



*Bob King
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STATE OF WASHINGTON
ENVIRONMENTAL HEARINGS OFFICE

4224 - 6th Avenue SE, Bldg. 2, Rowe Six
P.O. Box 40903, Lacey, WA 98504-0903

June 5, 2001

'01 JUN -7 10:21

DEPT. OF ECOLOGY
FISCAL & BUDGET

Matthew Cohen
HELLER EHRMAN
WHITE & McAULIFFE
Suite 6100
701 Fifth Avenue
Seattle WA 98104-7098

Mary Sue Wilson & Michael Dunning
Assistant Attorney General
Department of Ecology
PO Box 40117
Olympia WA 98504-0117

RE: PCHB No 00-166
KAISER ALUMINUM & CHEMICAL CORP v. ECOLOGY
(DE 00AQIS-1461)

Leann

Dear Parties:

Enclosed is the Stipulation and Agreed Order of Dismissal in this matter.

The Board appreciates the parties' efforts in reaching this settlement.

Sincerely yours,

Robert v. Jensen

Robert v. Jensen
Presiding

RVJ/P 00-166 LTR
cc: Leann Ryser - 7615
enc.

CERTIFICATION

On this day, I forwarded a true and accurate copy of the documents to which this certificate is affixed via United States Postal Service postage prepaid to the attorneys of record herein

I certify under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct
DATED June 5, 01 at Lacey, WA

Tracey Johnson





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HELLER EHRMAN
701 Fifth Avenue, Suite 6100
Seattle WA 98104-7098

Mary Sue Wilson & Michael Dunning
Assistant Attorneys General
Department of Ecology
PO Box 40117
Olympia WA 98504-0117

RE: PCHB NO. 00-105
KAISER ALUMINUM CORPORATION v. ECOLOGY
(DE 00AQIS-1256 and DE 00AQIS-1257)

Dear Counsel:

Enclosed is the Stipulation and Agreed Order of Dismissal in this matter.

The Board appreciates the parties' efforts in reaching this settlement.

Sincerely yours,

Robert V. Jensen
Presiding

RVJ/P 00-105 LIR
cc: Leann Ryser -- Ecology
enc.

CERTIFICATION

On this day, I forwarded a true and accurate copy of the documents to which this certificate is affixed via United States Postal Service postage prepaid to the attorneys of record herein

I certify under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct
DATED June 5, 2001, at Lacey, WA

Handwritten signature of Robert V. Jensen in black ink.



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**POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON**

KAISER ALUMINUM & CHEMICAL
CORPORATION,

Appellant,

v

WASHINGTON DEPARTMENT OF
ECOLOGY,

Respondent.

PCHB NO. 00-105

STIPULATION AND AGREED ORDER OF
DISMISSAL

KAISER ALUMINUM & CHEMICAL
CORPORATION,

Appellant,

v.

WASHINGTON DEPARTMENT OF
ECOLOGY,

Respondent.

PCHB NO. 00-166

COMES NOW Appellant, Kaiser Aluminum & Chemical Corporation (Kaiser), by and through its attorneys, Leonard J. Feldman and Matthew Cohen of Heller Ehrman White & McAuliffe; and Respondent, State of the Washington, Department of Ecology (Ecology), by and through its attorneys, Christine O. Gregoire, Attorney General, and Mary Sue Wilson and Michael L. Dunning,

1 Assistant Attorneys General, and agree to the entry of this Stipulation and Agreed Order of Dismissal
2 (Stipulation) in the form attached.

3 I. RECITALS

- 4 1.1 In 1995, Kaiser, at its Mead smelter in Spokane (Mead), implemented two potroom projects,
5 Mechanized Crust Breaking and Anode Rod Replacement (the Projects).
- 6 1.2 In July 1999, Ecology issued Notice of Violation No. DE 99AQ-I039 to Kaiser for violations
7 of WAC 173-415-050 and WAC 173-400-110.
- 8 1.3 In June 2000, Ecology issued Order No. DE 00AQIS-1256, directing Kaiser to prepare and
9 submit Notices of Construction per WAC 173-400-110 for the Projects.
- 10 1.4 In June 2000, Ecology issued Notice of Penalty Incurred and Due No. DE 00AQIS-1257 to
11 Kaiser, assessing a \$20,000 penalty for violations of WAC 173-415-050 and 173-400-110
- 12 1.5 In July 2000, Ecology issued Notice of Violation No. DE 00AQIS-1403 to Kaiser for
13 violations of WAC 173-415-030(6).
- 14 1.6 In September 2000, Ecology issued Notice of Penalty Incurred and Due No. DE 00AQIS-
15 1461 to Kaiser, assessing a \$388,000 penalty for violations of WAC 173-415-030(6).
- 16 1.7 On July 13, 2000, Kaiser timely appealed Order No. DE 00AQIS-1256 and Notice of Penalty
17 Incurred and Due No. DE 00AQIS-1257 to the Pollution Control Hearing Board (PCHB or
18 Board). The Board captioned that appeal as *Kaiser Aluminum & Chemical Corp. v Ecology*,
19 PCHB No. 00-105.
- 20 1.8 On October 19, 2000, Kaiser timely appealed Notice of Penalty Incurred and Due No. DE
21 00AQIS-1461 to the PCHB, which captioned that appeal as *Kaiser Aluminum & Chemical*
22 *Corp. v Ecology*, PCHB No. 00-166. This and the aforementioned appeal (PCHB No. 00-
23 105) are referred to collectively herein as "the Appeals."
- 24 1.9 Ecology contends that the Projects increased emissions at Mead. Kaiser contends that the
25 Projects did not increase emissions or decreased emissions at Mead.
- 26 1.10 As of the date of the parties' signature of this Stipulation, Mead has temporarily curtailed
27 operations.
28

1 1.11 In the spirit of compromise and for good and valuable consideration, Kaiser and Ecology
2 mutually agree to settle and terminate the Appeals as set forth below.

3 **II. STIPULATION**

4 2.1 Ecology shall perform the following:

5 (a) Within seven (7) days of the date the Board signs the attached Order of Dismissal,
6 formally withdraw by letter the following enforcement actions issued to Kaiser: Notice of
7 Violation No. DE 99AQ-I039; Order No. DE 00AQIS-1256; Notice of Penalty Incurred
8 and Due No. DE 00AQIS-1257; Notice of Violation No. DE 00AQIS-1403; and Notice of
9 Penalty Incurred and Due No. DE 00AQIS-1461

10 (b) Subject to and without waiving its right to initiate or join a future or potential Prevention
11 of Significant Deterioration (PSD) enforcement action (as set forth in paragraph 2.4
12 below), Ecology will not require Kaiser to submit notice of construction applications
13 regarding the Projects.

14 2.2 Kaiser shall perform the following:

15 (a) Within thirty (30) days of the date the Board signs the attached Order of Dismissal, pay a
16 penalty of one hundred fifty thousand dollars (\$150,000) to Ecology. The penalty shall be
17 paid to:

18 DEPARTMENT OF ECOLOGY
19 CASHIER'S SECTION
20 PO BOX 5128
21 LACEY, WA 98509-5128

22 (b) Within one hundred eighty (180) days of the date the Board signs the attached Order of
23 Dismissal, pay a sum of one hundred twenty-five thousand dollars (\$125,000) for a
24 supplemental environmental project (SEP). If and when the following program is
25 operational, the SEP funds shall be deposited in the general fund of the Spokane County
26 Air Pollution Control Authority (SCAPCA) to enable low-income persons in the Spokane
27 area to receive necessary emissions repairs to their vehicles when such repairs have been
28 deemed necessary at an Ecology-approved Vehicle Emission Test Center and the person
lacks the ability to pay for such a repair. Determinations of need and disbursements to

1 those in need shall be at the sole discretion of SCAPCA. SCAPCA shall provide quarterly
2 reports to Ecology showing the disbursements of SEP funds to the program. Upon the
3 disbursement of all of the SEP funds, SCAPCA shall provide a full accounting to Ecology
4 detailing the disbursements from the SEP fund. Upon receipt of such documentation from
5 SCAPCA, Ecology shall provide Kaiser with copies of SEP disbursement reports and the
6 full accounting report. Should the above-described program not become operational
7 within one hundred eighty (180) days of the Board signing the attached order, the SEP
8 funds shall be placed into an interest-bearing account to fund a SEP mutually agreeable to
9 the parties. The parties shall endeavor to identify and agree on a SEP as soon as
10 practicable. In State or Federal tax filings, Kaiser agrees it will not seek or obtain any tax
11 advantage or credit from any SEP to which it contributes to pursuant to this settlement.

12 (c) Prior to the restart of each reduction cell at Mead, convert each reduction cell to the New
13 Superstructure and Shield Design, consisting of a redesigned gas skirt and side shielding
14 and end doors, as outlined in a September 28, 2000 letter from the U.S. Environmental
15 Protection Agency (EPA) and the schematics and photographs attached and incorporated
16 into this Stipulation as Exhibit A.

17 (d) Demonstrate Mead's compliance with the Maximum Achievable Control Technology
18 (MACT) requirements of WAC 173-400-075(5)(a) on every operating potline at Mead
19 through the use of continuous Hydrogen Fluoride (HF) monitors.

20 (e) Within thirty (30) days of the date the Board signs the attached Order of Dismissal, file a
21 request under WAC 173-400-091 for a regulatory order from Ecology, setting a sulfur
22 dioxide emission limit for the Mead coke calciner of five hundred sixty-five (565) tons per
23 year.

24 (f) Within one hundred eighty (180) days of partial restart of any potline at Mead, implement
25 an electronic reporting system, by Internet or otherwise, allowing Ecology continuous
26 electronic access to HF emissions data from the potroom roofs for operating potlines at
27 Mead. Partial restart shall be any amount of current to any potline.
28

1 2.3 This Stipulation and settlement is not an admission or concession of any of the factual
2 allegations, issues presented for review, or legal arguments set forth or alleged by either party
3 in any documents exchanged between the parties or on file with the Board in the Appeals

4 2.4 This Stipulation and settlement does not in any manner whatsoever prejudice, estop, or
5 otherwise affect in any manner whatsoever any future or potential PSD enforcement action by
6 either Ecology or the EPA or a joint Ecology/EPA action. By way of example only, Kaiser
7 shall not argue that Ecology's agreement that it will not require Kaiser to submit notice of
8 construction applications regarding the Projects (as set forth in paragraph 2.1(b) above)
9 prejudices, estops, or otherwise prevents Ecology from issuing an order requiring Kaiser to
10 submit a PSD application should Ecology decide to initiate or join a future or potential PSD
11 enforcement action

12 2.5 Except as provided in paragraph 2.7 below, the parties shall bear all attorney fees and costs
13 arising from the actions of their own counsel in connection with the Appeals, this Stipulation,
14 and all related matters

15 2.6 This Stipulation shall be binding upon and inure to the benefit of the parties hereto and their
16 predecessors, successors, heirs, assigns, executors, and personal representatives.

17 2.7 In the event that any party hereto brings legal action to enforce any of the terms and
18 provisions of this Stipulation, the prevailing party shall be entitled to such attorney fees, costs,
19 and expenses as the court may deem reasonable in the circumstances, such fees, costs, and
20 expenses to be added to and made a part of any judgment entered pursuant to such action.

21 2.8 The parties shall cooperate in good faith with each other to implement the terms of this
22 Stipulation. The parties each agree to perform any other acts and execute and deliver any
23 further documents that may be reasonable and necessary to carry out the terms and provisions
24 of this Stipulation.

25 2.9 This Stipulation and attached Exhibit A constitutes the entire agreement between the parties
26 relating to the settlement of the Appeals and no statements, communications, letters, or
27 agreements relating to this Stipulation and settlement shall have any force or effect unless
28 embodied in this Stipulation. No representation, promise, inducement, or statement of

1 intention has been made by any party to any other party relating to the settlement that is not
2 set forth in this Stipulation, and no party shall be bound by or liable for any alleged
3 representation, promise, inducement, or statement of intention not so set forth.

4 2.10 This Stipulation shall be governed by and construed in accordance with the laws of the state
5 of Washington.

6 2.11 No modification or waiver of this Stipulation or any part hereof shall be valid or effective
7 unless agreed to in writing by the parties sought to be charged therewith and entered with the
8 Board. No waiver of any breach or condition of this Stipulation shall be deemed to be a
9 waiver of any other subsequent breach or condition, whether of like or different nature.

10 2.12 The undersigned representatives for Ecology and Kaiser certify that they are fully authorized
11 by the party whom they represent to enter into the terms and conditions of this Stipulation and
12 legally bind such party thereto. Ecology and Kaiser consent to the submission of this
13 Stipulation to the PCHB for approval and entry.

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DEPARTMENT OF ECOLOGY

KAISER ALUMINUM & CHEMICAL CORPORATION

By: Carol Kucarz

By: Steven G. Anderson

Title: Industrial Section Manager

Title: Northwest Operations Manager

Dated: June 1, 2001

Dated: May 30, 2001

CHRISTINE O. GREGOIRE
Attorney General

HELLER EHRMAN WHITE &
McAULIFFE LLP

Mary Sue Wilson

Leonard J. Feldman

MICHAEL L. DUNNING, WSBA #29452
MARY SUE WILSON, WSBA #19257
Assistant Attorneys General
Attorneys for State of Washington
Department of Ecology
(360) 586-6770

LEONARD J. FELDMAN, WSBA #20961
MATTHEW COHEN, WSBA #11232
Attorneys for Kaiser Aluminum
and Chemical Corporation
(206) 389-6024

Dated: June 1, 2001

Dated: May 31, 2001

1 **AGREED ORDER OF DISMISSAL**

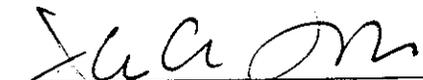
2 Having reviewed the foregoing Stipulation and the file and the pleadings herein, and it
3 appearing that the parties have reached an agreement;

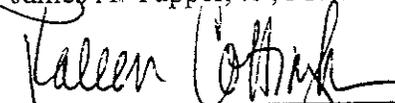
4 IT IS HEREBY ORDERED that the foregoing Stipulation be entered as an order of this Board
5 and these cases, *Kaiser Aluminum & Chemical Corp v. Ecology*, PCHB No. 00-105 and *Kaiser*
6 *Aluminum & Chemical Corp. v. Ecology*, PCHB No 00-166 are hereby DISMISSED WITH
7 PREJUDICE and without costs or attorneys fees.

8 DATED this 5th day of June, 2001.

9 POLLUTION CONTROL HEARINGS BOARD

10 
11 _____
12 Robert V. Jensen, Presiding

13 
14 _____
15 James A. Tupper, Jr., Member

16 
17 _____
18 Kaleen Cottingham, Member

19 Presented by:

20 CHRISTINE O. GREGOIRE
21 Attorney General

Approved as to form, notice of
presentation waived:

HELLER EHRMAN WHITE & McAULIFFE

22 
23 _____
24 MICHAEL L. DUNNING, WSBA #29452
25 MARY/SUE WILSON, WSBA #19257
26 Assistant Attorneys General
27 Attorneys for State of Washington
28 Department of Ecology
(360) 586-6770



LEONARD J. FELDMAN, WSBA #20961
MATTHEW COHEN, WSBA #11232
Attorneys for Kaiser Aluminum
and Chemical Corporation
(206) 389-6024

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