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MAY 09 2008

STATE OF ILLINOIS
Pollution Control Board

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:

Petition of the Big River Zinc Corporation)	AS 08-009
for an Adjusted Standard from 35 Ill. Adm.)	(Adjusted Standard)
Code 720.131(c))	

NOTICE OF FILING

To: John T. Therriault, 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 Nijman Franzetti LLP
Jennifer T. Nijman
10 S. LaSalle Street, Suite 3600
Chicago, IL 60603

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: 
William D. Ingersoll
Division of Legal Counsel

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

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STATE OF ILLINOIS
Pollution Control Board

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:

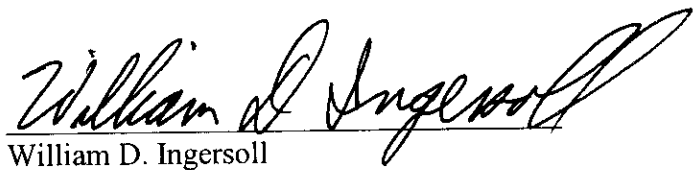
Petition of the Big River Zinc Corporation
for an Adjusted Standard from 35 Ill. Adm.
Code 720.131(c)

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AS 08-009
(Adjusted Standard)

PROOF OF SERVICE

I, William D. Ingersoll, 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.



William D. Ingersoll
Division of Legal Counsel

Illinois Environmental Protection Agency
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P.O. Box 19276
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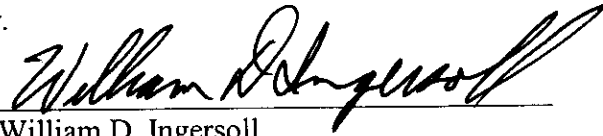
BEFORE THE ILLINOIS POLLUTION CONTROL BOARD STATE OF ILLINOIS
Pollution Control Board

IN THE MATTER OF:

)	
)	
Petition of the Big River Zinc Corporation)	AS 08-009
for an Adjusted Standard from 35 Ill. Adm.)	(Adjusted Standard)
Code 720.131(c))	

ENTRY OF APPEARANCE

I, William D. Ingersoll, hereby enter my appearance in the above-entitled action on behalf of the Illinois Environmental Protection Agency.



William D. Ingersoll
Division of Legal Counsel

Illinois Environmental Protection Agency
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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:

Petition of the Big River Zinc Corporation)	AS 08-009
for an Adjusted Standard under 35 Ill. Adm.)	(Adjusted Standard)
Code 720.131(c))	

**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, William D. Ingersoll, 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 April 1, 2008, pursuant to 35 Ill. Adm. Code Part 720.131(c).
3. Petitioner seeks an amendment to its existing Adjusted Standard as granted by the Board in In re Big River Zinc Corporation, AS 99-3, April 15, 1999. BRZ currently has a motion pending with the Board to incorporate by reference the contents of AS 99-3.

PRELIMINARY DISCUSSION

The Illinois EPA recommends that the Board **GRANT** Petitioner's Petition to amend its currently existing Adjusted Standard and believes the following information is relevant to the Board's consideration of the proposed amendment to the currently existing Adjusted Standard:

4. BRZ was granted an Adjusted Standard from the Board in AS 99-3. The Board's Order in that proceeding stated, "The Board finds that zinc oxide material produced by subjecting

electric arc furnace (EAF) dust from the primary production of steel (K061 under 35 Ill. Adm. Code 721.132) to a high temperature metals recovery (HTMR) process is not a solid waste and grants Big River Zinc Corporation (BRZ) an Adjusted Standard under 35 Ill. Adm. Code 720.131(c).”

5. Condition 2.a (1) of that Adjusted Standard states that the determination that EAF Zinc Oxide material is not a solid waste applies only to EAF Zinc Oxide “that is to be processed through BRZ’s electrolytic zinc refinery in Sauget, St. Clair County, Illinois.”

6. BRZ now seeks an amendment to Condition 2.a (1) of the Adjusted Standard granted in AS 99-3, whereby the solid waste determination would apply to EAF Zinc Oxide material “that is either to be processed through BRZ’s electrolytic zinc refinery in Sauget, St. Clair County, Illinois or that is washed at BRZ’s facility and will depart or has departed from BRZ’s facility to undergo further processing and (1) is destined for or has arrived at another BRZ facility, (2) is under a legally binding contract with the supplier of the EAF zinc oxide for return to the supplier, or (3) has been acquired by another entity under a legally binding contract for sale from BRZ.” The other conditions would remain unaffected.

7. In order to ensure that the EAF Zinc Oxide material is not “speculatively accumulated” at intermediate storage facilities or suppliers should the market for this material weaken, the Illinois EPA recommends that the proposed language in Paragraph six (6) above contain additional language so that Condition 2.a (1) states that the solid waste determination from AS 99-3 would apply to EAF Zinc Oxide material

that is either to be processed through BRZ’s electrolytic zinc refinery
in Sauget, St. Clair County, Illinois or that is washed at BRZ’s facility
and will depart or has departed from BRZ’s facility to undergo further

refining and (1) is destined for or has arrived at another BRZ facility that is capable of refining that material, (2) is under a legally binding contract with the supplier of the EAF zinc oxide for return to the supplier that is capable of refining that material, or (3) has been acquired by another entity that is capable of refining that material under a legally binding contract for sale from BRZ.

8. The Illinois EPA finds that the only substantive change to the Adjusted Standard, as granted in AS 99-3, concerns the location at which the final steps of the reclaiming process may occur. In order to bolster BRZ's claim that further reclamation is occurring, the Illinois EPA recommends that BRZ include in its Petition an economic benefit analysis for the service they provide by washing the EAF Zinc Oxide material. That economic benefit would entail either what a company pays BRZ to wash the EAF Zinc Oxide material before returning it or would entail the increase in value of the EAF Zinc Oxide material between their purchase price and the price they can sell the EAF Zinc Oxide material for.

9. The Illinois EPA also finds that the proposed amendment to Condition 2.a (1) of the existing Adjusted Standard is identical to the Condition granted by the Board in In Re Horsehead Resource and Development Company, Inc., AS 00-2, February 17, 2000.

10. Subject to the above comments, the Illinois EPA recommends that the Illinois Pollution Control Board grant BRZ's Petition to amend its existing Adjusted Standard.

11. 35 Ill. Adm. Code 104.416 requires that any Illinois EPA response to this Petition address subsections (a) through (j) of 35 Ill. Adm. Code 104.406. Because this Petition seeks an amendment to an existing Adjusted Standard instead of an Adjusted Standard itself, many of the

requirements of 35 Ill. Adm. Code 104.406 would not apply to this situation. However, the Illinois EPA has addressed this requirement in the next section.

REGULATORY REQUIREMENTS

11. **35 Ill. Adm. Code 104.406(a):** BRZ's Petition in AS 99-3, which was granted by the Board, fulfills the requirement of this subsection.

12. **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 three (3) of the Petition.

13. **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 was found to be met by the Board in AS 99-3.

14. **35 Ill. Adm. Code Section 104.406(d):** As required, pages four (4) through five (5) of the Petition provide a description of the nature of the petitioner's activity that is the subject of the Adjusted Standard.

15. **35 Ill. Adm. Code Section 104.406(e):** Pages five (5) to six (6) of the Petition provide a description of the efforts necessary if the Petitioner were to comply with the regulation of general applicability.

16. **35 Ill. Adm. Code Section 104.406(f):** The Petition provides a narrative description of the proposed amendment to the existing Adjusted Standard as well as proposed language for a Board order. The requirement for a narrative description of the proposed Adjusted Standard and proposed language is found on pages six (6) through seven (7) of the Petition.

17. **35 Ill. Adm. Code Section 104.406(g):** This requirement was found to be

fulfilled by the Board in AS 99-3.

18. **35 Ill. Adm. Code Section 104.406(h):** Page seven (7) of the Petition sets forth the Petitioner's required statement of justification for the amendment to the existing Adjusted Standard. In addition, this requirement was found to be fulfilled by the Board in AS 99-3.

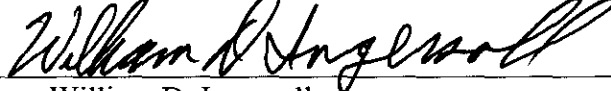
19. **35 Ill. Adm. Code Section 104.406(i):** The Petition, on page seven (7) through eight (8), states that the proposed Adjusted Standard is consistent with applicable federal law and past Board precedent.

20. **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 amendment to its existing Adjusted Standard.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

By: 

William D. Ingersoll
Division of Legal Counsel

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