

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

¶

UNITED STATES STEEL)	
CORPORATION,)	PCB-2024-077
)	
Petitioner,)	
v.)	
ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY)	
)	
Defendant.)	

NOTICE OF FILING

To:

Mr. Don A. Brown
Clerk of the Board
Illinois Pollution Control Board
60 East Van Buren Street, Suite 630
Chicago, Illinois 60605
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(VIA ELECTRONIC MAIL)

(SEE PERSONS ON ATTACHED SERVICE LIST)

PLEASE TAKE NOTICE that I have today electronically filed with the Office of the Clerk of the Illinois Pollution Control Board ENTRY OF APPEARANCE OF ELIZABETH HUBERTZ and MOTION OF AMERICAN BOTTOM CONSERVANCY TO INTERVENE, copies of which are hereby served upon you.

Respectfully submitted,

/s/ Elizabeth J. Hubertz

Elizabeth J. Hubertz

Interdisciplinary Environmental Clinic

Washington University School of Law

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Counsel for American Bottom Conservancy

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that I have served the attached MOTION OF AMERICAN BOTTOM CONSERVANCY TO INTERVENE and APPEARANCE OF ELIZABETH HUBERTZ via electronic mail upon:

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My email address is ejhubertz@wustl.edu. The email transmission consists of 13 pages and took place before 5:00 p.m. on the date of July 8, 2024.

Date: July 8, 2024

/s/ Elizabeth Hubertz
Elizabeth J Hubertz

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)	
Defendant.)	

NOW COMES Elizabeth J. Hubertz of the Interdisciplinary Environmental Clinic at Washington University School of Law and enters her appearance in this matter on behalf of Movant American Bottom Conservancy.

Respectfully Submitted,

By: /s/ Elizabeth J. Hubertz
Elizabeth J. Hubertz

DATE: July 8, 2024

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MOTION OF AMERICAN BOTTOM CONSERVANCY TO INTERVENE

Pursuant to 35 Illinois Administrative Code § 101.402, American Bottom Conservancy (ABC) moves to intervene as respondent in this proceeding. ABC seeks to intervene in this action to protect the air quality and human health and to protect its intervention in the related appeal, as it will be materially prejudiced and unable to protect its rights if intervention is not permitted. In support of this motion, ABC states as follows:

BACKGROUND

1. ABC is a grassroots environmental organization based in the Metro-East St. Louis area with members residing in and around the Granite City area where United States Steel Corporation (US Steel) operates an integrated iron and steel manufacturing facility, Granite City Works (GCW). ABC is particularly concerned about air emissions, as the GCW is in the middle of a residential neighborhood and near Horseshoe Lake State Park. The Granite City area is also an environmental justice community – heavily burdened with the negative environmental impacts of heavy industry while having a substantial minority and low-income population.

2. ABC has long been involved in advocacy over the air permits that IEPA has issued to US Steel. First, it is an intervenor in the closely related appeal of US Steel's 2013 CAAPP permit, *United States Steel Corp. v. IEPA*, PCB 2013-053. In that action, when granting ABC's motion to intervene, the Board noted that ABC's advocacy related to the CAAPP permit began in 2008, with the original draft permit, and continued through two revised permits, and an appeal of the original permit. *U.S. Steel Corporation v. IEPA*, 2010-023. See Order of the Board, *U.S. Steel Corporation v. IEPA*, PCB 2013-053 (November 21, 2013).

3. The subject of the instant action, the proposed changes to Permit No 95010001, were intended in part to resolve the appeal of the 2013 CAAPP permit that is the subject of matter PCB 2013-053. The changes that would be made to Permit 95010001 if U.S. Steel's appeal is successful would address US Steel's concerns about the emission factors and emission limits that formed the basis for its appeal of its 2013 CAAPP permit. Petition for Review, *United States Steel Corporation v. IEPA*, PCB 2013-053, ¶¶ 15-17, 26-27 (filed Apr. 8, 2013).

4. Further, in its Application for Revisions to a Construction Permit/PSD Approval (Application) US Steel sought integrated processing of its requested changes, meaning that the requested changes to Permit 95010001, if granted, could be changed in the CAAPP as an administrative matter without the need for an additional notice and comment period. Petition for Review, at ¶ 24 (filed June 12, 2024)

5. If US Steel is successful in the instant appeal, it seeks an order instructing IEPA to issue Permit 95010001 with the changes U.S. Steel requested in the Application. See *Petition*, at page 118. Such an order would, through integrated processing, allow for the administrative revision of the 2013 CAAPP permit, and thus of 2013 CAAPP permit appeal in which ABC intervened. Accordingly, when IEPA opened a period for public comment on its proposed denial

of the Application, ABC filed comments supporting IEPA's denial. See Exhibit A, ABC's Comments on Draft Denial of an Application to a Construction Permit, Permit No.95010001 for U.S. Steel Corporation Granite City Works, dated August 21, 2023.

ARGUMENT

6. Intervention in an Illinois PCB appeal is governed by section 101.402 of Title 35 of the Illinois Administrative Code. This section gives the Board the discretion to permit "any person" to intervene in "any adjudicatory proceedings."

7. Intervention should be allowed when the would-be intervenor will be materially prejudiced absent intervention or will be adversely affected by the Board's final decision in the proceeding. 35 Ill. Admin Code. 101.402(d)(2)-(3). ABC satisfies both standards.

8. ABC seeks intervention to protect its original intervention in PCB 2013-053. ABC joined the PCB 2013-053 appeal as a respondent, seeking to defend IEPA's 2013 CAAPP permit. If US Steel wins the instant case, and IEPA is directed to issue the permit, it will enable the administrative amendment of the 2013 CAAPP permit without giving ABC a chance to object. If intervention here is not allowed, ABC's position that the 2013 CAAPP was correct in its issuance of the 2013 CAAPP permit will be compromised by an order in a case to which it is not a party, a classic example of judicial prejudice.

9. In addition to demonstrating that the would-be intervenor will be materially prejudiced or adversely affected in the absence of intervention, the Board may also consider the timeliness of the motion to intervene and whether intervention will "unduly delay or materially prejudice the proceeding." 35 Ill. Admin. Code § 101.402(b).

10. ABC's motion is timely. US Steel filed its petition on June 12, 2024. Counsel for ABC learned of the filing on June 17, 2024 during a status conference in the 2013 CAAPP permit appeal, PCB-2013-053. This motion followed within 35 days of the filing of the petition.¹

11. Granting ABC's motion will not delay or prejudice this matter. ABC makes this motion before IEPA has answered or filed the agency record. No dispositive motions are pending, and the only scheduled hearing is a status hearing set for September 17, 2024 at 10:30 am which has been combined with the status hearing in the 2013 CAAPP permit appeal.

12. As its past history demonstrates, ABC has the knowledge and capability to participate in this appeal, including in negotiations for the settlement of this appeal.

13. In addition, ABC has interests that are separate and distinct from IEPA, as its history with the CAAPP permit since 2008 reveals. For example, ABC filed Petitions to Object with U.S. EPA because of its dissatisfaction with the previous iterations of the CAAPP permit. Although ABC seeks intervention on IEPA's side, there is no reason to believe that ABC's and IEPA's interests will continue to align with each other. IEPA could change its mind, settle with US Steel tomorrow, and agree to issue the revised Permit No. 95010001, leaving ABC out in the cold.

14. If granted leave to intervene in this proceeding, ABC understands that it will be bound by the Board and Hearing Officer orders.

15. On June 28, 2024, counsel for ABC reached out to IEPA and US Steel to learn their positions as to this motion. IEPA responded that it will file a response indicating that it does not oppose intervention but will request the Board limit the intervention as is

¹ The 35-day filing period found in 415 ILCS 5/40.2(a) does not apply to ABC's motion. ABC believes the IEPA decision denying the Application was correct, and so had no need to petition for review of the Denial. ABC's interest only arose after US Steel filed *its* petition for review on June 12.

allowed by regulation and as was ordered by the Board in PCB 2013-053. As of today's date, ABC has not received a response as to US Steel's position.

WHEREFORE, for these reasons, ABC respectfully requests that the Board grant this motion to intervene.

July 8, 2024

Respectfully submitted,

/s/ Elizabeth J. Hubertz

Elizabeth J. Hubertz

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Counsel for American Bottom Conservancy



SCHOOL OF LAW

Interdisciplinary Environmental Clinic

Exhibit A

August 21, 2023

Illinois Environmental Protection Agency
P.O. Box 19276
Springfield, IL 62704-9276

Re: Comments on Draft Denial of an Application to a Construction Permit, Permit No. 95010001 for U.S. Steel Corporation Granite City Works

Dear Sir or Madam:

On behalf of the American Bottom Conservancy (ABC), the Interdisciplinary Environmental Clinic at Washington University School of Law submits the following comments regarding the July 21, 2023 draft Notice of Intent to Deny Application to a Construction Permit, Permit No. 95010001 for U.S. Steel Corporation Granite City Works.

ABC is a grassroots organization based in the Metro-East St. Louis region. ABC seeks to improve and protect air quality and human health in the Granite City and Metro-East areas. ABC supports the denial largely for the reasons given by IEPA in its proposed denial documents, but writes to emphasize a few points.

Granite City, and in particular, the area immediately surrounding the US Steel facility, is an environmental justice community. It contains a high density of low-income and minority populations, some of whom live adjacent to the facility's fence line. Granite City, and the north part of Metro East contain a high concentration of heavy industrial activity. Ensuring that US Steel operates under a permit that protects air quality is especially important in these circumstances and given the current EPA emphasis on protecting overburdened communities.

History of ABC Involvement

ABC has a long history with United States Steel Corporation's Granite City Works and its air permits, including some of the specific issues involved in the Draft Denial. Since 2009, ABC has insisted that any Clean Air Act Permit Program (CAAPP) permit issued to the Granite City Works have protective emission limits for particulate matter, CO, and NOx, as well as sufficient monitoring to ensure compliance with those limits.

ABC's involvement began with IEPA's first draft CAAPP permit, Permit No. 96030056. It continued through the revised permit, two petitions to object, the second revised permit, and US Steel's appeal of the of the second revised CAAPP permit. The appeal has been pending (but

stayed) since 2013.¹ ABC intervened in the appeal in order to ensure that the permit would maintain protective emissions limits and caps as well as a means of ensuring compliance with those limits.

US Steel's appeal was based on its belief that it "cannot comply with certain permit requirements" associated with IEPA's use of "emission factors" as "emission factor *limits*" in the second revised CAAPP permit because they were incorrect, unreliable, and/or outdated. US Steel's solution to its inability to satisfy emission factor limits was to increase the amount of pollution it would be allowed to emit by changing the emission factors. It would accomplish this change in the CAAPP permit by performing additional testing and modifying the 1995 production increase permit, Permit No. 95010001 that was the source of the emission factor limits. It is this latter permit that is the subject of this comment.

US Steel first applied to modify permit 95010001 in February 2020. After discussions with IEPA, it filed a revised application to modify the permit in October 2022. This revised application is what IEPA proposes to deny in this current action. ABC is aware that IEPA and US Steel have been in discussions about the permit since the mid 2010s, but has not been a party to those discussions.

Emission Factors and Group Emission Limits

The original 1996 permit included emission factor limits and maximum emission limits for PM and PM 10, NO_x, and VOM in order to enable US Steel to avoid being considered a major source of these pollutants for purposes of the Prevention of Significant Deterioration (PSD) program. Without the emission limits, the Granite City facility would emit pollutants in sufficient quantity to be considered a major source. With the limits, it is a "synthetic minor source."

ABC objects to any use in a Granite City Works permit of what IEPA calls "group limits" to control the plant's potential to emit PM, PM₁₀, NO_x, and VOM. In the 1996 permit, the facility was broken down into six major processes and activities: Blast Furnace, Basic Oxygen Furnace (BOF) Shop, Continuous Casting, Certain Fuel Combustion Units, Roadways, and Material Handling. Each major process had an emissions limit in tons per year. In turn, each of these major processes was also broken down into subprocesses. The BOF Shop was divided into six subprocesses: BOF ESP Stack, BOF Roof Monitor, Desulfurization and Reladling, BOF Additive System, Flux Conveyor and Transfer Pits, and Hot Metal Charging Ladle Slag Skimmer. Each subprocess was assigned two limitations: an emission factor limit and a maximum emissions limit.

In the 2022 application, US Steel proposed eliminating both limits for the subprocesses. Instead, it would have limits for each of the major processes and activities. Those limits would be calculated as a monthly rolling 12-month total. These changes allow for substantial variation in

¹ A description of the appeal (PCB 2013-53) can be found on page 18 n.31 of the Proposed Denial of An Application for Revisions to a Construction Permit / PSD Approval ("Draft Denial") and at page 9 n.21 and page 11 n.25 of the Project Summary for the Draft Denial.

emissions over the short-term and at the subprocessing level, leading to a less stringent permit than the existing permit.

In its application, US Steel points to several EPA decisions, which it claims support its application.² Those cases are readily distinguishable. For example, in *In re Shell Offshore, Inc.*, Region 10 made clear that group limits and a longer rolling emissions period were appropriate only where the “unique” and “atypical” variability made individual limits for the subprocesses too difficult to determine.³ The *Shell Offshore* source, the ill-fated Kulluk oil rig moved from place to place, each with differing environmental conditions, and engaged in different types of activities depending on its location, i.e., it was not always deep-sea drilling. Likewise, in *In re Tucson Electric Power*,⁴ the new units were to be used to “compensate for the variability of wind and solar power,” meaning that they would operate on an as-needed basis that could not be predicted ahead of time. The Masada facility⁵ was unique and unpredictable because it was the first of its kind. US Steel did not make a similar showing with regard to its operations in Granite City. It has been at this location engaged in the same industry for more than 100 years. The special circumstances allowing for group limits are not present.

In addition, ABC has long been concerned about the use of emissions factors to determine compliance, and has repeatedly argued for the use of continuous emissions monitoring or some form of testing the actual emissions. For example, in ABC’s most recent comments on the second revised CAAPP permit, ABC noted that the emission factor limits from Permit 95010001 that were incorporated into the CAAPP permit did not accurately represent the emissions from the plant. Those emission factors were a combination of two-thirds generic emission factors, derived from a third-party source like AP-42, and one-third site-specific emission factors, based on infrequent stack testing. The maximum emissions limits and emissions factor limits were both generated through the application of emissions factors, making compliance determination a circular process.

In the 2022 application, US Steel likewise proposes a mix of generic emission factors and site-specific emission factors for the changes it proposes. The site-specific emission factors are to be created through “periodic” stack testing. Again, it refers to *Shell Offshore*, *Tucson Electric*, and *Masada* to support its use of emission factors to determine compliance.

In *Shell Offshore*, the Board noted that the use of generic emissions factors was a “last resort method” for calculating compliance appropriate only in “limited circumstances.”⁶ The generic emissions factors were used sparingly, as more than 90% of emissions were subject to site-specific factors.⁷ The other sources in the cited cases also used real-time monitoring of actual

² 2022 Application, at Section 3. The IEPA discussion is on pages 18-22 of the draft denial.

³ *In re Shell Offshore, Inc.*, 15 E.A.D. 536, 554, 555 (Mar. 30, 2012).

⁴ *In re Tucson Electric Power*, 17 E.A.D. 675, 681 (Dec. 2, 2018).

⁵ *In re matter of Organic Recycling and Ethanol Production Facility, Pencor-Masada Osynol, LLC, (Masada)*, 2001 Westlaw 36294221, *21 (May 2, 2001) (order granting in part and denying in part petition for objection to permit).

⁶ 15 E.A.D. at 559 n25.

⁷ *Id.* at 560.

emissions as an additional means of ensuring that the sources did not exceed the synthetic minor limits. The *Masada* equipment used continuous emissions monitoring to ensure compliance,⁸ and the *Tucson Electric* units used continuous monitoring of the pollution control equipment.⁹ This kind of real-life monitoring is not what US Steel proposed for the provisions that it sought to change. ABC continues to maintain that US Steel should use continuous monitoring to ensure compliance with emission limits.

ABC is glad to see that IEPA has taken a close and careful look at US Steel's proposed use of emission factors, netting, and group emission limits, and concluded that there is a lack of support for US Steel's proposed changes to Permit 95010001. It urges EPA to either finalize its denial or issue a permit that makes up for the shortcomings identified in the Draft Denial.

Thank you for the opportunity to comment.

Sincerely,

/s/ Elizabeth Hubertz

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⁸ 2001 Westlaw 36294221, at * 21.

⁹ 17 E.A.D. at 689-92.