

ILLINOIS POLLUTION CONTROL BOARD
May 18, 2006

AMERICAN BOTTOMS CONSERVANCY,)
)
Petitioner,)
)
v.) PCB 06-171
) (Third Party NPDES Permit Appeal)
ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY and UNITED)
STATES STEEL CORPORATION -)
GRANITE CITY WORKS,)
)
Respondents.)

ORDER OF THE BOARD (by T.E. Johnson):

On May 8, 2006, American Bottoms Conservancy timely filed a petition asking the Board to contest issuance of a National Pollutant Discharge Elimination System (NPDES) permit issued pursuant to Section 40(e) of the Illinois Environmental Protection Agency (Agency). *See* 415 ILCS 5/40(e) (2004); 35 Ill. Adm. Code 105.206(a). Because the postmark date of the joint request is within the extended time for filing, the petition was timely filed. 35 Ill. Adm. Code 101.300(b)(2), 105.404. The permit was issued by the Illinois Environmental Protection Agency (Agency) on March 31, 2006, to the United States Steel Corporation Granite City Works for its steelmaking facility at 20th and State Streets, in Granite City, Madison County.

Accompanying the petition for review was a motion of counsel for petitioners, Maxine I. Lipeles, of the Interdisciplinary Environmental Clinic, to appear *pro hac vice* before the Board. The Board considers and grants that motion below.

ACCEPT PETITION FOR REVIEW

American Bottoms Conservancy appeals on the grounds that (1) the Agency erred in setting various effluent limitations in the permit and granted exemptions not allowed by law; (2) the permit would allow discharges that violate water quality standards and effluent limitations, (3) the permit would fail to require adequate pollutant monitoring; (4) the permit does not include a compliance schedule to address a history of non-compliance; (5) the permit does not establish effluent limitations on the discharge of pollutants present in the facility's effluent discharges; and (6) the Agency issued the permit without first addressing public comments and holding a requested public hearing. The petition meets the content requirements of 35 Ill. Adm. Code 105.210. The Board accepts the petition for hearing.

A third-party appeal of an NPDES permit is authorized by Section 40(e) of the Act. 415 ILCS 5/40(e) (2004). The Board's procedural rules state that "[i]f the Agency grants or denies a permit under subsection (b) of Section 39 of the Act, a third party, other than the permit

applicant or Agency, may petition the Board for a hearing to contest the decision of the Agency (415 ILCS 5/40(e)(1).” 35 Ill. Adm. Code 105.204(b).

Section 40(e)(2) requires that the petition contains “a demonstration that the petitioner raised the issues contained within the petition during the public notice period or during the public hearing of the NPDES permit application, if a public hearing was held, and a demonstration that the petitioner is so situated as to be affected by the permitted facility.” 415 ILCS 5/40(e)(2). Further, Section 40(e)(3) provides that if the Board determines that the petition is not duplicitous or frivolous and contains a satisfactory demonstration under Section 40(e)(2), the Board shall “hear the petition.” 415 ILCS 5/40(e)(3). Petitioners represent that they presented written comments and repeatedly requested a public hearing on the draft permit, but they maintain that the Agency did not appropriately consider the comments, and that the Agency failed to conduct a public hearing according to applicable requirements. Petitioners raised legal and scientific issues regarding flaws in the draft permit. The petition also states that petitioner will be affected adversely when pollution discharged under the permit causes or contributes to the creation of offensive conditions in Horseshoe Lake.

The Board finds that the petition is neither duplicitous nor frivolous, and that the petition contains a satisfactory demonstration under Section 40(e)(2) of the Act. This matter is accepted for hearing. The hearing in this matter must be scheduled and completed in a timely manner, consistent with Board practices, and the applicable statutory decision deadline (set out in Section 40(a)(3) of the Act), or the decision deadline as extended by a waiver.

As the Board noted in McHenry County Defenders, Inc. v. IEPA (August 6, 1998), PCB 98-173, slip op. at 4-5, the Board has construed the Act and Section 40(e) as giving the person who had requested the permit: (1) the right to a decision within the applicable statutory time frame (now 120 days); and (2) the right to waive (extend) the decision period. United States Steel Corporation Granite City Works, the permit applicant, is the party with the right to a decision within 120 days and is the only party with the right to waive the decision deadline. The result is that failure of this Board to act within the 120 days would allow the permit applicant, United States Steel Corporation Granite City Works, to pursue an appellate court order as detailed in Section 40(a)(3) of the Act.

The Board will assign a hearing officer to conduct hearings consistent with this order and the Clerk of the Board will promptly issue appropriate directions to that assigned hearing officer. The assigned hearing officer must inform the Clerk of the Board of the time and location of the hearing at least 40 days in advance of hearing so that a 30-day public notice of hearing may be published. After hearing, the hearing officer must submit an exhibit list, a statement regarding credibility of witnesses, and all actual exhibits to the Board within five days after the hearing.

Any briefing schedule must provide for final filings as expeditiously as possible. Absent any future waivers of the decision deadline, the statutory decision deadline is now September 5, 2006, (120 days from May 8, 2006). The Board meeting immediately preceding the decision deadline is scheduled for August 17, 2006.

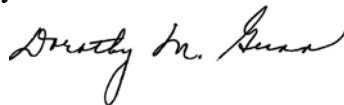
If, after appropriate consultation with the parties, the parties fail to provide an acceptable hearing date or if, after an attempt the hearing officer is unable to consult with all of the parties, the hearing officer shall unilaterally set a hearing date. The hearing officer and the parties are encouraged to expedite this proceeding as much as possible. The Board notes that Board rules (35 Ill. Adm. Code 105.102) require the Agency to file the entire Agency record of the permit application within 14 days of notice of the petition.

GRANT MOTION TO APPEAR *PRO HAC VICE*

Accompanying the petition for review was a motion of counsel for petitioners, Maxine I. Lipeles, of the Interdisciplinary Environmental Clinic, to appear *pro hac vice* before the Board. In support of her petition, Maxine I. Lipeles asserts as follows: (1) she is the Director of the Interdisciplinary Environmental Clinic at the Washington University School of Law, which is representing the American Bottom Conservancy; (2) she has been a member in good standing of the bar of the State of Missouri since 1982; (3) she has been a member in good standing of the bar of the Commonwealth of Massachusetts, currently on inactive status; (4) she is a member in good standing of the bar of a number of federal courts on active or inactive status; (5) she has never been disbarred or the subject of disbarment proceedings; (6) no disciplinary proceedings are currently pending, nor have any disciplinary proceedings ever been brought against her; (7) she is familiar with the Illinois Code of Civil Procedure, the rules of the Illinois Supreme Court, and the procedural rules of the Board; (8) she agrees to be bound by the rulings of the Board. The Board grants this motion to appear *pro hac vice* and enters the appearance of Maxine I. Lipeles on behalf of the American Bottom Conservancy in this matter.

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on May 18, 2006, by a vote of 4-0.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board