



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

March 22, 2006

RECEIVED
CLERK'S OFFICE
MAR 28 2006
STATE OF ILLINOIS
Pollution Control Board

PCB 06-151

The Honorable Dorothy Gunn
Illinois Pollution Control Board
James R. Thompson Center, Ste. 11-500
100 West Randolph
Chicago, Illinois 60601

Re: ***People v. Big River Zinc Corporation, et al***

Dear Clerk Gunn:

Enclosed for filing please find the original and ten copies of a Notice of Filing, Entry of Appearance and Complaint in regard to the above-captioned matter. Please file the originals and return file-stamped copies to me in the enclosed, self-addressed envelope.

Thank you for your cooperation and consideration.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Kristen Laughridge Gale".

Kristen Laughridge Gale
Environmental Bureau
500 South Second Street
Springfield, Illinois 62706
(217) 782-9031

KLG/pp
Enclosures

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)
)
Complainant,)
)
vs.)
)
BIG RIVER ZINC CORPORATION,)
a Delaware corporation, and)
ALLIED WASTE TRANSPORTATION,)
INC., d/b/a MIDWEST WASTE,)
a Delaware corporation,)
)
Respondents.)

PCB No. 06-151
(Enforcement)

RECEIVED
CLERK'S OFFICE
MAR 28 2005
STATE OF ILLINOIS
Pollution Control Board

NOTICE OF FILING

To: BIG RIVER ZINC CORPORATION
c/o Joe P. Heitzman, R.A.
2401 Mississippi Avenue
Sauget, IL 62201

ALLIED WASTE TRANSPORTATION, INC.
d/b/a MIDWEST WASTE
c/o Brian E. Konzen
Lueders, Robertson & Konzen, LLC
1939 Delmar Avenue
P.O. Box 735
Granite City, IL 62040-0735

PLEASE TAKE NOTICE that on this date I mailed for filing with the Clerk of the Pollution Control Board of the State of Illinois, a COMPLAINT, a copy of which is attached hereto and herewith served upon you. Failure to file an answer to this Complaint within 60 days may have severe consequences. Failure to answer will mean that all allegations in this Complaint will be taken as if admitted for purposes of this proceeding. If you have any questions about this procedure, you should contact the hearing officer assigned to this proceeding, the Clerk's Office or an attorney.

FURTHER, please take notice that financing may be available, through the Illinois Environmental Facilities Financing Act, 20 ILCS 3515/1 (2004), to correct the pollution alleged in the Complaint filed in this case.

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS

LISA MADIGAN,
Attorney General of the
State of Illinois

MATTHEW J. DUNN, Chief
Environmental Enforcement/Asbestos
Litigation Division

BY:



KRISTEN LAUGHRIDGE GALE
Assistant Attorney General
Environmental Bureau

500 South Second Street
Springfield, Illinois 62706
217/782-9031
Dated: March 22, 2006

CERTIFICATE OF SERVICE


I hereby certify that I did on March 22, 2006, send by certified mail, with postage thereon fully prepaid, by depositing in a United States Post Office Box a true and correct copy of the following instruments entitled NOTICE OF FILING, ENTRY OF APPEARANCE and COMPLAINT:

To: BIG RIVER ZINC CORPORATION
c/o Joe P. Heitzman, R.A.
2401 Mississippi Avenue
Sauget, IL 62201

ALLIED WASTE TRANSPORTATION, INC.
d/b/a MIDWEST WASTE
c/o Brian E. Konzen
Lueders, Robertson & Konzen, LLC
1939 Delmar Avenue
P.O. Box 735
Granite City, IL 62040-0735

and the original and ten copies by First Class Mail with postage thereon fully prepaid of the same foregoing instrument(s):

To: Dorothy Gunn, Clerk
Illinois Pollution Control Board
James R. Thompson Center
Suite 11-500
100 West Randolph
Chicago, Illinois 60601



Kristen Laughridge Gale
Assistant Attorney General

This filing is submitted on recycled paper.

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)
)
Complainant,)
)
vs.)
)
BIG RIVER ZINC CORPORATION,)
a Delaware corporation, and)
ALLIED WASTE TRANSPORTATION,)
INC., d/b/a MIDWEST WASTE,)
a Delaware corporation,)
)
Respondent.)

PCB No. 06-151
(Enforcement)

RECEIVED
CLERK'S OFFICE
MAR 28 2005
STATE OF ILLINOIS
Pollution Control Board

ENTRY OF APPEARANCE

On behalf of the Complainant, PEOPLE OF THE STATE OF ILLINOIS, KRISTEN LAUGHRIDGE GALE, Assistant Attorney General of the State of Illinois, hereby enters her appearance as attorney of record.

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS,
LISA MADIGAN
Attorney General of the
State of Illinois

MATTHEW J. DUNN, Chief
Environmental Enforcement/Asbestos
Litigation Division

BY: *Kristen Laughridge Gale*
KRISTEN LAUGHRIDGE GALE
Environmental Bureau
Assistant Attorney General

500 South Second Street
Springfield, Illinois 62706
217/782-9031
Dated: March 22, 2006

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

RECEIVED
CLERK'S OFFICE
MAR 28 2006
STATE OF ILLINOIS
Pollution Control Board

PEOPLE OF THE STATE OF ILLINOIS,)
)
)
Complainant,)
)
vs.)
)
BIG RIVER ZINC CORPORATION, a)
Delaware corporation, and ,)
ALLIED WASTE TRANSPORTATION, INC.)
d/b/a MIDWEST WASTE, a Delaware)
corporation,)
)
)
Respondents.)

No. PCB No. 06- 151
(Enforcement -

COMPLAINT

The PEOPLE OF THE STATE OF ILLINOIS, *ex rel.* LISA MADIGAN, Attorney General of the State of Illinois, on her own motion and at the request of the ILLINOIS ENVIRONMENTAL PROTECTION AGENCY, complains of the Respondents, BIG RIVER ZINC CORPORATION and ALLIED WASTE TRANSPORTATION, INC. d/b/a MIDWEST WASTE, as follows:

COUNT I

USED OIL RELEASE AND VIOLATIONS

1. This count is brought on behalf of the People of the State of Illinois, *ex rel.* Lisa Madigan, the Attorney General of the State of Illinois, on her own motion and at the request of the Illinois Environmental Protection Agency ("Illinois EPA"), pursuant to Sections 31 of the Illinois Environmental Protection Act ("the Act"), 415 ILCS 5/31 (2004).

2. The Illinois EPA is an agency of the State of Illinois created by the Illinois General Assembly in Section 4 of the Act, 415 ILCS 5/4 (2004), and charged, *inter alia*, with the duty of enforcing the Act in proceedings before the Illinois Pollution Control Board ("Board").

3. This Complaint is brought pursuant to Section 31 of the Act, 415 ILCS 5/31 (2004), after providing the Respondent with notice and the opportunity for a meeting with the Illinois EPA.

4. The Respondent, Big River Zinc Corporation ("BRZ"), is a Delaware corporation and is licensed to do business in Illinois and is in goodstanding.

5. BRZ owns and operates a facility at 2401 Mississippi Avenue, Sauget, St. Clair County, Illinois ("facility"). BRZ produces and sells zinc metal and associated co-products.

6. The BRZ facility is regulated as a Large Quantity Generator of Hazardous Waste and generates demolition and construction waste that is hazardous for arsenic, cadmium, and lead. The BRZ facility also periodically generates other hazardous waste including lab packs and solvent filters. The BRZ facility generates non-hazardous waste including used oil, wastewater treatments sludge and PCB waste.

7. The Respondent, Allied Waste Transportation, Inc. d/b/a Midwest Waste is a Delaware corporation and is licensed to do business in Illinois and is in goodstanding. Midwest Waste ("Midwest") is an assumed name of Allied waste Transportation, Inc.

8. On May 24, 2005, Illinois EPA conducted a Compliance Evaluation Inspection at the BRZ facility to determine the regulatory status of the facility and the facility's compliance with the Act and Board Regulations. The Illinois EPA inspector reviewed documentation, the contingency plan, and walked through the BRZ facility with the President and Environmental Manager.

9. Section 21 of the Act, 415 ILCS 5/21 (2004), provides, in pertinent part, as follows:

No person shall:

a. Cause or allow the open dumping of any waste.

* * *

- f. Conduct any hazardous waste-storage, hazardous waste-treatment or hazardous waste-disposal operation:
1. without a RCRA permit for the site issued by the Agency under subsection (d) of Section 39 of this Act, or in violation of any condition imposed by such permit, including periodic reports and full access to adequate records and the inspection of facilities, as may be necessary to assure compliance with this Act and with regulations and standards adopted thereunder; or
 2. in violation of any regulations or standards adopted by the Board under this Act; or

* * *

10. Section 3.305 of the Act, 415 ILCS 5/3.305 (2004), provides as follows:

"Open dumping" means the consolidation of refuse from one or more sources a disposal site that does not fulfill the requirements of a sanitary landfill.

11. Section 3.220 of the Act, 415 ILCS 5/3.220 (2004), provides as follows:

"Hazardous waste" means a waste, or combination of wastes, which because of its quantity, concentration, or physical, chemical, or infectious characteristics may cause or significantly contribute to an increase in mortality or an increase in serious, irreversible, or incapacitating reversible, illness; or pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, or disposed of, or otherwise managed, and which has been identified, by characteristics or listing, as hazardous pursuant to Section 3001 of the Resource Conservation and Recovery Act of 1976, P.L. 94-580, or pursuant to Board regulations.

* * *

12. Section 3.520 of the Act, 415 ILCS 5/3.520 (2004), provides as follows:

"Used oil" means any oil which as been refined from crude oil or refined from used oil, has been used, and as a result of such use has been contaminated by physical or chemical impurities...

13. Section 722.111 of the Hazardous Waste Operating Requirements Regulations,

35 Ill. Adm. Code 722.111, provides as follows:

A person that generates a solid waste, as defined in 35 Ill. Adm. Code 721.102, must determine if that waste is a hazardous waste using the following method:

- a) The person should first determine if the waste is excluded from regulation under 35 Ill. Adm. Code 721.104.
- b) The person should then determine if the waste is listed as a hazardous waste in Subpart D of 35 Ill. Adm. Code 721.
- c) For purposes of compliance with 35 Ill. Adm. Code 728, or if the waste is not listed as a hazardous waste in Subpart D of 35 Ill. Adm. Code 721, the generator must then determine whether the waste is identified in Subpart C of 35 Ill. Adm. Code 721 by either of the following methods:
 - 1) Testing the waste according to the methods set forth in Subpart C of 35 Ill. Adm. Code 721, or according to an equivalent method approved by the Board under 35 Ill. Adm. Code 720.121; or
 - 2) Applying knowledge of the hazard characteristic of the waste in light of the materials or processes used.
- d) If the generator determines that the waste is hazardous, the generator must refer to 35 Ill. Adm. Code 724, 725, 728, and 733 for possible exclusions or restrictions pertaining to the management of the specific waste.

14. Section 739.122(d) of the Board's Standards for Management of Used Oil

Regulations, 35 Ill. Adm. Code 739.122(d), provides as follows:

A used oil generator is subject to all applicable federal Spill Prevention, Control and Countermeasures (40 CFR 112) in addition to the requirements of this Subpart C. A used oil generator is also subject to the Underground Storage Tank (35 Ill. Adm. Code 731) standards for used oil stored in underground tanks whether or not the used oil exhibits any characteristics of hazardous waste, in addition to the requirements of this Subpart C.

* * *

- d) Response to releases. Upon detection of a release of used oil to the environment that is not subject to the federal requirements of 40 CFR 280, Subpart F and which has occurred after October 4, 1996, a generator must perform the following cleanup steps:
 - 1) Stop the release;

- 2) Contain the released used oil;
- 3) Properly clean up and manage the released used oil and other materials; and
- 4) If necessary, repair or replace any leaking used oil storage containers or tanks prior to returning them to service.

15. Section 721.102 of the Board's Identification and Listing of Hazardous Waste Regulations, 35 Ill. Adm. Code 721.102, provides that a solid waste is any material that is abandoned, recycled, or considered inherently waste-like.

16. The BRZ facility has two 500-gallon used oil tanks. One tank is at the Maintenance Building and the other is at the Oil Storage Building.

17. On May 24, 2005, there was spillage of used oil around both 500-gallon used oil tanks.

18. On May 24, 2005, there was oil soaked oil dry around the 500-gallon used oil tank at the Oil Storage Building.

19. The oil soaked oil dry is a solid waste as defined by Section 721.102 of the Board's Identification and Listing of Hazardous Waste Regulations, 35 Ill. Adm. Code 721.102.

20. BRZ did not conduct a hazardous waste determination of the oil soaked oil dry.

21. On May 24, 2005, there was a large amount of sludge on the pavement and around the sewer gate in front of the BRZ Maintenance Building. The sludge was from the cleaning out of vehicles prior to having them serviced.

22. The sludge is a solid waste as defined by Section 721.102 of the Board's Identification and Listing of Hazardous Waste Regulations, 35 Ill. Adm. Code 721.102.

23. BRZ did not conduct a hazardous waste determination of the sludge.

24. On May 24, 2005, an oil drum in front of the BRZ Maintenance Building was leaking. The oil waste was mixing with the sludge around the sewer gate.

25. By not conducting a hazardous waste determination of the oil soaked oil dry and the sludge, BRZ violated Section 722.111 of the Hazardous Waste Operating Requirements Regulations, 35 Ill. Adm. Code 722.111.

26. By allowing spillage around the two 500-gallon used oil tanks without following the required cleanup steps, BRZ violated Section 739.122(d) of the Board's Standards for Management of Used Oil Regulations, 35 Ill. Adm. Code 739.122(d).

27. By allowing sludge to accumulate, an oil drum to leak, and spillage around both 500-gallon used oil tanks, BRZ caused or allowed open dumping in violation of Section 21(a) of the Act, 415 ILCS 5/21(a) (2004).

PRAYER FOR RELIEF

WHEREFORE, the Complainant, People of the State of Illinois, respectfully requests that this Board enter an Order against the Respondent, BIG RIVER ZINC CORPORATION:

- A. Authorizing a hearing in this matter at which time the Respondent will be required to answer the allegations herein;
- B. Finding that the Respondent has violated the Act and regulations as alleged herein;
- C. Ordering Respondent to cease and desist from any further violations of the Act and associated regulations;
- D. Pursuant to Section 42(a) of the Act, 415 ILCS 5/42(a) (2004), impose a civil penalty of not more than the statutory maximum;
- E. Pursuant to Section 42(f) of the Act, 415 ILCS 5/42(f) (2004), award the Complainant its costs in this matter, including reasonable attorney's fees and costs; and
- F. Grant such other and further relief as the Board deems appropriate.

COUNT II

HAZARDOUS WASTE VIOLATIONS

1-11. Complainant realleges and incorporates herein by reference paragraphs 1 through 11 of Count I as paragraphs 1 through 11 of this Count II.

12. Section 722.134(a) of the Board's Hazardous Waste Operating Regulations, 35 Ill. Adm. Code 722.134(a), provides, in pertinent part, as follows:

- a) Except as provided in subsection (d), (e), (f), (g), (h), or (i) of this Section, a generator is exempt from all the requirements in 35 Ill. Adm. Code 725.Subparts G and H, except for 35 Ill. Adm. Code 725.211 and 725.214, and may accumulate hazardous waste on-site for 90 days or less without a permit or without having interim status, provided that the following conditions are fulfilled:
 - 1) The waste is placed in or on one of the following:
 - A) In containers, and the generator complies with 35 Ill. Adm. Code 725.Subparts I, AA, BB, and CC;
* * *
 - 2) The date upon which each period of accumulation begins is clearly marked and visible for inspection on each container;
 - 3) While being accumulated on-site, each container and tank is labeled or marked clearly with the words "Hazardous Waste"; and
 - 4) The generator complies with the requirements for owners or operators in 35 Ill. Adm. Code 725.Subparts C and D and with 35 Ill. Adm. Code 725.116 and 728.107(a)(5).

13. BRZ generates filter press cloths from a plate and frame filters press located in the Leaching Building. The waste filter press cloths is accumulated in a 30 cubic yard roll-off box.

14. The waste filter press cloths are hazardous for arsenic, cadmium and lead. The USEPA Hazardous Waste Number for arsenic is D004, for chromium it is D006 and for lead it is D008.

15. On May 24, 2005, the 30 cubic yard roll-off box containing waste filter press cloths did not have an accumulation start date and was not labeled as "Hazardous Waste."

16. By failing to label the 30 cubic yard roll-off box containing waste filter press cloths as "hazardous waste" and affixing an accumulation date, BRZ violated Section 722.134(a)(2) and (a)(3) of the Board's Hazardous Waste Operating Regulations, 35 Ill. Adm. Code 722.134(a)(2), (a)(3).

PRAYER FOR RELIEF

WHEREFORE, the Complainant, People of the State of Illinois, respectfully requests that this Board enter an Order against the Respondent, BIG RIVER ZINC CORPORATION:

- A. Authorizing a hearing in this matter at which time the Respondent will be required to answer the allegations herein;
- B. Finding that the Respondent has violated the Act and regulations as alleged herein;
- C. Ordering Respondent to cease and desist from any further violations of the Act and associated regulations;
- D. Pursuant to Section 42(a) of the Act, 415 ILCS 5/42(a) (2004), impose a civil penalty of not more than the statutory maximum;
- E. Pursuant to Section 42(f) of the Act, 415 ILCS 5/42(f) (2004), award the Complainant its costs in this matter, including reasonable attorney's fees and costs; and
- F. Grant such other and further relief as the Board deems appropriate.

COUNT III

HAZARDOUS WASTE PERMIT VIOLATIONS

1-11. Complainant realleges and incorporates herein by reference paragraphs 1 through 11 of Count I as paragraphs 1 through 11 of this Count III.

12. Section 702.110 of the Board's RCRA and UIC Permit Programs Regulations, 35 Ill. Adm. Code 702.110, provides the following definitions:

"Hazardous waste management facility" or "HWM facility" means all contiguous land and structures, other appurtenances, and improvements on the land, used for treating, storing, or disposing of "hazardous waste". A facility may consist of several treatment, storage, or disposal operational units (for example, one or more landfills, surface impoundments, or combinations of them).

"HWM facility" (RCRA) means Hazardous waste management facility.

13. Section 703.121 of the Board's RCRA Permit Program Regulations, 35 Ill. Adm. Code 703.121, provides in pertinent part, as follows:

- a) No person may conduct any hazardous waste storage, hazardous waste treatment, or hazardous waste disposal operation as follows:
 - 1) Without a RCRA permit for the HWM (hazardous waste management) facility; or

* * *

14. By failing to comply with the permit exemption conditions of Section 722.134(a) of the Board's Hazardous Waste Operating Regulations, 35 Ill. Adm. Code 722.134(a), the BRZ facility no longer falls within the RCRA permit exclusion under Section 703.123 of the Board's RCRA Permit Program Regulations, 35 Ill. Adm. Code 703.123.

15. By storing hazardous waste without a RCRA permit, BRZ has violated Section 21(f) of the Act, 415 ILCS 5/21(f)(2004), and Section 703.121(a) of the Board's RCRA Permit Program Regulations, 35 Ill. Adm. Code 703.121(a).

PRAYER FOR RELIEF

WHEREFORE, the Complainant, People of the State of Illinois, respectfully requests that this Board enter an Order against the Respondent, BIG RIVER ZINC CORPORATION:

- A. Authorizing a hearing in this matter at which time the Respondent will be required to answer the allegations herein;
- B. Finding that the Respondent has violated the Act and regulations as alleged herein;
- C. Ordering Respondent to cease and desist from any further violations of the Act and associated regulations;
- D. Pursuant to Section 42(a) of the Act, 415 ILCS 5/42(a) (2004), impose a civil penalty of not more than the statutory maximum;
- E. Pursuant to Section 42(f) of the Act, 415 ILCS 5/42(f) (2004), award the Complainant its costs in this matter, including reasonable attorney's fees and costs; and
- F. Grant such other and further relief as the Board deems appropriate.

COUNT IV

HAZARDOUS WASTE CONTINGENCY PLAN VIOLATIONS

1-11. Complainant realleges and incorporates herein by reference paragraphs 1 through 11 of Count I as paragraphs 1 through 11 of this Count IV.

12. Section 725.153 of the Board's Interim Status Standards For Owners And Operators Of Hazardous Waste Treatment, Storage, And Disposal Facilities Regulations, 35 Ill. Adm. Code 725.153, provides, in pertinent part, as follows

A copy of the contingency plan and all revisions to the plan must be:

- a) Maintained at the facility; and
- b) Submitted to all local police departments, fire departments, hospitals and state and local emergency response teams that may be called upon to provide emergency services.

13. Section 725.155 of the Board's Interim Status Standards For Owners And Operators Of Hazardous Waste Treatment, Storage, And Disposal Facilities Regulations, 35 Ill. Adm. Code 725.155, provides, in pertinent part, as follows:

At all times, there must be at least one employee either on the facility premises or on call (i.e., available to respond to an emergency by reaching the facility within a short period of time) with the responsibility for coordinating all emergency response measures. This emergency coordinator must be thoroughly familiar with all aspects of the facility's contingency plan, all operations and activities at the facility, the location and characteristics of waste handled, the location of all records within the facility and the facility layout. In addition, this person must have the authority to commit the resources needed to carry out the contingency plan.

Comment: The emergency coordinator's responsibilities are more fully spelled out in § 725.156. Applicable responsibilities for the emergency coordinator vary, depending on factors such as type and variety of waste(s) handled by the facility and type and complexity of the facility.

14. On October 6, 1998, BRZ provided a copy of the BRZ contingency plan dated September 30, 1998. The contingency plan listed Stephen French as the Emergency Coordinator.

15. On May 24, 2005, BRZ provided a copy of the BRZ contingency plan dated September 30, 1998 to Illinois EPA.

16. In the BRZ contingency plan copy provided to the Illinois EPA on May 24, 2005, the Environmental Manager, Mike Altepeter, was listed as the Emergency Coordinator.

17. Mike Altepeter did not know he was the Emergency Coordinator listed in the BRZ contingency plan

18. Mike Altepeter was not thoroughly familiar with all aspects of the facility's contingency plan.

19. The BRZ contingency plan was updated with a new Emergency Coordinator, but was not sent to the local authorities.

20. By failing to submit a copy of the updated contingency plan to all local police departments, fire departments, hospitals, and emergency response teams that may be called upon to provide emergency services, BRZ violated Section 725.153 of the Board's Interim Status Standards For Owners And Operators Of Hazardous Waste Treatment, Storage, And Disposal Facilities Regulations, 35 Ill. Adm. Code 725.153.

21. By failing to have an emergency coordinator who was thoroughly familiar with all aspects of the facility's contingency plan, BRZ violated Section 725.155 of the Board's Interim Status Standards For Owners And Operators Of Hazardous Waste Treatment, Storage, And Disposal Facilities Regulations, 35 Ill. Adm. Code 725.155.

PRAYER FOR RELIEF

WHEREFORE, the Complainant, People of the State of Illinois, respectfully requests that this Board enter an Order against the Respondent, BIG RIVER ZINC CORPORATION:

- A. Authorizing a hearing in this matter at which time the Respondent will be required to answer the allegations herein;
- B. Finding that the Respondent has violated the Act and regulations as alleged herein;
- C. Ordering Respondent to cease and desist from any further violations of the Act and associated regulations;
- D. Pursuant to Section 42(a) of the Act, 415 ILCS 5/42(a) (2004), impose a civil penalty of not more than the statutory maximum;
- E. Pursuant to Section 42(f) of the Act, 415 ILCS 5/42(f) (2004), award the Complainant its costs in this matter, including reasonable attorney's fees and costs; and
- F. Grant such other and further relief as the Board deems appropriate.

COUNT V

FAILURE TO PERFORM EQUIPMENT INSPECTIONS

1-11. Complainant realleges and incorporates herein by reference paragraphs 1 through 11 of Count I as paragraphs 1 through 11 of this Count V.

12. Section 725.274 of the Board's Interim Status Standards For Owners And Operators Of Hazardous Waste Treatment, Storage, And Disposal Facilities Regulations, 35 Ill. Adm. Code 725.274, provides as follows:

The owner or operator shall inspect areas where containers are stored at least weekly, looking for leaks and for deterioration caused by corrosion or other factors.

13. On May 24, 2005, there were no records documenting that the containers of hazardous waste were inspected weekly.

14. By failing to inspect the containers of hazardous waste weekly, BRZ has violated Section 725.274 of the Board's Interim Status Standards For Owners And Operators Of Hazardous Waste Treatment, Storage, And Disposal Facilities Regulations, 35 Ill. Adm. Code 725.274.

PRAYER FOR RELIEF

WHEREFORE, the Complainant, People of the State of Illinois, respectfully requests that this Board enter an Order against the Respondent, BIG RIVER ZINC CORPORATION:

- A. Authorizing a hearing in this matter at which time the Respondent will be required to answer the allegations herein;
- B. Finding that the Respondent has violated the Act and regulations as alleged herein;
- C. Ordering Respondent to cease and desist from any further violations of the Act and associated regulations;

D. Pursuant to Section 42(a) of the Act, 415 ILCS 5/42(a) (2004), impose a civil penalty of not more than the statutory maximum;

E. Pursuant to Section 42(f) of the Act, 415 ILCS 5/42(f) (2004), award the Complainant its costs in this matter, including reasonable attorney's fees and costs; and

F. Grant such other and further relief as the Board deems appropriate.

COUNT VI

TRANSPORTATION AND DISPOSAL OF HAZARDOUS WASTE VIOLATIONS

1-11. Complainant realleges and incorporates herein by reference paragraphs 1 through 11 of Count I as paragraphs 1 through 11 of this Count VI.

12. Section 21 of the Act, 415 ILCS 5/21 (2004) provides, in pertinent part, as follows:

No person shall:

e) Dispose, treat, store or abandon any waste, or transport any waste into this State for disposal, treatment, storage or abandonment, except at a site or facility which meets the requirements of this Act and of regulations and standards thereunder

* * *

g) Conduct any hazardous waste-transportation operation:

* * *

2) in violation of any regulations or standards adopted by the Board under this Act.

13. Section 722.122(c) of the Board's Standards Applicable to Generators of Hazardous Waste Regulations, 35 Ill. Adm. Code 722.112(c), provides as follows:

A generator must not offer its hazardous waste to transporters or to treatment, storage or disposal facilities that have not received a USEPA identification number.

14. Section 722.120(a) of the Board's Standards Applicable to Generators of Hazardous Waste Regulations, 35 Ill. Adm. Code 722.120(a), provides as follows:

A generator that transports hazardous waste or offers hazardous waste for transportation for off-site treatment, storage, or disposal must prepare a manifest before transporting the waste off-site.

15. Section 728.107(a)(2) of the Board's Land Disposal Restrictions Regulations, 35

Ill. Adm. Code 728.107(a)(2), provides as follows:

If the waste or contaminated soil does not meet the treatment standard, the generator must send a one-time written notice to each treatment or storage facility receiving the waste with the initial shipment of waste to each treatment or storage facility, and the generator must place a copy of the one-time notice in the file. The notice must include the information in column "728.107(a)(2)" of the Generator Paperwork Requirements Table in Table I of this Part. No further notification is necessary until such time that the waste or facility changes, in which case a new notification must be sent and a copy placed in the generator's file.

16. Section 723.120(a) of the Board's Standards Applicable to Transporters of Hazardous Waste Regulations, 35 Ill. Adm. Code 723.120(a), provides, in pertinent part, as follows:

No acceptance without a manifest.

- 1) A transporter shall not accept hazardous waste from a generator unless it is accompanied by a manifest signed in accordance with the provisions of 35 Ill. Adm. Code 722.120....

17. Section 728.109(a) of the Board's Land Disposal Restrictions Regulations, 35 Ill. Adm. Code 728.109(a), provides as follows:

The initial generator of a solid waste must determine each USEPA hazardous waste number (waste code) applicable to the waste in order to determine the applicable treatment standards under Subpart D of this Part. For purposes of this Part, the waste must carry the waste code for any applicable listing under Subpart D of 35 Ill. Adm. Code 721. In addition, the waste must carry one or more of the waste codes under Subpart C of 35 Ill. Adm. Code 721 where the waste exhibits a characteristic, except in the case when the treatment standard for the listed waste operates in lieu of the treatment standard for the characteristic waste, as specified in subsection (b) of this Section. If the generator determines that its waste displays a characteristic of hazardous waste (and the waste is not D001 nonwastewaters treated by CMBST, RORGS, or POLYM of Table C to this Part), the generator must determine the underlying hazardous constituents (as defined at Section 728.102(i)) in the characteristic waste.

18. Section 808.121(b) of the Board's Special Waste Classification Regulations, 35

Ill. Adm. Code 808.121(b), provides as follows:

- b) No person shall deliver special waste to a transporter unless the waste is accompanied by a manifest as specified in Section 808.122, and the transporter has a special waste hauling permit issued pursuant to 35 Ill. Adm. Code 809. The following are exceptions to this prohibition:
 - 1) The person is subject to the small quantity generator exemption of Section 808.123.
 - 2) The transporter and waste are subject to a transporter exemption under 35 Ill. Adm. Code 809.211.
 - 3) The Agency has determined pursuant to this Part that the waste is not a special waste.
 - 4) The waste consists of municipal water or wastewater treatment plant sludge regulated under a sludge management plan approved by the Agency pursuant to 35 Ill. Adm. Code 309.208.

19. Section 809.301 of the Board's Nonhazardous Special Waste Hauling and the Uniform Program Regulations, 35 Ill. Adm. Code 809.301, in pertinent part, as follows:

No person may deliver any special waste generated within Illinois or for disposal, storage or treatment within Illinois unless that person concurrently delivers a manifest completed in accordance with Subpart E of this Part to a special waste transporter who holds a current nonhazardous special waste hauling permit or Uniform Program Registration and Permit issued by the Agency under Subpart B or C of this Part.

20. On March 18, 2005, BRZ contacted Midwest and requested a 40 cubic yard roll-off box to put wood waste in from dismantling the wooden #4 Thickner Tank. The wood waste was to be relocated within the BRZ plant to a roaster for metal reclamation.

21. BRZ did not analyze the wood waste to determine each USEPA hazardous waste number applicable to the waste.

22. On March 21, 2005, Midwest delivered a 40 cubic yard roll-off box to BRZ.

23. On March 24, 2005, BRZ contacted Midwest to relocate the roll-off box, which was done that day by substitute driver and the millwright supervised.

24. On April 1, 2005, BRZ contacted Midwest to relocate the roll-off box again and remove the empty roll-off box.

25. On April 4, 2005, the regular Midwest driver went to BRZ to move the roll-off box. No BRZ representative was present to supervise.

26. The Midwest driver removed the roll-off box and took the wood waste to the St. Louis Transfer Station. The wood waste was mixed with the transfer station waste, and was sent to Roxana Landfill Authority in Roxana, Madison County, Illinois.

27. The wood waste was not accompanied by a waste manifest.

28. BRZ did not send a written notice to the St. Louis Transfer facility that the waste was hazardous for cadmium.

29. The St. Louis Transfer Station does not have an USEPA identification number.

30. The Roxana Landfill Authority is not permitted to accept hazardous waste.

31. On April 5 2005, BRZ collected a sample of the remaining wood waste. The sample contained 22.6 mg/l of cadmium.

32. On April 8 2005, BRZ collected another sample of the remaining wood waste. The second sample contained 13.9 mg/l of cadmium.

33. The toxicity level for cadmium is 1.0 mg/L as stated in Section 721.124 of the Board's Identification and Listing of Hazardous Waste Regulations, 35 Ill. Adm. Code 721.124. The USEPA Hazardous Waste Number for cadmium is D006.

34. By failing to determine each USEPA hazardous waste number applicable to the wood waste, BRZ violated Section 728.109(a) of the Board's Land Disposal Restrictions Regulations, 35 Ill. Adm. Code 728.109(a).

35. By offering its wood waste to the St. Louis Transfer facility, which does not have an USEPA identification number, BRZ violated Section 722.122(c) of the Board's Standards Applicable to Generators of Hazardous Waste Regulations, 35 Ill. Adm. Code 722.112(c).

36. By failing to prepare a waste manifest for the wood waste, BRZ violated Section 722.120(a) of the Board's Standards Applicable to Generators of Hazardous Waste Regulations, 35 Ill. Adm. Code 722.120(a) and Section 808.121(b) of the Board's Special Waste Classification Regulations, 35 Ill. Adm. Code 808.121(b).

37. By failing to send a written notice to the St. Louis Transfer facility, BRZ violated Section 728.107(a)(2) of the Board's Land Disposal Restrictions Regulations, 35 Ill. Adm. Code 728.107(a)(2).

38. By disposing the wood waste at a site that does not meet the requirements of the Act and regulations thereunder, BRZ violated Section 21(e) of the Act, 415 ILCS 5/21(e).

39. By accepting waste from BRZ without a waste manifest in compliance with 35 Ill. Adm. Code 722.120 or Subpart E of 35 Ill. Adm. Code 809, Midwest violated Section 723.120(a) of the Board's Standards Applicable to Transporters of Hazardous Waste Regulations, 35 Ill. Adm. Code 723.120(a) and Section 809.301 of the Board's Nonhazardous Special Waste Hauling and the Uniform Program Regulations, 35 Ill. Adm. Code 809.301.

40. By conducting a hazardous waste transportation operation in violation of Board Regulations, Midwest violated Section 21(g) of the Act, 415 ILCS 5/21(g) (2004).

PRAYER FOR RELIEF

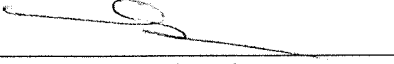
WHEREFORE, the Complainant, People of the State of Illinois, respectfully requests that this Board enter an Order against the Respondents, BIG RIVER ZINC CORPORATION and ALLIED WASTE TRANSPORTATION, INC. d/b/a MIDWEST WASTE:

- A. Authorizing a hearing in this matter at which time the Respondents will be required to answer the allegations herein;
- B. Finding that the Respondents have violated the Act and regulations as alleged herein;
- C. Ordering Respondents to cease and desist from any further violations of the Act and associated regulations;
- D. Pursuant to Section 42(a) of the Act, 415 ILCS 5/42(a) (2004), impose a civil penalty of not more than the statutory maximum;
- E. Pursuant to Section 42(f) of the Act, 415 ILCS 5/42(f) (2004), award the Complainant its costs in this matter, including reasonable attorney's fees and costs; and
- F. Grant such other and further relief as the Board deems appropriate.

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS,
ex rel. LISA MADIGAN,
Attorney General of the
State of Illinois

MATTHEW J. DUNN, Chief
Environmental Enforcement/Asbestos
Litigation Division

BY: 
THOMAS DAVIS, Chief
Environmental Bureau
Assistant Attorney General

OF COUNSEL
KRISTEN LAUGHRIDGE GALE
Assistant Attorney General
500 South Second Street
Springfield, Illinois 62706
217/782-9031
Dated: 3/22/05