

**DRAFT**

ILLINOIS POLLUTION CONTROL BOARD  
May 6, 1991

IN THE MATTER OF: )  
)  
CERTAIN HAZARDOUS WASTES FROM ) R 91-11  
PRIMARY ZINC SMELTING AND ) (emergency rulemaking)  
REFINING, 35 Ill. Adm. Code )  
721.104(b)(7)(U) )

ADOPTED EMERGENCY RULE. FINAL ORDER.

DRAFT OPINION AND ORDER OF THE BOARD (J. Anderson):

On April 8, 1991, Big River Zinc Corp. filed a Petition for Variance and Motion for Stay of the July 1, 1991 termination of 35 Ill. Adm. Code 721.104(b)(7)(U). The Board docketed that proceeding as PCB 91-61. The background of this proceeding is set forth in detail in the Board's May 6, 1991 Order in PCB 91-61, which is incorporated by reference herein as if fully set forth.

In summary, the Board finds that this situation "reasonably constitutes a threat to the public interest, safety or welfare" within the meaning of Section 27(c) of the Environmental Protection Act (Ill. Rev. State 1989 ch. 111-1/2, par. 1027(c). Section 5.02 of the Administrative Procedure Act (Ill. Rev. Stat. 1989 ch. 127, par. 1005.02). The threat to the public interest in this case is that, absent emergency relief, Big River Zinc will be required to immediately commence expending \$1.9 million in capital improvements to comply with an "identical in substance" RCRA regulation in a situation where:

1. The underlying federal regulation is presently being challenged in federal court;
2. Big River Zinc has made good faith efforts to obtain relief at the federal level since 1990 without success;
3. Based on information currently available, relief from the state RCRA rule can be granted consistent with federal law, and
4. Because of the Board's quick adoption of RCRA rules pursuant to Section 7.2, Big River Zinc is uniquely placed at a competitive disadvantage, because no other state has as yet adopted the USEPA K066 waste rules at issue here.

The Board intends this rule to be effective upon filing.

The Board hereby amends the termination provision of 721.104(b)(7)(U) as follows:

ORDER

Section 721.104 Exclusions

. . .

- b) Solid wastes which are not hazardous wastes. The following solid wastes are not hazardous wastes:

. . .

- 7) Solid waste from the extraction, beneficiation and processing of ores and minerals (including coal), including phosphate rock and overburden from the mining of uranium ore. For purposes of this subsection, beneficiation of ores and minerals is restricted to the following activities: crushing, grinding, washing, dissolution, crystallization, filtration, sorting, sizing, drying, sintering, pelletizing, briquetting, calcining to remove water or carbon dioxide, roasting, autoclaving or chlorination in preparation for leaching (except where the roasting or autoclaving or chlorination)/leaching sequence produces a final or intermediate product that does not undergo further beneficiation or processing), gravity concentration, magnetic separation, electrostatic separation, floatation, ion exchange, solvent extraction, electrowinning, precipitation, amalgamation, and heap, dump, vat tank and in situ leaching. For the purposes of this subsection, solid waste from the processing of ores and minerals will include only the following wastes:

. . .

- U) Until June 30, 1991 the first date upon which this exclusion renders the Board RCRA program "not equivalent to the Federal program," within the meaning of Section 3006(b) of the Resource Conservation and Recovery Act, 42 U.S.C. § 6926(b), and Section 7.2

of the Act, Ill. Rev. Stat. 1989  
ch. 111 1/2, par. 1007.2, or it  
renders the Board RCRA rules "less  
stringent" than the USEPA rules, as  
this phrase is used in Section  
3009, 42 U.S.C. § 6929, 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.

. . .

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, do hereby certify that the above Draft Opinion and Order was adopted on the \_\_\_\_\_ day of \_\_\_\_\_, 1991, by a vote of \_\_\_\_\_.

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Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board