

ILLINOIS POLLUTION CONTROL BOARD
August 9, 1990

IN THE MATTER OF:)
)
RCRA UPDATE, USEPA REGULATIONS) R90-2
(7-1-89 THROUGH 12-31-89)) (Rulemaking)

ORDER OF THE BOARD (by J. Anderson):

On July 3, 1990, the Board entered a final Opinion and Order amending the RCRA hazardous waste rules in 35 Ill. Adm. Code 703 et seq. to conform with USEPA amendments through December 31, 1989. The Opinion allowed post-adoption comment through August 3, 1990.

The Board has received the following post-adoption comment:

- PC 6 United States Environmental Protection Agency (USEPA), received July 17, 1990
- PC 7 Illinois Environmental Protection Agency (Agency), received August 3, 1990.
- PC 8 Big River Zinc (Big River), received July 24, 1990
- PC 9 Big River, motion to address the Board, August 2, 1990

The Big River motion to address the Board (PC 9) is denied.

The Big River comment (PC 8) addresses the K066 listing which was added in R89-1, and the "Bevill amendment" exclusions involved in this Docket, in Section 721.104(b)(7). Big River has advised the Board that, on July 10, 1990, the United States Court of Appeals for the District of Columbia reversed the USEPA action in adding K066, and remanded the listing to USEPA for further action. (American Mining Congress v. USEPA) This also causes significant confusion as to the status of the "Bevill amendment" exclusions involved in this Docket, which, for primary zinc producers, are fundamentally linked to the K066 listing.

Section 22.4(a) of the Act required the Board to adopt regulations which were "identical in substance" with USEPA's K065 listing. Section 22.4 does not authorize the Board to repeal the listing prior to USEPA's regulatory action on the remand. However, the Board views the federal court opinion as applying to the derivative Board rule pending Board action in adopting the USEPA revisions resulting from the court opinion. (R85-44, 12/3/87, 84 PCB 89, 127)

With respect to the "Bevill amendment" exclusions in this Docket, the question is not so straightforward. First, the USEPA rulemaking was not directly before the Court of Appeals so that the effect is even more subject

to interpretation. Second, the Board did not complete its action on this Docket prior to the Court of Appeals decision.

In view of the substantial confusion as to the status of the "Bevill amendment" exclusions, as applied to primary zinc producers, pending USEPA action on the remand, the Board will add an additional amendment as Section 721.104(b)(7)(A)(vi). This will exclude the waste from certain primary zinc production operations from the definition of hazardous waste. Coupled with the Appeals Court decision, this will put Big River back into the status it occupied prior to the K066 amendments and the "Bevill amendment" exclusions. The complete text is as follows:

Until June 30, 1991, process wastewater, acid plant blowdown and wastewater treatment plant solids from primary zinc smelting and refining, except for wastewater treatment plant solids which are hazardous by characteristic and which are not processed.

This exclusion will terminate on June 30, 1991, the last day on which the Board can adopt the "Bevill amendment" exclusions consistent with federal law. (40 CFR 271.21(a)(3) (1989). In the event the remand uncertainty is not resolved by that date, the Board will regard the decision in American Mining Congress as binding to the extent applicable to the Bevill amendment exclusions.

The Agency has also raised a number of questions about the adjusted standards procedures in Sections 724.213(e) and 725.213(e). Although these were largely answered in the Opinion of July 3, 1990, the Board will repeat the response here. These decisions must be handled as adjusted standards, mainly because they include non-appealable decisions which are inconsistent with the Agency's permit authority.

The Agency will be a party to any adjusted standard proceeding under this rule. The adjusted standard will be incorporated into the RCRA permit, and all reporting pursuant to the adjusted standard will be directed to the Agency. Indeed, the rule includes a number of zipper clauses which may require the Agency to move the Board to reopen the adjusted standard to modify the conditions or terminate the adjusted standard.

Section 724.213(d) applies to facilities which are in compliance with the RCRA design standards, including a double liner, and leachate collection and removal. An adjusted standard under Section 724.213(e) is required for surface impoundments which do not meet these requirements. The Agency cannot issue a RCRA permit for continued operation of such units without an adjusted standard.

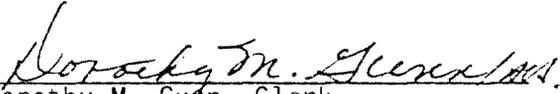
The operator is not required to submit a corrective action plan under Section 724.Subpart F until after a release has been detected. The corrective measures plan under this Section is a corrective action plan based on the assumption that a release has been detected. If the release has in fact been detected, then it is possible that the operator would have already filed a real corrective action plan with the Agency, prior to requesting an adjusted standard. If this happens, the Agency will need to actively participate in

the adjusted standards proceeding to assure that the permit staff reviews the plan submitted to the Board, and provides timely input into the Board's decision process. Following approval of the adjusted standard, the Agency will be required to modify any RCRA permit in accordance with the adjusted standard.

As noted above, the adjusted standard will be incorporated into the RCRA permit, and all reporting will be directed to the Agency. If the Agency learns that one of the zipper conditions has obtained, the Agency may be obligated to request the Board to reopen the adjusted standard.

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above Order was adopted on the 9th day of August, 1990, by a vote of 6-0.


Dorothy M. Gunn, Clerk
Illinois Pollution Control Board