

ILLINOIS POLLUTION CONTROL BOARD

August 4, 2006

IN THE MATTER OF: )  
)  
PETITION OF BIG RIVER ZINC ) AS 06-04  
CORPORATION FOR AN ADJUSTED ) (Adjusted Standard - Land)  
STANDARD UNDER 35 ILL. ADM. CODE )  
720.131(C) )

ORDER OF THE BOARD (by N.J. Melas):

Big River Zinc Corporation (BRZ) seeks a determination from the Board that the electric arc furnace dust (EAFD) that BRZ will use in a new zinc recycling process at its facility is not a solid waste. BRZ operates an electrolytic refinery in Sauget, St. Clair County that produces zinc products for a variety of industrial and agricultural applications. BRZ seeks this determination by way of an adjusted standard pursuant to Section 104.Subpart D of the Board's procedural rules, and Section 720.130 of the Board's hazardous waste management rules. On June 30, 2006, BRZ filed this request for relief. The Environmental Protection Agency (Agency) filed a recommendation in support of granting the petition on July 20, 2006. Along with the petition for an adjusted standard, BRZ also filed a motion for expedited review. For the reasons set forth below, the Board grants BRZ's motion to expedite.

Section 28.1(d)(1) of the Environmental Protection Act (Act) (415 ILCS 5/28.1 (2004)) and Section 104.408(a) of the Board's procedural rules (35 Ill. Adm. Code 104.408(a)) require the petitioner to publish notice of the petition for an adjusted standard by advertisement in a newspaper of general circulation in the area likely to be affected by the proposed adjusted standard. Under those provisions, publication must take place within 14 days after the petition is filed, or the Board lacks jurisdiction to hear the petition. *See, e.g., In re Petition of SCA Tissue North America, L.L.C. for an Adjusted Standard from 35 Ill. Adm. Code 218.301 and 218.302(c)*, AS 05-1 (Jan. 6, 2005). Within 30 days after filing the petition, petitioner must file a certificate of publication with the Board. *See* 35 Ill. Adm. Code 104.410.

BRZ filed a certificate of publication on July 19, 2006, documenting that the required notice of the petition was provided in the *News-Democrat*, published in Belleville, St. Clair County, on July 11, 2006. The Board finds that BRZ has met the notice requirements of the Act and the Board's procedural rules.

To date, the primary raw material for the Sauget refinery has been zinc concentrates from mineral ore deposits and secondary, zinc oxide materials reclaimed from EAFD using high temperature metal recovery. BRZ explains that the facility ceased production in February 2006, because it could not source sufficient raw material at competitive prices to support the operation. BRZ proposes to retrofit the facility with a new technology that will allow BRZ to directly use EAFD produced from scrap steel recycling, as a substitute for some or all of the traditional raw materials used in the production process. BRZ expects this change will allow it to restart the refinery and return the Sauget facility operations to profitability. Facility production remains

idled, asserts BRZ, and further delays may have significant negative implications for the facility. BRZ argues that for these reasons, expedited review is necessary.

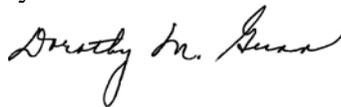
The Board grants BRZ's motion and will expedite the Board's review of the petition consistent with the Board's resources. 35 Ill. Adm. Code 101.512(c). In acting on a motion for expedited review, the Board must consider all statutory requirements and whether or not material prejudice will result from the motion being granted or denied. 35 Ill. Adm. Code 101.512(b). As noted above, BRZ has waived its opportunity to have a hearing. The Board will review the petition to identify whether it contains all of the necessary information. Whether the Board will nevertheless order a hearing depends on several factors, including whether the Board identifies informational deficiencies and, if so, BRZ's response to any deficiencies the Board may identify. Also, if a member of the public timely files a hearing request, the Board will hold a hearing. *See* 415 ILCS 5/28.1(d)(2) (2004); 35 Ill. Adm. Code 104.420(a).

### **CONCLUSION**

The Board finds that Big River Zinc Company (BRZ) has satisfied the jurisdictional requirement of providing newspaper notice of its petition for an adjusted standard. The Board also grants BRZ's motion and will expedite review of the petition consistent with the Board's resources.

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on August 4, 2006, by a vote of 4-0.



Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board