

ILLINOIS POLLUTION CONTROL BOARD
August 22, 2024

UNITED STATES STEEL CORPORATION,)
a Delaware corporation,)
)
Complainant,)
)
v.) PCB 24-77
) (Permit Appeal - Air)
)
ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
)
Respondent.)

ORDER OF THE BOARD (by J. Van Wie):

On June 12, 2024, United States Steel Corporation (U.S. Steel) timely filed a petition asking the Board to review a May 8, 2024 determination of the Illinois Environmental Protection Agency (IEPA or Agency). The Agency’s determination concerns U.S. Steel’s Granite City Works, an integrated iron and steel manufacturing facility located at 1951 State Street, in Granite City, Madison County.

On July 8, 2024, American Bottom Conservancy (ABC) filed a motion to intervene in this proceeding. The Agency and U.S. Steel have responded, and neither party objects to the motion. The Board grants ABC’s unopposed motion to intervene, subject to the restrictions set forth below.

PROCEDURAL HISTORY

U.S. Steel filed its petition for review on June 12, 2024. On June 20, 2024, the Board accepted the petition for hearing.

On July 8, 2024, ABC filed its motion to intervene (Mot.). The Agency filed its response (IEPA Resp.) on July 12, 2024. U.S. Steel filed its response (USS Resp.) on July 19, 2024.

On August 14, 2024, the Agency filed an unopposed motion for extension of time to file the record. On August 15, 2024, the hearing officer granted the motion and set a deadline of September 30, 2024, to file the record.

The current decision deadline in this case is March 20, 2025.

MOTION OF AMERICAN BOTTOM CONSERVANCY TO INTERVENE

ABC describes itself as “a grassroots organization based in the Metro-East St. Louis region with members residing and recreating in and around Granite City.” Mot. at 1. This area, described as residential, near a state park, and a designated environmental justice community,

also houses U.S. Steel's Granite City Works (GCW) facility. *Id.* ABC moves to intervene "to protect the air quality and human health" in the area and "to protect its intervention in the related appeal". *Id.* ABC is currently an intervening party in a related Board proceeding, U.S. Steel's appeal of its 2013 Clean Air Act Permit Program (CAAPP) permit, PCB 13-53. *Id.*; see United States Steel Corporation v. IEPA, PCB 13-53.

ABC states that it has actively participated in all phases of U.S. Steel's CAAPP permit process. Mot. at 2. This participation began in 2008 when the Agency issued its original draft permit and has continued through two revised Agency-issued permits, and an appeal of the original permit. *Id.* ABC notes that the subject of the instant action, the proposed changes to Permit No. 950100001, were intended in part to resolve the appeal of the 2013 CAAPP permit that is the subject of PCB 13-53. *Id.*

ABC argues that it will be materially prejudiced and unable to protect its rights as intervenor in PCB 13-53 if not permitted to intervene in this case. Mot. at 1, 3. ABC argues that, if U.S. Steel is successful in this permit appeal, and the Agency issues a revised permit, it will "enable the administrative amendment of U.S. Steel's 2013 CAAPP permit without giving ABC the chance to object." Mot. at 3. ABC asserts being compromised by an order in a case to which it is not a party will amount to judicial prejudice against ABC. *Id.*

ABC states that it "has the knowledge and capability to participate in this appeal, including in negotiations for the settlement of this appeal". Mot. at 4. ABC also asserts that it "has interests that are separate and distinct from IEPA". *Id.* ABC points to its previous petitions to object filed with the United States Environmental Protection Agency (USEPA) stating its dissatisfaction with previous iterations of the 2013 CAAPP permit as an example. *Id.* Although ABC seeks to intervene in support of IEPA, it maintains that it cannot rely on their alignment throughout the proceedings. *Id.*

Further, ABC argues that its motion is timely filed and that granting it will not delay or prejudice this matter. Mot. at 4. ABC states that, to date, "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 [PCB 13-53]." *Id.* ABC also notes that this motion was filed before IEPA has answered or filed the Agency record. *Id.* If granted intervention, ABC acknowledges that it will be bound by the Board and Hearing Officer's orders. *Id.* Finally, ABC notes that it has contacted both U.S. Steel and IEPA regarding their positions on this motion. Mot. at 4-5.

IEPA'S RESPONSE TO MOTION TO INTERVENE

The Agency does not object to ABC's motion to intervene, subject to specific limitations on ABC's intervention. IEPA Resp. at 2, citing 35 Ill. Adm. Code 101.402(e); see also United States Steel Corporation v. IEPA, PCB 13-53, slip op. at 5 (Nov. 21, 2013).

U.S. STEEL'S RESPONSE TO MOTION TO INTERVENE

U.S. Steel does not object to ABC's motion to intervene, subject to specific limitations on

ABC’s intervention. USS Resp. at 2. U.S. Steel states that this is consistent with its position in prior permit appeals. *Id.* at 2. Specifically, U.S. Steel requests that ABC should be limited to be consistent with Board regulations and past Board orders: “ABC is bound by Board and hearing officer orders already issued or by evidence already admitted; ABC does not control any decision deadline; and ABC cannot raise any issues that were not raised or might more properly have been raised at an earlier stage in the proceeding.” *Id.*, citing United States Steel Corporation v. IEPA, PCB 13-53, slip op. at 5 (Nov. 21, 2013); 35 Ill. Adm. Code 101.402(e).

BOARD DISCUSSION

Under the Illinois Environmental Protection Act (415 ILCS 5 (2022)), the Agency is the permitting authority, responsible for administering Illinois’ regulatory programs to protect the environment. In this case, the Agency denied U.S. Steel’s application to revise its construction permit/Prevention of Significant Deterioration (PSD) approval for Granite City Works. Pet., Statement of Reasons at 1-91.

U.S. Steel submitted its petition under Section 40.3(a)(1) of the Act. Pet. at 2 (¶4), citing 415 ILCS 5/40.3(a)(1) (2022); 35 Ill. Adm. Code 105.604(a). Section 40.3(a)(2) provides that “[a]ny person who participated in the public comment process and is either aggrieved or has an interest that is or may be adversely affected by the PSD permit may, within 35 days after final permit action, petition for a hearing before the Board to contest the decision of the Agency.” 415 ILCS 5/40.3(a)(2) (2022); see 35 Ill. Adm. Code 105.604(c).

Because its application to revise its construction permit/PSD approval included a request for Integrated Processing of revisions to its CAAPP permit, U.S. Steel also submitted its petition under Section 40.2(a) of the Act. Pet. at 3 (¶5), citing 415 ILCS 5/40.2(a) (2022), 35 Ill. Adm. Code 105.302. Section 40.2(a) provides that “any person who participated in the public comment process pursuant to subsection 8 of Section 39.5 of this Act, or any other person who could obtain judicial review pursuant to Section 41(a) of this Act, may, within 35 days after final permit action, petition for a hearing before the Board to contest the decision of the Agency.” 415 ILCS 5/40.2(a) (2022).

U.S. Steel also submitted its petition under Section 40(a) of the Act, which concerns general construction permit requirements and PSD approval. Pet. at 3, (¶6), citing 415 ILCS 5/40(a)(1) (2022). Finally, because the Agency’s denial addressed Nonattainment New Source Review issues, U.S. Steel filed its petition under Section 40(d) of the Act. Pet. at 3, (¶6), citing 415 ILCS 5/40(d) (2022); 35 Ill. Adm. Code 105.204.

ABC seeks to intervene in this action under Section 101.402 of the Board’s rules. See 35 Ill. Adm. Code 101.402. Section 101.402(d) provides:

Subject to subsection (b), the Board may permit any person to intervene in any adjudicatory proceeding if:

...

- 2) The person may be materially prejudiced absent intervention; or
- 3) The person is so situated that the person may be adversely affected by a final Board order. 35 Ill. Adm. Code 101.402(d).

The Board finds, and the parties do not dispute, that the Board has the authority to grant ABC's motion to intervene in this proceeding. Section 40.3(a) of the Act allows a person who is has an interest in, or who is aggrieved by, an Agency PSD permit determination to appeal that Agency PSD permit determination to the Board. 415 ILCS 5/40.3(a) (2022). The person appealing must have participated in the public comment process for the PSD permit application. *Id.* Similarly, Section 40.2(a) of the Act allows certain persons to appeal an Agency final CAAPP permit determination to the Board. 415 ILCS 5/40.2(a) (2022). This includes persons who participated in the Agency's public comment process pursuant to Section 39.5(8) of the Act. *Id.*; 415 ILCS 39.5(8) (2022). The parties do not dispute that ABC participated before the Agency during U.S. Steel's PSD permit application process or its CAAPP permit application process. Therefore, granting ABC's motion to intervene "would not give party status to a person without standing to have appealed under Section 40.2(a) of the Act." United States Steel Corporation v. IEPA, PCB 10-23, slip op. at 6 (Dec. 3, 2009).

When ruling on a motion to intervene, the Board considers the timeliness of the motion and whether intervention will interfere with an orderly proceeding. 35 Ill. Adm. Code 101.402(b). At the time of ABC's filing, the Agency's record has not been filed, no hearing has been scheduled, no dispositive motions are pending, and no discovery orders have been issued. Considering ABC's conflicts with the prior Agency-issued permits, as well as the parties' differing interests, the Board finds that ABC would be materially prejudiced if it were not allowed to intervene. *See* 35 Ill. Adm. Code 101.402(d)(2). Further, the Board finds, and the parties do not dispute, that ABC and its members are so situated that ABC may be adversely affected by a final Board order. *See* 35 Ill. Adm. Code 101.402(d)(3). The Board also finds that intervention by ABC is timely given the current procedural posture of the case and would not interfere with an orderly proceeding. *See* 35 Ill. Adm. Code 101.402(b).

As an intervenor, ABC "has all the rights of an original party to this proceeding . . . including the right to appeal the Board's final decision." United States Steel Corporation v. IEPA, PCB 13-53, slip op. at 4, *citing* 35 Ill. Adm. Code 101.402(e). However, like any intervenor, ABC "must take the case as it finds it." *Id.* The Board has the authority to "limit the rights of the intervenor as justice may require." 35 Ill. Adm. Code 101.402(e). ABC, IEPA and U.S. Steel agree that ABC's intervention should be limited as follows: ABC is bound by all hearing officer and Board orders; ABC does not control the statutory deadline; and ABC cannot raise issues that were raised or might more properly have been raised at an earlier stage of this proceeding. USS Resp. at 4; IEPA Resp. at 1-2; Mot. at 2. The Board agrees with the parties' assessment in limiting ABC's participation in this manner, as set forth in 35 Ill. Adm. Code 101.402(e).

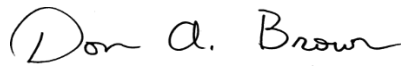
In conclusion, the Board finds that ABC has satisfied the relevant requirements of the Act and Board regulations to intervene in this permit appeal. The Board finds that granting ABC's motion to intervene is consistent with past Board orders and procedural fairness, and grants the motion, subject to limitations.

ORDER

The Board grants ABC's motion to intervene in this proceeding, subject to limitations. ABC is bound by Board and hearing officer orders already issued and by evidence already admitted; ABC does not control any decision deadline; and ABC cannot raise issues that were not raised or might more properly have been raised at an earlier stage in the proceeding. *See* 35 Ill. Adm. Code 101.402(e).

IT IS SO ORDERED.

I, Don A. Brown, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on August 22, 2024, by a vote of 4-0.

A handwritten signature in cursive script that reads "Don A. Brown".

Don A. Brown, Clerk
Illinois Pollution Control Board