



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5  
77 WEST JACKSON BOULEVARD  
CHICAGO, IL 60604-3590

OCT 14 2015

REPLY TO THE ATTENTION OF:

LC- 8J

**CERTIFIED MAIL: No. 7011 1150 0000 2641 7093**

**RETURN RECEIPT REQUESTED**

Mr. Lawrence S. Thaier / VP & CFO  
Big River Zinc Corporation  
2201 Mississippi Avenue  
Sauget, Illinois 62201

Consent Agreement and Final Order In the Matter of  
Big River Zinc Corporation. Docket No. TSCA-05-2016-0002

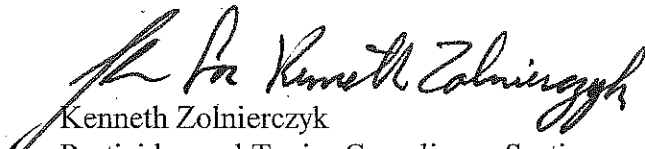
Mr. Thaier:

Enclosed please find a copy of a fully executed Consent Agreement and Final Order (CAFO) in resolution of the above case. This document was filed on October 14, 2015 with the Regional Hearing Clerk.

The civil penalty in the amount of \$1,000 is to be paid in the manner described in paragraphs 30 and 31. Please be certain that the docket number is written on both the transmittal letter and on the check.

Thank you for your cooperation in resolving this matter.

Sincerely,

  
Kenneth Zolnierczyk  
Pesticides and Toxics Compliance Section

Enclosure

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5

In the Matter of: )

Docket No. TSCA-05-2016-0002

Big River Zinc Corporation )  
Sauget, Illinois )

Respondent. )  
\_\_\_\_\_ )



Consent Agreement and Final Order

Preliminary Statement

1. This is an administrative action commenced and concluded under Section 16(a) of the Toxic Substances Control Act (TSCA), 15 U.S.C. § 2615(a), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/ Termination or Suspension of Permits (Consolidated Rules) as codified at 40 C.F.R. Part 22.
2. The Complainant is the Director of the Land and Chemicals Division, U.S. Environmental Protection Agency, Region 5.
3. Respondent is Big River Zinc Corporation (Respondent) a corporation operating under the laws of the State of Illinois, with a place of business at 2401 Mississippi Avenue, Sauget, Illinois.
4. Where the parties agree to settle one or more causes of action before the filing of a complaint, the administrative action may be commenced and concluded simultaneously by the issuance of a consent agreement and final order (CAFO). 40 C.F.R. § 22.13(b).
5. The parties agree that settling this action without the filing of a complaint or the adjudication of any issue of fact or law is in their interest and in the public interest.
6. Respondent consents to the assessment of the civil penalty specified in this CAFO,

and to the terms of this CAFO.

### **Jurisdiction and Waiver of Right to Hearing**

7. Respondent admits the jurisdictional allegations in this CAFO and neither admits nor denies the factual allegations in this CAFO.

8. Respondent waives its right to request a hearing as provided at 40 C.F.R. § 22.15(c), any right to contest the allegations in this CAFO and its right to appeal this CAFO.

9. Respondent certifies it is complying with TSCA, 15 U.S.C. §2614.

### **Statutory and Regulatory Background**

10. The Polychlorinated Biphenyls (PCB) Disposal and Marking regulations were lawfully promulgated pursuant to Section 6(e)(1) of TSCA, 15 U.S.C. § 2605(e)(1), on February 17, 1978 (43 Federal Register 7150). The PCB Manufacturing, Processing, Distribution in Commerce and Use regulations (the PCB Rule) were lawfully promulgated on May 31, 1979 (44 Fed. Reg. 31514) and incorporated the disposal and marking regulations. The PCB rule was subsequently amended and partially re-codified at 40 C.F.R. Part 761.

11. The PCB Rule at 40 C.F.R. § 761.1(b)(1) states, in part, that the regulations at 40 C.F.R. Part 761 apply to all persons who manufacture, process, distribute in commerce, use, or dispose of PCBs or PCB Items.

### **General Allegations**

12. Respondent is a "person" as defined at 40 C.F.R. § 761.3 and is subject to the prohibitions set forth at 40 C.F.R. Part 761.

13. Respondent is the owner and operator of the facility at 2401 Mississippi Avenue, Sauget, Illinois.

14. Respondent's PCB transformers are PCB articles as defined at 40 C.F.R. § 761.3.

15. Respondent's PCB articles are PCB items as defined at 40 C.F.R. § 761.3.

**Specific Allegations**

16. On July 14, 2010, a representative of EPA inspected Respondent's facility located at 2201 Mississippi Avenue, Sauget, Illinois.

17. At the time of the inspection, Respondent had 4 PCB transformers in use or stored for reuse.

18. Respondent's PCB transformers are nameplated as PCB and contain PCBs in concentrations greater than 500 ppm.

19. The PCB rule at 40 C.F.R. § 761.1 (a)(3) states that provisions that apply to PCBs at concentrations greater than or equal to 50 ppm also apply to PCB contaminated surfaces with PCB concentrations greater than or equal to 10  $\mu\text{g}/100\text{cm}^2$ .

20. Unless otherwise stated at 40 C.F.R. § 761.60(a)(2)-(5), 40 C.F.R. § 761.60 requires that PCBs at concentrations of 50 ppm or greater be disposed of in an incinerator which complies with 40 C.F.R. § 761.70.

21. At the time of the inspection, EPA took a representative wipe sample from the valve stem of Respondent's PCB transformer, serial # E9D1025, which showed the presence of PCBs at concentrations of 530,000  $\mu\text{g}/100\text{cm}^2$ .

22. The PCB rule at 40 C.F.R. § 761.3 defines disposal as spills, leaks and other uncontrolled discharges of PCBs.

23. Respondent's failure to properly dispose of PCBs in an incinerator that complies with 40 C.F.R. § 761.70 is a violation of 40 C.F.R. § 761.60(a)(2)-(5), 40 C.F.R. § 761.60.

24. The PCB rule at 40 C.F.R. § 761.35(a) states that the owner or operator of a PCB article may store it for no more than five years after the date the article was removed from use.

25. At the time of the inspection, Respondent's PCB transformer, serial # PBV7627-02, was in storage for reuse for more than five years from the date it was first placed in storage.

26. As a result of the July 14, 2010 inspection, EPA has determined that Respondent has violated the federal regulations regarding the disposal and storage requirements of the PCB regulations, 40 C.F.R. Part 761.35(a), and thereby violated Section 15 of TSCA, 15 U.S.C. § 2614.

### **Civil Penalty**

27. Section 16(a) of TSCA, 15 U.S.C. § 2615(a), authorizes the Administrator of EPA to assess a civil penalty under section 16 of TSCA of up to \$25,000 for each unlawful act committed under section 15 of TSCA, 15 U.S.C. § 2614. Under the Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701 *note*, U.S. EPA increased the maximum penalty to \$32,500 for each violation occurring after March 15, 2005 (see 40 C.F.R. § 19.4). In determining the amount of any civil penalty, section 16 of TSCA requires EPA to take into account the nature, circumstances, extent and gravity of the violation or violations alleged and, with respect to the violator, ability to pay, affect on ability to continue to do business, any history of prior such violations, the degree of culpability, and such other factors as justice may require.

28. EPA calculates penalties by applying its “Polychlorinated Biphenyls (PCBs) Penalty Policy,” dated April 9, 1990” (Response Policy). This Response Policy provides a rational, consistent and equitable calculation methodology for applying the statutory factors to particular cases.

29. By letter dated May 8, 2014, U.S. EPA advised Respondent that EPA was planning to file a civil administrative complaint against Respondent for alleged violations of the PCB Rule and that section 16 of TSCA authorizes the assessment of a civil administrative penalty. EPA

asked Respondent to identify any factors Respondent thought EPA should consider before issuing the complaint, and if Respondent believed there were financial factors which bore on Respondent's ability to pay a civil penalty, EPA asked Respondent to submit specific financial documents.

30. Pursuant to Section 16(a) of TSCA, 15 U.S.C. § 2615(a), Complainant has determined that an appropriate civil penalty to settle this action is \$1,000. In determining the penalty amount, Complainant considered the nature, circumstances, extent and gravity of the violations, and Respondent's ability to pay, effect on ability to continue to do business, any history of such prior violations, the degree of culpability, and Respondent's cleanup efforts in response to the alleged violations. In determining the appropriate civil penalty amount Complainant also considered "The Enforcement Response Policy for Reporting and Recordkeeping Rules and Requirements for TSCA Sections 8, 12 and 13," effective June 1, 1999.

31. Respondent agrees to pay a \$1,000 civil penalty for the TSCA violations alleged herein, within 30 days after the effective date of this CAFO, by sending a cashier's or certified check, payable to "Treasurer, United States of America," to:

U.S. EPA  
Fines and Penalties  
Cincinnati Finance Center  
P.O. Box 979077  
St. Louis, Missouri 63197-9000

For checks sent by express mail (non-U.S. Postal Service which won't deliver mail to P.O. Boxes), Respondent must send the check to:

U.S. Bank  
Government Lockbox 979077  
U.S. EPA Fines and Penalties  
1005 Convention Plaza  
Mail Station SL-MO-C2-GL  
St. Louis, Missouri 63101

The check must note Respondent's name and the docket number of this CAFO.

32. Respondent must also send a notice of payment that states Respondent's name, complete address, the amount paid, the case docket number and the billing document number, to EPA at the following addresses when it pays the penalty (a copy of the check bearing this information would suffice):

Regional Hearing Clerk (E-19J)  
U.S. Environmental Protection Agency, Region 5  
77 West Jackson Blvd  
Chicago, Illinois 60604

Ken Zolnierczyk (LC-8J)  
Pesticides and Toxics Compliance Section  
U.S. Environmental Protection Agency, Region 5  
77 West Jackson Blvd  
Chicago, Illinois 60604

Jose C. de Leon (C-14J)  
Office of Regional Counsel  
U.S. Environmental Protection Agency, Region 5  
77 West Jackson Blvd  
Chicago, Illinois 60604

33. This civil penalty is not deductible for federal tax purposes.

34. If Respondent does not pay timely the civil penalty, EPA may request the Attorney General of the United States to bring an action to collect any unpaid portion of the penalty with interest, nonpayment penalties and the United States enforcement expenses for the collection action, under Section 16(a) of TSCA, 15 U.S.C. § 2615(a). The validity, amount and appropriateness of the civil penalty are not reviewable in a collection action.

35. Pursuant to 31 C.F.R. § 901.9, Respondent must pay the following on any amount overdue under this CAFO. Interest will accrue on any amount overdue from the date the payment was due at a rate established pursuant to 31 U.S.C. § 3717. Respondent must pay a \$15 handling charge each month that any portion of the penalty is more than 30 days past due. In addition, Respondent must pay a 6 percent per year penalty on any principal amount 90 days past due.

### **General Provisions**

36. This CAFO resolves only Respondent's liability for federal civil penalties for the violations alleged in the CAFO.

37. This CAFO does not affect the rights of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.

38. Respondent waives any and all remedies, claims for relief and otherwise available rights to judicial or administrative review that Respondent may have with respect to any issue of fact or law set forth in this Order on Consent, including any right of judicial review under Section 16(a)(3) of TSCA, 15 U.S.C. § 2615(a)(3).

39. This CAFO does not affect Respondent's responsibility to comply with the PCB Rule and other applicable federal, state and local laws.

40. Respondent certifies that it is complying with the PCB Rule.

41. The terms of this CAFO bind Respondent, and its successors and assigns.

42. Each person signing this agreement certifies that he or she has the authority to sign for the party whom he or she represents and to bind that party to its terms.

43. Each party agrees to bear its own costs and attorneys fees in this action.

44. This CAFO constitutes the entire agreement between the parties.



**For Big River Zinc, Respondent**

16 Sept. 2015  
Date

Lawrence S. Thayer  
Lawrence S. Thayer  
Vice President and CFO

**For the United States Environmental Protection Agency, Complainant**

10/5/2015  
Date


Margaret M. Guerriero  
Margaret M. Guerriero  
Director  
Land and Chemicals Division  
U.S. Environmental Protection Agency, Region 5

**In the Matter of: Big River Zinc Corporation, Sauget, Illinois.**  
**Docket No. TSCA-05-2016-0002**

**Final Order**

This Consent Agreement and Final Order, as agreed to by the parties, shall become effective immediately upon filing with the Regional Hearing Clerk, U.S. Environmental Protection Agency, Region 5. This Final Order concludes this proceeding pursuant to 40 C.F.R. §§ 22.18 and 22.31. IT IS SO ORDERED.

9 October 2015  
Date

  
\_\_\_\_\_  
Susan Hedman  
Regional Administrator  
United States Environmental Protection Agency  
Region 5

In the matter of: Big River Zinc Corporation  
Docket Number: TSCA-05-2016-0002

**CERTIFICATE OF SERVICE**

I certify that I served a true and correct copy of the foregoing *Consent Agreement and Final Order*, which was filed on October 14, 2015, in the following manner to the addressees:

Copy by Certified Mail

Return-receipt:

Mr. Lawrence S. Thaier / VP & CFO  
Big River Zinc Corporation  
2201 Mississippi Avenue  
Sauget, Illinois 62201

Copy by E-mail to

Attorney for Complainant:

Jose C. deLeon  
deLeon.jose@epa.gov

Copy by E-mail to

Regional Judicial Officer:

Ann Coyle  
coyle.ann@epa.gov

Dated:

October 14, 2015 

LaDawn Whitehead  
Regional Hearing Clerk  
U.S. Environmental Protection Agency, Region 5

CERTIFIED MAIL RECEIPT NUMBER(S): 7011 1150 0000 2641 7093