

ILLINOIS POLLUTION CONTROL BOARD

August 7, 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):

Today the Board rules on a motion for expedited decision filed by petitioner, Big River Zinc Corporation (BRZ), on July 29, 2008. The Board provides brief background on this case before addressing the motion.

BACKGROUND

On April 1, 2008, 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. 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. BRZ has waived hearing and no hearing was requested after provision of the statutory notice.

On May 9, 2008, the Illinois Environmental Protection Agency (Agency) filed its recommendation that the Board grant BRZ's request. The Agency, however, also proposed additional language for the condition at issue and suggested that BRZ provide more economic information. The Board's May 15, 2008 order found that BRZ satisfied the notice requirement of the Environmental Protection Act (415 ILCS 5/28.1 (2006)). That order also granted BRZ's motion to incorporate certain documents from two prior adjusted standard proceedings which concerned 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. On May 22, 2009, BRZ filed a response to the Agency's recommendation.

On June 26, 2008, the hearing officer issued an order contemplated by the Board's May 15, 2008 order, requiring BRZ to file an amended petition addressing a number of issues set forth in an attachment to the hearing officer's order. In response, BRZ timely filed an amended petition on July 14, 2008. On July 29, 2008, BRZ filed a motion for expedited Board decision (Mot.), requesting a final Board decision on August 7, 2008, or alternatively on August 21, 2008.

MOTION FOR EXPEDITED DECISION

In the motion for expedited decision, BRZ states that its counsel conferred with Agency counsel on July 28, 2008, and learned that the Agency “has no comment” on BRZ’s amended petition and that the Agency “confirmed its recommendation” that BRZ’s petition be granted. Mot. at 2. BRZ asserts that under these circumstances, no material prejudice will result from the Board granting the motion for expedited decision. *Id.*

BRZ’s motion is supported by the affidavit of its President and Chief Executive Officer, George Obeldobel (Aff.). BRZ states that it has recently entered into a contract with a supplier, Steel Dust Recycling, which would like to begin shipping electric arc furnace (EAF) zinc oxide to BRZ for washing as soon as possible. Mot. at 2; Aff at 1. To begin washing, in addition to a grant of BRZ’s petition, BRZ represents that it “needs to make preparations such as scheduling employees to return to work and readying the facility and equipment for operation.” Mot. at 2; Aff. at 1. These activities, including calling back seven former employees or retaining new employees, are expected to take approximately 3 to 4 weeks to complete. Aff. at 1. Therefore, according to BRZ:

Time is of the essence as BRZ does not want to lose the washing contract with Steel Dust Recycling. The contract could be lost if BRZ cannot begin washing for several months since a long delay will force SDR to look for alternatives. BRZ cannot afford to begin preparing the facility for washing until the Board issues its decision to amend the condition in BRZ’s existing Adjusted Standard Aff. at 2; Mot. at 2.

BRZ asks that the Board issue a determination on the adjusted standard request by the Board’s August 7, 2008 meeting “or, in the alternative, by August 21.” Mot. at 3.

Motions for expedited review are governed by Section 101.512 of the Board’s procedural rules, and must contain, among other things, a complete statement of the facts and reasons for the request. *See* 35 Ill. Adm. Code 101.512(a). In ruling on a motion for expedited review, the Board considers, at a minimum, all statutory requirements and whether material prejudice will result from the motion being granted or denied. *See* 35 Ill. Adm. Code 101.512(b). BRZ’s motion for expedited decision was filed just over one week before today’s Board meeting. Under the Board’s procedural rules, the Agency was allowed 21 days’ time after service of BRZ’s July 14, 2008 amended petition to file an amended recommendation. *See* 35 Ill. Adm. Code 104.418(b), (d). The Board learned that the Agency apparently will not be filing an amended recommendation only through BRZ’s July 29, 2008 motion. The Board is not entering a final decision today on the merits of the adjusted standard request and to that extent denies BRZ’s motion.

The Board appreciates, however, BRZ’s economic urgency and the prospects for re-opening the Sauget facility, which ceased process operations in June 2006. *See* Petition, Attachment B at 1. Considering all of the factors, the Board grants BRZ’s alternative motion for expedited decision as follows: the Board will endeavor to issue a final decision at its scheduled

August 21, 2008 meeting or as soon thereafter as is reasonably practicable, consistent with decision deadlines and available resources. *See* 35 Ill. Adm. Code 101.512(c).

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 August 7, 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