

ILLINOIS POLLUTION CONTROL BOARD
October 18, 1989

IN THE MATTER OF:)
)
RCRA UPDATE, USEPA REGULATIONS) R89-1
(8-1-88 THROUGH 12-31-88))

ORDER OF THE BOARD (by J. Anderson):

On October 4, Big River Zinc Corporation (Big Rivers) filed a Motion to Extend the Withholding of Filing of Portions of the Rules Adopted in R89-1. Also, on October 11, 1989, Big River filed a Motion for Reconsideration or Stay, and Motion for Leave to Address Board, as well as a Request to Appear before Board and an Appearance. All relate to the Board's Opinion and Order of September 13, 1989, which amended the RCRA hazardous waste regulations, including 35 Ill. Adm. Code 721. The Motion for reconsideration is granted; all else is denied.

In the Opinion and Order the Board indicated that it would not file the regulations until October 13, pending motions for reconsideration. As is discussed in the September 13 Opinion, in connection with Sections 721.104 and 721.132, this RCRA update includes a listing of certain sludges from primary zinc production. Big River filed comments opposing this listing. The reasons are discussed in the Opinion. The Board indicated that it could not modify this action in an "identical in substance" rulemaking pursuant to Sections 7.2 and 22.4(a) of the Act. The Board asked that USEPA review this comment and advise the Board as to whether it ought to withhold the action or modify it. The Board has not received a response from USEPA.

Big River has alleged that it is the only industry in the country affected by the listing, its waste has no hazardous characteristics, that the USEPA listing is a mistake, and that it will suffer serious economic harm if the listing takes effect in Illinois. Since these assertions are uncontradicted, the Board is prepared to accept them as true for purposes of this motion.

40 CFR 271.21(a)(2) gives the Board until June 30, 1990 to modify the Illinois hazardous waste program to reflect this listing. However, Section 7.2 of the Act required the Board to adopt this listing by September 13, 1989.

Because of the special circumstances of this listing, the Board will seek a compromise between the requirements of Section 7.2 and 40 CFR 271.21. The Board will adopt the federal regulation in dispute here, but with its compliance date delayed

until June 30, 1990. The Order of September 13, 1989 is modified as follows. 35 Ill. Adm. Code 721.104(b)(7)(C) is modified to read as follows:

- b) 7) C) After June 30, 1990, sludge from treatment of process wastewater or acid plant blowdown from primary zinc production;

In 35 Ill. Adm. Code 721.132, listing K066 is modified to read as follows:

K066 After June 30, 1990, sludge from treatment of process wastewater or acid plant blowdown from primary zinc production.

The listing is in Section 721.132. Section 721.104(b)(7)(C) excludes the listed waste from the general exclusion of ore processing wastes from the definition of "hazardous waste".

One possible problem with this action is that it locks the June 30, 1990 date into the State regulations. Big River is cautioned that the Board will need to be promptly notified if USEPA modifies this listing prior to that date. Big River is further cautioned that there may be nothing more the Board can do, absent action by USEPA. As is discussed in the September 13 Opinion, Big River is urged to initiate a delisting petition with USEPA, or otherwise resolve the problem with them.

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 18th day of October, 1989, by a vote of 7-0.


Dorothy M. Gunn, Clerk
Illinois Pollution Control Board