

ILLINOIS POLLUTION CONTROL BOARD

May 15, 2008

IN THE MATTER OF:)
)
PETITION OF BIG RIVER ZINC) AS 08-9
CORPORATION FOR AN ADJUSTED) (Adjusted Standard - Land)
STANDARD UNDER 35 ILL. ADM. CODE)
720.131(c))

ORDER OF THE BOARD (by T.E. Johnson):

On April 1, 2008, Big River Zinc Corporation (BRZ) filed a petition for an adjusted standard under 35 Ill. Adm. Code 720.131(c) concerning its electrolytic refinery in Sauget, St. Clair County. Specifically, BRZ seeks to amend a condition of an existing adjusted standard granted by the Board to BRZ in 1999, Petition of Big River Zinc for an Adjusted Standard Under 35 Ill. Adm. Code 720.131(c), AS 99-3. According to the petition, the amendment would allow BRZ to sell washed zinc oxide to third parties for further refining or return washed zinc oxide to the suppliers for sale to another refiner. BRZ has waived hearing. On April 3, 2008, BRZ filed a motion to incorporate specified documents from prior proceedings. On May 9, 2008, the Illinois Environmental Protection Agency (Agency) filed its recommendation regarding the petition.

In this order, the Board finds that BRZ has satisfied the statutory notice requirement for adjusted standard petitions. Next, the Board briefly discusses BRZ's petition and the Agency's recommendation. The Board then grants BRZ's motion to incorporate.

NOTICE

The Environmental Protection Act (Act) (415 ILCS 5 (2006)) requires petitioner to publish notice of the petition's filing by advertisement in a newspaper of general circulation in the area likely to be affected by the proposed adjusted standard. *See* 415 ILCS 5/28.1 (2006); *see also* 35 Ill. Adm. Code 104.408(a). 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). The newspaper notice must indicate that any person may cause a public hearing to be held on the proposed adjusted standard by filing a hearing request with the Board within 21 days after publication. *See* 415 ILCS 5/28.1(d)(1) (2006); 35 Ill. Adm. Code 104.408(b). Within 30 days after filing the petition, petitioner must file a certificate of publication with the Board. *See* 35 Ill. Adm. Code 104.410.

On April 15, 2008, BRZ filed a certificate of publication, documenting that the required notice of the petition was published on April 4, 2008, in the *Belleville News-Democrat*. The Board finds that BFI has met the notice requirements of the Act and the Board's procedural rules.

PETITION AND RECOMMENDATION

No member of the public has requested a hearing and, as noted, BRZ has waived its opportunity to have a hearing. The Board is reviewing the petition to identify whether it contains all of the necessary information. Whether the Board will order a hearing depends on several factors, including whether the Board identifies informational deficiencies in the petition and, if so, BRZ's response to any such deficiencies, as well as the Board's assessment of the Agency's recommendation.

The Agency timely filed its recommendation concerning BRZ's petition. *See* 35 Ill. Adm. Code 104.416(a). The Agency recommends that the Board grant BRZ's request to amend a condition of the existing adjusted standard. The Agency, however, proposes additional language for the modified condition "to ensure that the EAF [electric arc furnace] Zinc Oxide material is not 'speculatively accumulated.'" Recommendation at 2. The Agency also recommends that BRZ "include in its Petition an economic benefit analysis for the service they provide by washing the EAF Zinc Oxide material." *Id.* at 3. Under the Board's procedural rules, BRZ may file a response to the Agency's recommendation within 14 days after being served with the recommendation. *See* 35 Ill. Adm. Code 104.416(d); *see also* 35 Ill. Adm. Code 104.418(a), (d) (amended petition).

MOTION TO INCORPORATE

On April 3, 2008, BRZ filed a motion to incorporate certain documents from two prior adjusted standard proceedings concerning both BRZ's Sauget facility and relief granted under 35 Ill. Adm. Code 720.131(c): Petition of Big River Zinc for an Adjusted Standard Under 35 Ill. Adm. Code 720.131(c), AS 99-3; and Petition of Big River Zinc for an Adjusted Standard Under 35 Ill. Adm. Code 720.131(c), AS 06-4. As support for the pending adjusted standard request in AS 08-9, BRZ references numerous documents in the dockets of these earlier proceedings, including hearing transcripts and petitions. Motion at 2-3. According to the motion, "[t]o the extent the Board seeks to review or reassess the solid waste determination for EAF zinc oxide in this case in order to amend Condition 2.a (1), the prior Board proceedings AS-99-3 and AS-06-4 provide all necessary support and detail." *Id.* at 3. BRZ attaches to its motion the documents it seeks to have incorporated into the record of the instant proceeding. *See id.*, Attachments A-G. No response has been filed to BRZ's motion to incorporate, which is granted. *See* 35 Ill. Adm. Code 101.306, 101.500(d).

CONCLUSION

The Board finds that BRZ has satisfied the jurisdictional requirement of providing newspaper notice of its petition for an adjusted standard. The Agency has filed a recommendation regarding the petition, to which BRZ may respond. The Board grants BRZ's motion to incorporate specified documents from prior proceedings as described above.

IT IS SO ORDERED.

I, John T. Therriault, Assistant Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on May 15, 2008, by a vote of 4-0.

A handwritten signature in black ink that reads "John T. Therriault". The signature is written in a cursive style with a long horizontal flourish extending to the right.

John T. Therriault, Assistant, Clerk
Illinois Pollution Control Board