a Conclusion of Law is hereby adopted as such.

Therefore the Pollution Control Hearings Board issues this

ORDER

Notices of Civil Penalty Nos. 1311 and 1532 are stricken.

DONE at Lacey, Washington this 19th day of September, 1974.

POLLUTION CONTROL HEARINGS BOARD

Walt Woodward

WALT WOODWARD, Chairman

W. A. Gissberg

W. A. GISSBERG, Member

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