

ILLINOIS POLLUTION CONTROL BOARD  
August 17, 2006

IN THE MATTER OF: )  
)  
PETITION OF BIG RIVER ZINC ) AS 06-4  
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 Board determination that electric arc furnace dust (EAFD) proposed as feedstock for a new zinc recycling process 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 uses. BRZ seeks this determination through an adjusted standard petition under the Board's hazardous waste management rules (35 Ill. Adm. Code 720.131(c)).

In this order, the Board identifies several informational deficiencies in BRZ's petition and directs BRZ to file an amended petition to cure them. The Board sets forth this case's procedural history before turning to the informational deficiencies.

**PROCEDURAL HISTORY**

On June 30, 2006, BRZ filed a petition for an adjusted standard. Along with the petition for an adjusted standard, BRZ also filed a motion for expedited review. BRZ filed a certificate of publication on July 19, 2006, documenting that the required newspaper notice of the petition was provided. The Environmental Protection Agency (Agency) filed a recommendation in support of granting the petition on July 20, 2006.<sup>1</sup> Under the Board's procedural rules, a petitioner may file a response to an Agency recommendation on an adjusted standard petition within 14 days after being served with the recommendation. *See* 35 Ill. Adm. Code 104.416(d). BRZ has not filed a response to the Agency recommendation.

On August 4, 2006, the Board issued an order finding that BRZ had satisfied the requirement of newspaper notice for adjusted standard petitions under the Environmental Protection Act (415 ILCS 5/28.1 (2004)), a prerequisite to the Board having jurisdiction over this proceeding. In addition, the Board granted BRZ's motion for expedited review. In that order, the Board also noted that BRZ had waived hearing. Further, the Board stated:

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

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<sup>1</sup> The Board cites BRZ's petition as "Pet. at \_" and the Agency's recommendation as "Rec. at \_."

identify. Petition of Big River Zinc Corporation for an Adjusted Standard Under 35 Ill. Adm. Code 720.131(c), AS 06-4 (Aug. 4, 2006).

### **INFORMATIONAL DEFICIENCIES**

The Board finds that BRZ's adjusted standard petition has not provided all of the information required for the requested solid waste determination. *See* 35 Ill. Adm. Code 104.406, 720.131(c). Below, the Board identifies, and directs BRZ to cure, the following informational deficiencies:

1. BRZ proposes that EAFD received by BRZ at its Sauget facility "and placed directly in the LSXEW [Leach, Solvent Extraction, Electrowinning] zinc recycling process for use as feedstock is, upon receipt by [BRZ], not a solid waste." Pet. at 39. BRZ states that its requested solid waste determination "would not affect the applicability of RCRA [Resource Conservation and Recovery Act] hazardous waste management requirements to the EAFD prior to delivery at BRZ." *Id.* at 3. The Agency states in its recommendation that "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." Rec. at 2.

BRZ's petition also provides, however, that "[o]nly EAFD of a sufficient quantity of recoverable zinc will be accepted at the Facility as determined by a pre-acceptance evaluation." Pet. at 19. According to the petition, incoming EAFD, which will be transported to BRZ by highway or rail, will be "managed as a regulated RCRA hazardous waste until it arrives at the Facility" and the vehicles "will be kept closed at all times except for sampling and unloading." *Id.* The petition further indicates that EAFD below a "minimum acceptable grade . . . will not be processed at BRZ and will continue to be stabilized and landfilled by ESOI [Envirosafe Services of Ohio, Inc.]." *Id.* at 27. Finally, BRZ states that "[n]o storage of EAFD prior to entering the production process will be conducted at the Facility." *Id.* at 30.

- a. Would only EAFD that satisfies the "minimum acceptable grade" be delivered to BRZ, or would the "pre-acceptance evaluation" be performed *after* delivery to BRZ? Could there ever be an EAFD load delivered to BRZ but *not* placed in BRZ's LSXEW process and, if so, how would such a rejected load (which, as proposed, would remain K061 listed hazardous waste) be handled?
- b. Precisely when does BRZ propose that the requested solid waste determination would attach to the EAFD (*e.g.*, upon unloading the EAFD from the rail car or truck to enter the LSXEW process or at some other point)?
- c. In AS 99-3, the Board imposed sampling and recordkeeping conditions on the Section 720.131(c) adjusted standard granted to BRZ, which included

an obligation to make supplier and sampling information available to the Agency for inspection and copying. *See* Petition of Big River Zinc Corporation for an Adjusted Standard Under 35 Ill. Adm. Code 720.131(c), AS 99-3 (May 6, 1999); *see also* Petition of Horsehead Resource and Development Company, Inc. for an Adjusted Standard Under 35 Ill. Adm. Code 720.131(c), AS 00-2 (Feb. 17, 2000) (imposing similar conditions on a Section 720.131(c) adjusted standard). BRZ is not proposing any such conditions for the AS 06-4 request. Explain whether sampling and recordkeeping conditions are appropriate to the currently requested relief. If appropriate, propose language for sampling and recordkeeping conditions.

2. In Table 1 on page 28 of the petition, the percentage by weight of zinc oxide in U.S. EAFD is listed as 15.0 to 24.0. Elsewhere, the petition states that the “concentration of zinc in EAFD ranges up to 35%.” Pet. at 10. Discuss why these values differ.
3. Is it correct that the LSXEW process produces only two waste streams: wastewater; and filter cake? Pet. at 20, 36. Describe any pollution control equipment associated with the proposed LSXEW process.
4. BRZ states that “[i]f the residue is hazardous, on-site de-characterization may be performed.” Pet. at 21. Explain what is meant by “on-site de-characterization” and how it would be accomplished.
5. Provide the address of BRZ’s Sauget facility.

Before this proceeding can continue, BRZ must remedy these informational deficiencies by filing an amended petition. Mindful of the Board’s grant of BRZ’s motion for expedited review, the Board allows BRZ until September 15, 2006, to file the amended petition. Failure to timely file the amended petition will subject this matter to dismissal. If BRZ requires additional time to file the amended petition, it may file a motion for an extension with the hearing officer, but must do so by the September 15, 2006 filing deadline.

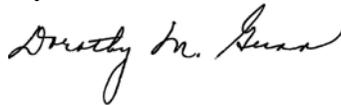
As noted above, the Agency recommends that the Board grant the requested adjusted standard. Under the Board’s procedural rules, the Agency may amend its recommendation at any time if the amendment does not cause material prejudice. *See* 35 Ill. Adm. Code 104.418(b). The incremental changes expected in the amended petition should be relatively modest by volume. Under these circumstances and in the interest of administrative economy, the Board directs the Agency to file any amended recommendation within 21 days after the Agency receives BRZ’s amended petition. BRZ, in turn, will have 14 days after receiving any Agency amended recommendation to file a response. *See* 35 Ill. Adm. Code 104.418(c). The amended petition and any amended recommendation “need not repeat the entire unchanged portion of the original filing provided that a sufficient portion of the original filing is repeated so that the context of the amendment is made clear.” 35 Ill. Adm. Code 104.418(d).

**CONCLUSION**

As described above, the Board finds that BRZ has not provided all of the necessary information in its petition and directs BRZ to file an amended petition to cure these shortcomings by September 15, 2006, or by a later date authorized by the hearing officer. Any amended Agency recommendation is due within 21 days after the Agency receives BRZ's amended petition, and any BRZ response is due within 14 days after BRZ receives any Agency amended recommendation.

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 17, 2006, by a vote of 4-0.



Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board