

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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JUL 20 2006

STATE OF ILLINOIS
Pollution Control Board

IN THE MATTER OF:)

Petition of the Big River Zinc Corporation)
for an Adjusted Standard from 35 Ill. Adm.)
Code 720.131(c))

AS 06-04
(Adjusted Standard)

NOTICE OF FILING

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

Carol Webb, Hearing Officer
Illinois Pollution Control Board
1021 North Grand Avenue East
P. O. Box 19274
Springfield, IL 62794-9274

Big River Zinc Corporation
c/o Baker & McKenzie LLP
Sasha M. Reyes
John W. Watson
One Prudential Plaza, Suite 3500
130 East Randolph Drive
Chicago, IL 60601

PLEASE TAKE NOTICE that today I have filed with the Office of the Clerk of the
Pollution Control Board the **ILLINOIS ENVIRONMENTAL PROTECTION
AGENCY'S RESPONSE TO THE PETITION FOR ADJUSTED STANDARD** and an
ENTRY OF APPEARANCE in the above titled matter. Copies of these documents are
hereby served upon you.

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

By: Michael Roubitchek
Michael S. Roubitchek
Assistant Counsel
Division of Legal Counsel

1021 North Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794-9276
(217) 782-5544

THIS FILING SUBMITTED ON RECYCLED PAPER.

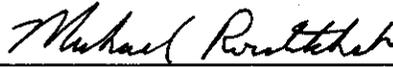
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for an Adjusted Standard from 35 Ill. Adm.)	(Adjusted Standard)
Code 720.131(c))	

PROOF OF SERVICE

I, Michael S. Roubitchek, an attorney, hereby certify that I caused the attached pleadings to be served upon all parties listed on the attached Notice of Filing via first class U.S. mail from 1021 North Grand Avenue East, Springfield, Illinois 62794-9276.



Michael S. Roubitchek
Assistant Counsel
Division of Legal Counsel

Illinois Environmental Protection Agency
1021 North Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794-9276
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(Adjusted Standard)

ENTRY OF APPEARANCE

I, Michael S. Roubitchek, hereby enter my appearance in the above-entitled action on behalf
of the Illinois Environmental Protection Agency.



Michael S. Roubitchek
Assistant Counsel
Division of Legal Counsel

Illinois Environmental Protection Agency
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JUL 20 2006

STATE OF ILLINOIS
Pollution Control Board

IN THE MATTER OF:

Petition of the Big River Zinc Corporation
for an Adjusted Standard under 35 Ill. Adm.
Code 720.131(c)

AS 06-04
(Adjusted Standard)

**ILLINOIS ENVIRONMENTAL PROTECTION AGENCY'S RESPONSE
TO THE PETITION FOR ADJUSTED STANDARD**

NOW COMES the Respondent, the Illinois Environmental Protection Agency ("Illinois EPA"), by one of its attorneys, Michael S. Roubitchek, Assistant Counsel, and for its response to the Big River Zinc Corporation's ("Petitioner")("BRZ") Petition for an Adjusted Standard would respectfully state:

1. This response is filed pursuant to 35 Ill. Adm. Code 104.416.
2. The Petitioner filed its Petition for an Adjusted Standard with the Illinois Pollution Control Board ("Board") on June 30, 2006.
3. Petitioner seeks an adjusted standard under 35 Ill. Adm. Code Part 720.131(c).

PRELIMINARY DISCUSSION

The Illinois EPA believes the following information is relevant to the Board's consideration of the proposed adjusted standard:

4. The Illinois EPA recommends that the Board grant this Petition because the Petition limits the determination that the Electric Arc Furnace dust ("EAFD") is not a solid waste to those instances where it is introduced into the Leach, Solvent Extraction, Electrowinning ("LSXEW") process as a raw material. The LSXEW process is used to process zinc ores and will be used at a

manufacturing facility that was developed and operated specifically for the refining of zinc and zinc compounds. The resulting product is indistinguishable from products made with virgin ores.

5. The LSXEW process was not commonly used when the K061 waste listing (35 Ill. Adm. Code 721.132) was developed, so it would not have been considered when determining the regulatory status of EAFD.

6. EAFD is a raw material when introduced into the LSXEW process. Prior to introduction into the LSXEW process, the EAFD has no market value and may still be sent for disposal. Therefore, it is appropriate to limit the determination that EAFD is not a solid waste to only those instances where it has been introduced into the LSXEW process.

7. Prior to the filing of this Adjusted Standard, BRZ submitted draft petitions to the Illinois EPA for comment. This Petition has satisfactorily addressed all of the Illinois EPA's concerns.

REGULATORY REQUIREMENTS

5. **35 Ill. Adm. Code 104.406(a):** The Petition for an Adjusted Standard contains a statement describing the standard from which an adjusted standard is sought. This statement can be found on page thirty-eight (38) of the petition.

6. **35 Ill. Adm. Code Section 104.406(b):** The regulations of general applicability at 35 Ill. Adm. Code Part 720 *et seq.* were enacted to implement the requirements of the State of Illinois RCRA program. This representation is stated on page (38) of the Petition.

7. **35 Ill. Adm. Code Section 104.406(c):** The level of justification necessary for the requested adjusted standard is provided at 35 Ill. Adm. Code 720.131(c) and is stated on page two (2) and thirty-eight (38) of the Petition.

8. **35 Ill. Adm. Code Section 104.406(d):** As required, pages two (2) through twenty-two (22) of the Petition provide a description of the nature of the petitioner's activity that is the subject of the adjusted standard.

9. **35 Ill. Adm. Code Section 104.406(e):** Pages thirty-eight (38) to thirty-nine (39) of the Petition provide a description of the efforts necessary if the Petitioner were to comply with the regulation of general applicability.

10. **35 Ill. Adm. Code Section 104.406(f):** The Petition provides a narrative description of the proposed adjusted standard as well as proposed language for a Board order. The requirement for a narrative description of the proposed adjusted standard is found on pages one (1) through three (3) of the Petition. The requirement for proposed language is found on page thirty-nine (39) of the Petition.

11. **35 Ill. Adm. Code Section 104.406(g):** This requirement is fulfilled in the Petition on pages nineteen (19) through twenty-one (21), thirty-one (31) through (36) and forty (40), by stating the quantitative and qualitative impact of BRZ's proposed adjusted standard upon the environment.

12. **35 Ill. Adm. Code Section 104.406(h):** Pages twenty-two (22) through thirty-seven (37) of the Petition sets forth the Petitioner's required statement of justification for the adjusted standard.

13. **35 Ill. Adm. Code Section 104.406(i):** The Petition, on page forty-one (41), states that the proposed adjusted standard is consistent with applicable federal law.

14. **35 Ill. Adm. Code Section 104.406(j):** The Petitioner expressly waives its right to a hearing. If the Board deems a hearing necessary, the Illinois EPA will be in attendance.

WHEREFORE, the Illinois EPA recommends that the Illinois Pollution Control Board
GRANT the Petitioner's Petition for an Adjusted Standard.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

By: *Michael Roubitchek*

Michael S. Roubitchek
Assistant Counsel
Division of Legal Counsel

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