

BEFORE THE POLLUTION CONTROL BOARD
OF THE STATE OF ILLINOIS

AMERICAN BOTTOM CONSERVANCY,)
)
Petitioner,)
)
v.)
)
ILLINOIS ENVIRONMENTAL PROTECTION)
AGENCY, and UNITED STATES STEEL)
CORPORATION - GRANITE CITY WORKS)
)
Respondents.)

Case No. PCB 2006-171
(NPDES Permit Appeal)

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Pollution Control Board

NOTICE OF FILING

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PLEASE TAKE NOTICE that on December 18, 2006 there was filed with the Clerk of the Illinois Pollution Control Board of the State of Illinois an original and executed copies of the **United States Steel Corporation's Post-Hearing Brief**, a copy of which is herewith served upon you.

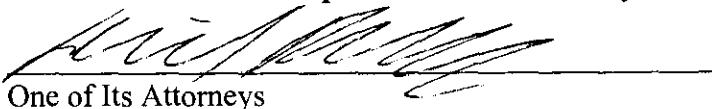
Dated: December 18, 2006

Respectfully submitted,

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STATES STEEL CORPORATION -)	
GRANITE CITY WORKS,)	
)	
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UNITED STATES STEEL CORPORATION'S POST-HEARING BRIEF

Respondent, United States Steel Corporation - Granite City Works ("U. S. Steel"), submits its Post-Hearing Brief and requests that Petitioner American Bottom Conservancy's ("ABC") Petition for Review of a Decision by the Illinois Environmental Protection Agency ("Petition for Review") and request for a public hearing to the Illinois Environmental Protection Agency ("IEPA") be denied. In support of its Brief, U. S. Steel states as follows:

INTRODUCTION

ABC filed a third-party appeal of an NPDES permit that IEPA issued to U. S. Steel's Granite City Works. The sole issue before the Board is whether IEPA abused its discretion by denying ABC's request for a public hearing on the proposed permit. As a review of the Administrative Record and relevant law shows, IEPA did not abuse its discretion in denying ABC's request. ABC's Petition for Review and Post-Hearing Brief are attempts to circumvent the relevant standards for determining whether IEPA should have held a public hearing regarding the proposed NPDES permit for U. S. Steel's Granite City facility. Specifically, in its Post-Hearing Brief, ABC raises a litany of issues that were not raised in any comments to IEPA

during the public notice period (also referred to as a “public comment period”) for the proposed permit. Such a strategy ignores the rule that the Board cannot consider any issues that were not raised during the public notice period. *See* 415 ILCS 5/40(e)(2)(A). ABC also raises numerous issues that may be relevant to Horseshoe Lake in a general manner, but ABC fails to establish any connection between such issues and the NPDES permit that was issued to U. S. Steel. Such a failure to connect ABC’s complaints to U. S. Steel’s permit is fatal to ABC’s claim, as ABC must demonstrate that there was a significant degree of public interest **in the proposed permit** to warrant a hearing. *See* 35 Ill. Adm. Code 309.115.

Further, ABC has repeatedly said that it wanted a hearing to ask questions about the proposed permit. IEPA, however, did provide ABC with opportunities for ABC to ask questions and obtain more information about the proposed permit, in that IEPA provided the name and telephone number of IEPA’s permit engineer to contact with questions, and IEPA offered to meet with ABC. In its brief and at hearing, ABC completely glossed over the fact that its letter filed within the public notice period gave IEPA the option of meeting with ABC if IEPA decided not to hold a public hearing on the permit. IEPA’s offer to meet with ABC satisfied this request. Moreover, ABC had an opportunity and did participate in public meetings and hearings on the impairment status of Horseshoe Lake, which is one of the issues ABC discussed in its comments.

In addition, ABC makes numerous factually inaccurate and misleading assertions about issues that are outside the Board’s jurisdiction in this appeal. Without waiving any arguments related to jurisdiction, U. S. Steel addresses each of ABC’s flawed arguments below. Lastly, ABC ignores binding and long-established case law that holds that IEPA’s decision to hold a public hearing is reviewed for an abuse of discretion, with the burden of proof resting on the party challenging the decision. As the relevant law, Administrative Record, and other evidence

shows, IEPA did not abuse its discretion in denying ABC's request for a public hearing. Accordingly, ABC's Petition for Review and request for a public hearing should be denied.

BACKGROUND FACTS

1. On October 14, 2002, U. S. Steel submitted an application to renew its NPDES permit to IEPA for its Granite City Works facility located in Granite City, Illinois. R. 135.¹ This facility has had NPDES permits ever since such permits have been required. R. 554. After conducting a thorough analysis of U. S. Steel's Granite City Works facility and its discharges into Horseshoe Lake, on December 19, 2004, IEPA issued a proposed NPDES permit for the Granite City Works facility (the "Proposed Permit"), that would allow the facility to discharge into Horseshoe Lake in compliance with Illinois water quality standards. R. 518.

2. The Proposed Permit stated that the public notice period started on December 19, 2004 and ended on January 18, 2005. R. 518. The Notice for Proposed Permit stated that "If written comments or requests indicate a significant degree of public interest in the draft permit, the permitting authority may, at its discretion, hold a public hearing. . . . For further information, please call Beth M. Burkard [at IEPA]." R. 518. The Proposed Permit further provided:

Any interested person may submit written request for a public hearing on the draft permit, stating their name and address, **the nature of the issues proposed to be raised and the evidence proposed to be presented** with regards to these issues in the hearing. Such requests must be received by the Agency not later than 30 days from the date of this publication.

If written comments and/or requests indicate a significant degree of public interest in the draft permit, the permitting authority may, at its discretion, hold a public hearing.

R. 522 (emphasis added).

¹ Citations of "R. ____," will be to the Administrative Record, "SR. ____," will be to ABC's Second Supplement to the Administrative Record, and "Trans. ____," will be to the Transcript from the November 20, 2006 hearing before the Chief Administrative Officer.

3. On January 17, 2005, Kathleen Logan Smith submitted a comment to IEPA on behalf of the Health & Environmental Justice - St. Louis ("HEJ"). R. 532. That letter stated the following to IEPA:

Please hold a public hearing on the US Steel Corp. NPDES permit referenced above and extend the comment period for three weeks on the above referenced permit. This permit warrants public involvement because it impacts directly a recreational body of water promoted by the Illinois Department of Natural Resources for boating, fishing, bird watching, and waterfowl hunting.

R. 532. The letter also asserted that the Proposed Permit would allow lead to be discharged into Horseshoe Lake, which "would add up to hundreds of pounds and may have a serious detrimental effect on organisms living in the lake." R. 532.² The letter did not state or describe any evidence to support this assertion, nor did it indicate that such evidence could reasonably be expected to be presented if a public hearing on the Permit were held. The letter further stated "A public hearing would give citizens an opportunity to ask questions about the permit, voice concerns, and hear explanations." R. 532. The letter did not identify any regulations or sections of the Illinois Environmental Protection Act (the "Act") that would be violated if the permit were issued as it was drafted. R. 532.

4. On January 18, 2005, Katherine Andria and four other individuals submitted comments on behalf of ABC, HEJ, Neighborhood Law Office (East St. Louis), Sierra Club, and Webster Groves Nature Study Society. R. 537-539. That letter provided:

² It should be noted that U. S. Steel does not use lead in its processes. R. 601. The increased load limits that appear on paper are due to production changes and the load limit is consistent with effluent limitation guidelines and federal rules at 40 C.F.R. 420. *Id.*

Our organizations request that the Agency hold a public hearing for the above-entitled permit. The receiving waters for this permit is Horseshoe Lake at Horseshoe Lake State Park in Madison County. The lake is used recreationally by outdoor enthusiasts, bird watchers, nature lovers, fishers, hunters and families. It is also used by low-income and minority folks for subsistence fishing.

R. 537. The letter did not indicate what, if any, evidence might be presented regarding this assertion that subsistence fishing occurred at the Lake.³ The January 18, 2006 letter commented that Horseshoe Lake is impaired for PCBs, pH, suspended solids, excessive algal growth, ammonia (unionized), nutrients, phosphorus, total and ammonia-N, and that “[w]e have seen fish caught at Horseshoe Lake with melanoma.” R. 537. The letter stated that Professor Richard Brugam at Southern Illinois University at Edwardsville showed that the testing of sediments in Horseshoe Lake shows high concentrations of lead, although the letter did not provide a copy of any study from Professor Brugam. R. 537. The letter also stated:

Granite City Steel in this permit would be allowed to put additional lead into the lake. It would be allowed to put additional ammonia into the lake. That appears to be contrary to the Clean Water Act and to the Bureau of Water’s stated mission to ensure that Illinois’ rivers, streams and lakes will support all uses for which they are designated including protection of aquatic life and recreation.

R. 537. The letter also provided information purportedly from a U.S. EPA Enforcement & Compliance History Online (ECHO) report that showed U. S. Steel’s Granite City facility’s compliance history. R. 537-38. Finally, the letter stated “We ask that you hold a public hearing in order to allow citizens to ask questions and present information and testimony. We have just recently received the SIUE reports and have not had time to review them or to get technical guidance as to their meaning.” R. 539. ABC and the other organizations involved with the letter never provided a copy of any report or study from Professor Brugam to IEPA. Most

³ The fish advisory in effect for Horseshoe Lake is for PCBs, which U. S. Steel does not discharge. R. 554.

significantly, ABC's letter failed to identify any provisions of the Act or regulatory standards for the protection of water quality that would be violated if the permit were issued as drafted. R. 537-539. The letter concludes by stating that "If you deny this request for a hearing, we ask for a meeting with you and your staff, . . ." R. 539.

5. On March 8, 2006, IEPA issued a final NPDES permit for U. S. Steel's Granite City Works facility (the "Final Permit"). R. 637.

6. On March 31, 2006, IEPA reissued the permit to coincide with its issuance of the responses to the comments it received. R. 645, 648, 651-657.

7. On May 4, 2006, ABC filed by mail its Petition for Review alleging, among other things, that IEPA improperly denied ABC's request for a public hearing. Petition for Review, ¶¶ 27-29. The Clerk's Office received the Petition on May 8, 2006. HEJ, Neighborhood Law Office, East St. Louis, Sierra Club, and Webster Groves Nature Study Society did not appeal IEPA's denial of their public hearing request.

8. On September 21, 2006, the Board granted U. S. Steel's and IEPA's Motions to Dismiss all counts of ABC's Petition for Review, with the exception of the issue involving ABC's public hearing request.

9. On November 20, 2006, a hearing was held before the Board Hearing Officer on whether IEPA improperly denied ABC's request for a public hearing.

ARGUMENT

I. Standard of review.

A. The standard of review for IEPA's decision to deny a public hearing is abuse of discretion.

Under 35 Ill. Adm. Code 309.115(a)(1), IEPA determines whether a party has demonstrated a significant degree of public interest sufficient to warrant the holding of a public

hearing. IEPA's decision to hold a public hearing "is a discretionary decision to be made by the Agency." *Borg-Warner Corp. v. Mauzy*, 100 Ill. App. 3d 862, 867, 427 N.E.2d 415, 419 (3d Dist. 1981). The *Borg-Warner* Court further explained the standard for demonstrating that IEPA should allow a public hearing, stating that 35 Ill. Adm. Code 309.115:

establishes that the party requesting a public hearing has the burden of showing why it is warranted. Certainly, agency action on a decision is reviewable, subject to an abuse of discretion standard, but the availability of review over the determination does not alter the essentially discretionary nature of the determination.

Id.; *Marathon Oil Co. v. IEPA*, PCB No. 92-166, 1994 Ill. ENV. LEXIS 488, *18-19 (IPCB, March 31, 1994) ("Whether an Agency hearing is to be held in an NPDES permit review is discretionary with the Agency, as has been declared by the [*Borg-Warner*] court.")⁴

Accordingly, IEPA's decision to not grant ABC's request for a public hearing is reviewed for an abuse of discretion.

Under the abuse of discretion standard, an agency abuses its discretion when it makes a decision "without employing conscientious judgment or when the decision is clearly against logic." *Deen v. Lustig*, 337 Ill. App. 3d 294, 302, 785 N.E.2d 521, 529 (4th Dist. 2003) (citing *Bodine Electric of Champaign v. City of Champaign*, 305 Ill. App. 3d 431, 435, 711 N.E.2d 471, 474 (4th Dist. 1999) ("the question is whether . . . the court exceeded the bounds of reason and ignored recognized principles of law so that substantial prejudice resulted.")); *see also Whirlpool Corp. v. Certain Underwriters at Lloyd's London*, 295 Ill. App. 3d 828, 839, 692 N.E.2d 1229, 1237 (1st Dist. 1998); *Modine Manufacturing Co. v. PCB*, 192 Ill. App. 3d 511, 519, 548

⁴ The *Borg-Warner* Court interpreted former Water Rule 909(a), the language of which was identical to 35 Ill. Adm. Code 309.115(a). Accordingly, the Court was aware of the word "shall" in the regulation, upon which ABC heavily relies in arguing for a nondiscretionary standard of review. Despite the "shall" in the regulation, the Court still ruled that IEPA's decision to hold a public hearing is reviewed for an abuse of discretion. *Borg-Warner*, 100 Ill. App. 3d at 867, 427 N.E.2d at 419. Not surprisingly, ABC wholly ignores the *Borg-Warner* case.

N.E.2d 1145, 1150 (2d Dist. 1989) (no abuse of discretion unless the agency acted “unreasonably or arbitrarily.”)

In an attempt to avoid the abuse of discretion standard of review, ABC completely ignores the holding by the *Borg-Warner* Court. Instead, ABC relies on cases that do not even involve a public hearing request, with the exception of one administrative case from West Virginia (that is addressed separately below in section III). Instead, the cases cited by ABC address the standard of review for an agency’s decision to issue a permit. *See Des Plaines River Watershed Alliance v. Illinois EPA*, PCB No. 04-88, 2005 Ill. ENV LEXIS 622, *15 (IPCB, Nov. 17, 2005) (applying the “substantial evidence” standard of review to agency’s decision on motion for summary judgment). In fact, in an apparent oversight in reviewing their case law, ABC actually cites a case from the Illinois Appellate Court that directly rejects their argument that a substantial evidence standard of review is appropriate in this case. *See Finnerty v. Personnel Board of the City of Chicago*, 303 Ill. App. 3d 1, 9-11, 707 N.E.2d 600, 606-08 (1st Dist. 1999) (citing *Basketfield v. Police Board*, 56 Ill. 2d 351, 358 (1974)). Specifically, the *Finnerty* Court held that the Illinois Supreme Court in *Basketfield* rejected the substantial evidence standard of review for reviewing administrative decisions, and, therefore, the *Finnerty* Court found that it also had to reject such a standard of review. *Id.* None of the cases cited by ABC apply to this case or overcome the abuse of discretion standard that is clearly set forth in *Borg-Warner* and that governs the Board’s review of IEPA’s denial of ABC’s public hearing request.

B. The relevant time period for reviewing IEPA’s decision is limited to only the comments submitted during the public notice period.

The Act provides that only issues raised during the public notice period for a proposed NPDES permit can be the basis for a third party appeal of IEPA’s issuance of a NPDES permit,

and requires a third party petitioner to make “a demonstration that the petitioner raised the issues contained within the petition during the public notice period . . .” 415 ILCS 5/40(e)(1)(A). Moreover, 35 Ill. Adm. Code 309.115(a)(2) provides that a request for a public hearing “shall be filed with[in] the 30-day public comment period . . .” Under these two provisions, the only issues that ABC can raise in this appeal are the issues that were stated during the public notice period from December 19, 2004 to January 18, 2005. R. 518. Thus, the only issues that can be raised on appeal are issues raised in two letters, the January 17, 2005 and January 18, 2005 comments, from five individuals who claim to represent the various organizations. However, except for the request for a public hearing, ABC did not raise in its Petition the other issues it raised in its comments dated January 18, 2006, and those issues are not properly before the Board.

As asserted in its Post-Hearing Brief, ABC not only submitted comments on January 18, 2005, but also submitted comments on October 3, 2005 and December 9, 2005. These comments, however, were received outside of the public notice period for the Proposed Permit that ended on January 18, 2005. R. 518. Accordingly, IEPA justifiably disregarded these comments under 415 ILCS 5/40(e) and 35 Ill. Adm. Code 309.115(a)(2). In fact, the Board has already ruled on the issue of the scope of review for ABC’s Petition, and dismissed all issues that ABC did not raise during the public comment period. *ABC v. IEPA, et al.*, PCB 06-171, p. 2 (Sept. 21, 2006) (in ruling on ABC’s Motion to Dismiss, the Board held that because the only issue raised in the comment and contained in ABC’s petition is the request for a public hearing, “the issues contained in the petition, other than the issue concerning the request for a public hearing, are improperly before the Board, and will be dismissed.”). As a result, the ultimate

inquiry on review is whether IEPA abused its discretion in denying ABC's public hearing request based only on the issues raised in the January 17, 2005 and January 18, 2005 comments.⁵

II. A public hearing will not affect IEPA's proper issuance of the Final Permit to U. S. Steel.

A. There is no evidence that IEPA's issuance of the Final Permit fails to comply with the Act or its attendant regulations.

Under section 39(a) of the Act, "[w]hen the Board has by regulation required a permit for the construction, installation, or operation of any type of facility . . . , the applicant shall apply to the Agency for such permit and it shall be the duty of the Agency to issue such a permit upon proof by the applicant that the facility . . . will not cause a violation of this Act or of regulations hereunder." 415 ILCS 5/39(a). Under this section, U. S. Steel timely filed for a NPDES permit and met its burden for the issuance of such a permit. Accordingly, IEPA was required to issue a NPDES permit to U. S. Steel's Granite City Works facility because the discharges from the facility would not cause a violation of the Act or its regulations.

ABC has failed to demonstrate that it would present any evidence at a requested public hearing or that it raised any issue in the January 17, 2005 or January 18, 2005 comments that would affect IEPA's issuance of the Final Permit to U. S. Steel. Neither the January 17, 2005 nor January 18, 2005 letters raise any issues alleging that any provision of the Act or any of its attendant regulations would be violated if the proposed permit were issued, nor did the letter assert that a public hearing was necessary to discuss even a potential for the regulated discharge to exceed established water quality standards if the Final Permit were issued. Instead, ABC only stated that a public hearing should be ordered by IEPA "in order to allow citizens to ask

⁵ It is for this reason that the extensively quoted testimony from the November 20, 2006 hearing on pages 6-8 of Petitioner's Post-Hearing Brief, as well as numerous other factual assertions identified throughout the brief that are inconsistent with the January 17, 2005 and January 18, 2005 comments should be disregarded in determining whether IEPA abused its discretion in denying ABC's public hearing request. In other words, IEPA did not have the information presented at the November 20, 2006 hearing when IEPA made its decision.

questions and present information and testimony.” R. 539; *see also*, R. 532 (HEJ comment only states that “A public hearing would give citizens an opportunity to ask questions about the permit, voice concerns, and hear explanations.”) Indeed, as was stated at the November 20, 2006 hearing, Horseshoe Lake has substantial diversity of wildlife as would indicate a satisfactory habitat to support life. Trans. 113-114. That bio-diversity has apparently co-existed with the Granite City steel mill for decades. The permit in question is a renewal of a discharge permit for U. S. Steel’s Granite City facility. R. 135.

Further, the January 18, 2005 letter clearly asks IEPA for the option of a public hearing or a meeting with Agency staff. R. 539. Yet, ABC did not take advantage of two opportunities it had to ask IEPA questions about the permit. By not taking advantage of these opportunities to be heard, ABC failed to demonstrate that a significant degree of public interest in the permit existed, and that apparent lack of conviction supported IEPA’s conclusion that it was not reasonable to expect significant additional comments would be obtained if a hearing were held. There is no information in the record that ABC contacted Ms. Burkard at IEPA to ask questions about the permit, even though Ms. Burkard’s name and telephone number were on the Notice for the Proposed Permit as the person to contact for further information. R. 496, 518. Additionally, as discussed in more detail below, ABC cancelled a meeting that IEPA scheduled to discuss at least the subsistence fishing issues that ABC raised in its comment letter. SR. XX-XXIV. ABC could have asked that its other comments to be included in that meeting and, indeed, ABC asked that Frank Holten State Park be included on the meeting agenda. R. 633, SR. XX. In the end, ABC has failed to show that IEPA abused its discretion in denying ABC’s public hearing request.

B. ABC improperly raises issues for the first time in its post hearing brief that were not raised in either its comments or in its Petition for Review.

ABC argues for the first time in its Post-Hearing Brief (Pet. Br., p. 14) that IEPA failed to ensure that U. S. Steel's discharges are in compliance with the narrative water quality standard that provides that "Waters of the State shall be free from sludge or bottom deposits, floating debris, visible oil, odor, plant or algal growth, color or turbidity of other than natural origin." 35 Ill. Adm. Code 302.203. This argument should be disregarded because it was not raised in either the January 17, 2005 or January 18, 2005 comments during the public comment period. R. 532, 537-539. Nor was the issue raised in ABC's Petition. Thus, according to the Board's earlier decision on U. S. Steel's and IEPA's Motions to Dismiss on September 21, 2006, because issues involving narrative water quality standards were not raised during the public notice period, they cannot be asserted now as part of ABC's Petition. *See* 415 ILCS 5/40(e); *see also* § Argument, I.B., *supra*.

ABC also argues in its brief for the first time that U. S. Steel's Granite City facility operates under a "central treatment exemption" that "allows it to discharge more zinc into Horseshoe Lake than would otherwise be permitted by federal effluent guidelines." Pet. Br., p. 13. Again, this issue should be disregarded under 415 ILCS 5/40(e). Even if the issue were properly raised during the public notice period,⁶ ABC does not understand the central treatment provision. This provision was approved in 1982 by the U.S. Environmental Protection Agency ("U.S. EPA") to exempt certain facilities from the technology based categorical treatment requirements established for certain operations at steel mills. R. 627. In 2002, U.S. EPA revised its technology based effluent limitations guidelines and standards for wastewater discharges from

⁶ Also, this is not the proper forum for challenging this federal rule. 33 U.S.C. § 1369. Under Section 509 of the federal Clean Water Act, 33 U.S.C. § 1369, appeals of effluent limitations guidelines and standards must be filed with the federal Circuit Court of Appeals within 120 days of the effective date of the rule, which in this case was November 18, 2002. R. 626.

the iron and steel manufacturing category. As part of that rulemaking, U.S. EPA decided to continue this central treatment waiver provision for zinc. R. 626-627. Although this waiver provision does not require Granite City Works to follow the technology-based requirements in 40 C.F.R. 420 for zinc discharges, the provision does not allow U. S. Steel to violate water quality standards. The concentration-based limit for zinc in U. S. Steel's permit is based on the zinc water quality standard for Horseshoe Lake. R. 314, 341.

ABC also argues in its brief that it is "troubling" that IEPA did not investigate Horseshoe Lake sediments because the Proposed Permit allowed U. S. Steel "to discharge up to 4,380 pounds of zinc and 2,044 pounds of lead into the Lake each year." Pet. Br., p. 12. There are critical flaws with ABC's arguments. First, like the narrative water quality standard and central treatment provision arguments, ABC did not raise these issues in its January 18, 2005 letter, nor did HEJ raise the issues in the January 17, 2005 letter. In fact, neither letter raised any concerns with zinc, and to the extent any issues were raised in the Petition related to zinc or lead discharges, the Board dismissed such issues on September 21, 2006. Thus, the arguments related to zinc are not properly raised now pursuant to 415 ILCS 5/40(e)(2), as zinc issues were never before IEPA during the public notice period. R. 532, 537-539. With respect to lead, ABC's arguments, even if they had been properly raised, are without merit as U. S. Steel does not use lead in its process and the loading limits that appear on paper in the permit are calculated from allowable levels in the federal standards at 40 C.F.R. 420 that apply to U. S. Steel's operations. R. 601. Further, merely stating the total amount that a permit would allow to be discharged over the course of a year does not address the central issue of whether U. S. Steel's discharges under the Proposed and Final Permits violate water quality standards. Again, ABC has not submitted any evidence that shows that IEPA's issuance of the Final Permit will cause a violation of the

Act or any regulation. ABC has not met its burden to prove that the Final Permit should not have been issued. Accordingly, IEPA's denial of ABC's public hearing request and issuance of the Final Permit was not an abuse of discretion.⁷

In addition, ABC charges for the first time in its brief that because U. S. Steel allegedly failed chronic toxicity tests in the past, and because IEPA removed toxicity testing requirements from the Proposed Permit before it issued the Final Permit, there is somehow a concern that justifies a public hearing. Pet. Br., p. 15. As with numerous other issues raised in its brief, this issue was not raised during the public notice period, is not properly before the Board, and, thus, should be disregarded. 415 ILCS 5/40(e)(2). Assuming *arguendo* that it is properly before the Board, ABC's argument is factually incorrect. Numerous results of whole effluent toxicity tests are in the record. See R. 1-3, R. 65-89, R. 156-252, R. 272-273. Of the eight acute toxicity tests that were performed, none of them determined that the effluent was toxic, even at 100% effluent concentrations. *Id.* The chronic test that ABC is referring to was a study that compared the growth rate of green algae (*selenastrum capricornutum*) in Granite City Works' effluent to its growth in water from Horseshoe Lake. R. 156. Initially, this study found that the algae did not grow as well in the effluent as it did in water from Horseshoe Lake. R. 157, 158, 168. Given that Horseshoe Lake is impaired for nutrients and excessive algae growth (R. 519) the possibility exists that the difference in growth rates was attributable to higher nutrient levels in the lake water. Further, a repeat of this test determined that "The effluent sample was not chronically toxic to [green algae] at all concentrations tested." R. 158. ABC failed to mention in its brief that the same report included chronic toxicity tests on daphnia (*Ceriodaphnia dubia*) and fathead

⁷ ABC also raises in its comment letter that "Granite City Steel . . . would be allowed to put additional ammonia into the lake." R. 537. However, the record is clear that the limits for ammonia were set at levels protective of the new water quality standards for Horseshoe Lake. R. 545, 508-509. Further, ammonia degrades in the environment.

minnows, and concluded that “The effluent samples were not chronically toxic to *Ceriodaphnia dubia* through the 100 percent concentration.” R. 158. In addition, “The effluent samples were not chronically toxic to fathead minnows through the 100 percent concentration.” R. 158, 170. However, the growth rate of fathead minnows was reduced at the 100 percent effluent concentration level, but was not significantly reduced at the other effluent concentrations tested. R. 157. When reviewing the permit application, IEPA analyzed the tests of the effluent toxicity and found that “A review of recent whole effluent toxicity test results found that no acute toxicity was present in the effluent.” R. 478. Thus, IEPA concluded that “This significantly reduced the burden of toxicity testing,” and only required Acute Toxicity Screening for *Ceriodaphnia* and fathead minnow. R. 478-479. Accordingly, this issue was properly considered by IEPA, and resulted in the testing being taken out of the Final Permit.

ABC has not been able to point to any evidence that suggests that IEPA violated the Act or its regulations in issuing the Final Permit, or that a public hearing could reasonably be expected to assist IEPA in identifying, evaluating or resolving any such potential violation. Accordingly, IEPA did not abuse its discretion in denying ABC’s public hearing request.

C. ABC failed to present any evidence of public interest specific to the Proposed Permit.

The regulations at 35 Ill. Adm. Code 309.115(a)(1) provide that IEPA “shall hold a public hearing on the issuance . . . of an NPDES Permit . . . whenever the Agency determines that there exists a significant degree of public interest **in the proposed permit . . .**” (emphasis added). In other words, ABC must demonstrate that the public interest is not generally in Horseshoe Lake or some other aspect of IEPA’s regulation of discharges to Horseshoe Lake, but the interest must be specific to the NPDES permit proposed by IEPA to be issued to U. S. Steel’s Granite City Works.

Again, in the January 17, 2005 and January 18, 2005 comments, there is no evidence that the issuance of a NPDES permit to U. S. Steel would be improper or in violation of the Act or any applicable regulatory standards. Instead, the comments discuss issues unrelated to the Proposed Permit. For instance, the January 17, 2005 comment states that discharges of lead from the Granite City Works facility over a period of years “would add up to hundreds of pounds and may have a serious detrimental effect on organisms living in the lake.” R. 532. HEJ, however, was unable to state that the alleged lead discharges would violate any water quality standard or other regulation, such that the discharges under the Proposed Permit limits would be illegal. Contrary to the implications of the comments and as noted elsewhere, U. S. Steel does not use lead in its processes. R. 601. HEJ failed to provide evidence to support its contention about lead discharges to the Lake and failed to identify any such evidence that could reasonably be expected if a public hearing were held. In other words, the comment may involve an issue with regard to Horseshoe Lake generally, but it does not address any particular provision in the Proposed Permit, or indicate that a hearing on the subject could reasonably be expected to illicit relevant information. Accordingly, ABC cannot demonstrate that the January 17, 2005 comment shows that there was a public interest that was particularly connected to the Proposed Permit. Thus, IEPA did not abuse its discretion by failing to provide a public hearing on this issue.

At the hearing and in its brief, ABC and its witnesses spent a considerable amount of time testifying that many people use Horseshoe Lake State Park and that the ecosystem has a diversity of habitat. Trans. 113-114. (“It is a fantastic place for all different types of birds because it has a variety of habitat. . . . It’s a good place to look at butterflies, for the same reason it’s got a diversity of habitat.”) Yet ABC ignores the fact that the steel mill now owned by U. S. Steel has operated under previous NPDES permits and that the NPDES permit at issue is merely

a renewal of an existing permit that essentially maintains the status quo. R. 135.⁸ In fact, the water discharged by Granite City Works helps to keep the lake from drying up during periods of drought and thus, helps maintain critical habitat. R. 600. (“The Department [of Conservation] finds the discharge beneficial; it sustains a constant normal pool for the lake. Without it, this would not be the case. . . .”)

Similarly, the January 18, 2005 letter states that Horseshoe Lake is impaired for various pollutants. That issue, however, is properly addressed through the section 303(d) process related to impaired waters and the development of a total maximum daily load under section 303(d) of the federal Clean Water Act, and not during the NPDES permitting process for individual permits. ABC is aware of that fact, as Ms. Andria from ABC was actively involved in the section 303(d) listing process for Horseshoe Lake, and attended a public hearing regarding 303(d) listed water bodies that addressed the impairment of Horseshoe Lake. Trans. 56, 84; SR. X. (“As a final note, it should be mentioned that the American Bottom Conservancy did participate in a recent hearing regarding 303(d) listed water bodies and did make specific comments regarding Horseshoe Lake.”) As stated in section V, *infra*, ABC had numerous opportunities for their concerns to be heard by IEPA, yet it was ABC that failed to take advantage of those opportunities.

The January 18, 2005 letter also raises the compliance history of the Granite City Works facility with its permit limits by citing information from an U.S. EPA Enforcement and Compliance Online (ECHO) report. This issue, however, is not a permitting issue, but involves

⁸ The permit limits in the renewal permit increased for lead, zinc and ammonia because the load limits for lead and zinc are based on the federal categorical limits at 40 C.F.R. 420, which are production-based and because the ammonia water quality standard in Horseshoe Lake changed. R. 601. It should also be noted that the concentration-based limits were set to meet the water quality standards for Horseshoe Lake. *See* Correspondence from Alan Keller at IEPA, dated April 10, 2006 (as attached to ABC’s First Motion to Supplement the Record), p. 3 (“the Agency has concluded that the NPDES permit issued March 31, 2006 is protective of water quality . . .”); *see also, id.*, pp. 2-5.

IEPA's enforcement of permit limits and was being addressed under relevant enforcement mechanisms. R. 604. ("The IEPA and US EPA have monitored the compliance and have taken appropriate actions in response to permit exceedences.") Further, the information in the ECHO report can be misleading because a single exceedence in a grab sample or 24-hour composite sample during a quarter appears in the ECHO report as a violation for the quarter. R. 556, 604. A person who is not familiar with the report or does not investigate further could end up with the misimpression that a facility with a violation in a single sample for a single parameter was out of compliance for the whole quarter. If ABC has an issue with IEPA's enforcement of NPDES permit limits, such an issue should be taken up with IEPA's enforcement division, and not IEPA's NPDES permit writer.

In addition, ABC argues that IEPA should have held a public hearing because fish were allegedly caught with melanoma in Horseshoe Lake. Pet. Br., p. 14-15. This argument should be rejected because it is based on speculation, not admissible evidence. Specifically, the January 18, 2005 letter stated that "We have seen fish caught at Horseshoe Lake with melanoma. An IDNR fish biologist confirmed fish with melanoma at Horseshoe." R. 537. U. S. Steel provided a comment on this issue, which IEPA considered. R. 603 ("US Steel feels the fish with melanoma statement to be anecdotal.") IEPA then analyzed the issue, but found ABC's statement to be inconclusive. *Id.* ("More information is needed on the fish with melanoma issue - was this reported as part of an IDNR study, or did one fish appear with melanoma, and was confirmed by an IDNR fish biologist?") IEPA's response to ABC's vague comment was entirely appropriate, and IEPA did not abuse its discretion in not using ABC's comment to hold a public hearing. There is no evidence in the record of any specific finding of fish in Horseshoe Lake with melanoma. More importantly, there is no evidence that U. S. Steel's discharges cause

melanoma in fish in Horseshoe Lake. No expert or scientific testimony was submitted during the public comment period or at the November 20, 2006 hearing that would make such a connection. ABC's argument is based on nothing other than conjecture that U. S. Steel is responsible for a problem that may or may not exist in the fish in Horseshoe Lake. In other words, ABC failed to submit any evidence that could reasonably be expected to be presented if a public hearing were held that (1) fish in Horseshoe Lake have a higher incidence of melanoma than other fish or (2) there is any connection between the alleged melanoma in fish and U. S. Steel's effluent. ABC's unsubstantiated comments are not sufficient to determine that IEPA should have held a public hearing to receive comments on the issue. Because ABC did not establish that there was an increased rate of melanoma in Horseshoe Lake and could not connect its alleged observations of melanoma with the Proposed Permit, IEPA did not abuse its discretion in finding that there was no significant public interest specific to the Proposed Permit.

ABC's comment letter also charged that "Canteen Lake, which is part of the same lake, but privately owned, tested high in cadmium." R. 537. Again, this comment would not have affected the issuance of U. S. Steel's permit as cadmium was not detected by the facility in its effluent samples, "nor was any [cadmium] in 19 Agency samples." R. 342. The Agency concluded "that no regulation of cadmium is necessary and that no monitoring beyond the routine requirements is needed." *Id.* This lack of connection between ABC's comments and U. S. Steel's permit further documents that IEPA did not abuse its discretion by not holding a public hearing on the draft permit.

D. ABC improperly attempts to shift the burden of proof for establishing a significant degree of public interest.

ABC argues that because it stated in the January 18, 2005 letter that Professor Brugam had studied bottom sediments in Horseshoe Lake, and because IEPA did not sufficiently

investigate Brugam's studies, IEPA was required to hold a public hearing to resolve the issue. Pet. Br., p. 11. This argument is wrong. First, ABC implies that it was IEPA's burden to analyze Brugam's studies, and that IEPA failed to "visit a library to obtain the study . . ." or "pick up a phone and talk with Professor Brugam." *Id.* As the *Borg-Warner* case clearly states, "the party requesting a public hearing has the burden of showing why it is warranted." *Borg-Warner*, 100 Ill. App. 3d at 867, 427 N.E.2d at 419. Thus, it was ABC's burden to visit a library to obtain Brugam's study to send to IEPA, or to communicate the substance of Brugam's study to IEPA. ABC even admitted in its January 18, 2005 letter "**that the studies had been obtained** only recently and had not been reviewed thoroughly by the commentators." Pet. Br., p. 11 (emphasis added). This begs the question, why did ABC withhold the Brugam studies instead of simply submitting them to IEPA if they were critical to addressing the Proposed Permit? ABC does not have an answer for that question, and instead tries to pawn its error off on IEPA, who in fact attempted to analyze the study by downloading an abstract of a study from the Internet, even though "The commentators did not provide a copy of the study, and thus it is not possible to know the nature of the study." R. 604.⁹ IEPA properly analyzed the issue with the information that was provided to it during the public notice period. Any lack of information that was not before IEPA was ABC's own doing. Perhaps the reason that ABC did not provide a copy of the study is that ABC knew that Brugam concluded that the source of the lead sediments was the lead smelters in the area and particularly NL Industries. Indeed, during the hearing Ms. Andria stated

⁹ ABC also argues that U. S. Steel's use of the Brugam studies "was a clear attempt to distort the record." Pet. Br., p. 12, fn. 4. Tellingly, ABC does not explain why U. S. Steel's use of the Brugam studies is a distortion of the record. ABC ignores that it was the party that raised the issues of Brugam's studies in its public comments in the first place. R. 537. By opening the door to a discussion on Brugam's studies, U. S. Steel inquired at the November 20, 2006 hearing about some of the particulars of the studies. Trans. 77-83. Merely asking ABC's representative, Kathy Andria, questions about the finding in the studies that ABC referenced in the January 18, 2005 letter can hardly be characterized as a distortion of the record. Instead, U. S. Steel was making an appropriate inquiry into relevant evidence.

“It is clear that most of the lead in the sediment from 1900 to the present represents anthropogenic input. We believe that the major source of this lead was the National Lead Industry smelter in Granite City.” Trans. 82. NL Industries is a Superfund site due to lead contamination. Trans. 78. Accordingly, IEPA did not abuse its discretion in not holding a public hearing as a result of any information that ABC submitted in its January 18, 2005 letter regarding Professor Brugam’s studies.

III. ABC failed to demonstrate a significant degree of public interest.

Again, according to 35 Ill. Adm. Code 309.115(a)(1), IEPA will hold a public hearing if it determines “that there is a significant degree of public interest in the proposed permit . . .” In determining the statutory meaning of the words “significant degree of public interest,” the words are to be applied according to their plain and ordinary meaning. *People v. Whitney*, 188 Ill. 2d 91, 97, 720 N.E.2d 225, 228 (Ill. 1999) (“The language of a statute is the best means of determining legislative intent. The statutory language should be given its plain and ordinary meaning.”) (citation omitted). The plain meaning of the word “public” is “of, relating to, or affecting all the people or the whole area of a nation or state.” Merriam-Webster Online Dictionary, <<http://www.m-w.com/dictionary/public>> (as of Dec. 12, 2006). ABC has not made the required showing that there was a significant interest from all the people that use Horseshoe Lake, such that IEPA abused its discretion in denying ABC’s request.

Only two requests were made for a public hearing. The first was in HEJ’s January 17, 2005 comment. R. 532. Although it submitted a public hearing request in that comment, HEJ did not deem its interest sufficiently significant to file a Petition for Review of IEPA’s denial of HEJ’s public hearing request. Trans. at 147. Moreover, the January 17, 2005 letter does not identify one person from the public who would potentially desire to be involved in a public

hearing, but only speculates that a public hearing would give unnamed “citizens an opportunity to ask questions about the permit, voice concerns, and hear explanations.” R. 532.

The other public hearing request of January 18, 2005 was purportedly submitted on behalf of multiple organizations. R. 537-539. However, the January 18, 2005 letter appears to have been written by Kathy Andria, with representatives of other organizations only commenting on Ms. Andria’s letter and allowing their names to be added to the signature block. Trans. 97-98; Trans. 145 (Representative of HEJ “submitted” January 17, 2005 letter and only “signed onto” January 18, 2005 letter); Trans. 119 (Representative of Webster Groves Nature Study Society did not participate in the drafting of the January 18, 2005 letter and did not have any independent knowledge of the water issues in the letter). Indeed, the Sierra Club’s representative at the November 20, 2006 hearing did not even read the January 18, 2005 letter until a week before her deposition was taken on November 6, 2006. Trans. 132.¹⁰ Two of the individuals whose names appear on the January 18, 2005 letter (Kathleen O’Keefe and Jack Norman) did not even testify at the November 20, 2006 hearing as to their participation preparing the letter. Moreover, only ABC deemed IEPA’s denial of the public hearing request sufficiently important to appeal IEPA’s denial of the public hearing request, with HEJ, Neighborhood Law Office, East St. Louis, Sierra Club, and Webster Groves Nature Study Society all declining to file Petitions for Review.

In support of its argument that it demonstrated a significant degree of public interest, ABC cites the West Virginia case of *Queen v. Div. of Env’tl. Prot.*, Appeal No. 621, 1996 W. Va. ENV LEXIS 23 (WVEQB, Aug. 13, 1996). A review of the *Queen* case outlines the substantial

¹⁰ Three members of the public testified at the hearing on November 20, 2006: Robert Johnson (Trans. 101-107); Cathy Copley (Trans. 107-108), and Jason Warner (Trans. 140-143). None of these individuals, however, submitted comments or information to IEPA during the public notice period from December 19, 2004 to January 18, 2005. Trans. 104 (Mr. Johnson admitted that he did not submit any comments on the Proposed or Final Permit.) Accordingly, none of the comments can be used to support ABC’s claim for a public hearing.

burden that ABC faces in this case. In the *Queen* case, in stark contrast to the two requests for a public hearing in the instant case, the appellant presented evidence that an overwhelming number of 57 requests for a public hearing were submitted, as well as evidence of procedural deficiencies by the agency in failing to notify interested persons of the opportunity for a public hearing and carrying out the requests. *Queen*, 1996 W. Va. ENV LEXIS 23, at *5-6. Here, there is no evidence that IEPA failed to comply with its procedural obligations in giving notice of the Proposed Permit or that the public could request a public hearing. Moreover, the *Queen* case stated that “when there are large numbers of requests for a public hearing, the Chief should be cognizant that there may be a real need for a hearing.” *Id.* at *6. In the case at bar, there were not numerous requests for a public hearing. There were only two requests for a public hearing, making it well within IEPA’s discretion to find that there was not a significant degree of public interest.

ABC attempts to avoid its lack of evidence of public interest by stating that ABC and the other organizations that allegedly signed¹¹ the January 18, 2005 letter represent “thousands of members.” Pet. Br., pp. 8-10. This argument is misleading. First, none of the information stated in pages 8-10 regarding the number of members of the organizations was provided to IEPA during the public notice period in the January 17, 2006 or January 18, 2006 comments. Because the information was never properly before IEPA, it should be disregarded by the Board. *See* 415 ILCS 5/40(e)(2). Moreover, ABC ignores the fact that only five individual representatives were listed on the January 18, 2005 letter, and that no other individual members of the organizations were identified or submitted separate public hearing requests. Secondly, ABC did not present

¹¹ Although ABC has argued that the January 18, 2005 letter was signed by ABC, Sierra Club, Webster Groves Nature Study Society, HEJ, and the Neighborhood Law Office, no letter was ever submitted to IEPA that was actually signed by a representative of any of the organizations.

any evidence that it asked its membership whether members were interested in a public hearing. More tellingly, not one member of the public, independent of any private organization, submitted a comment, or was identified in the organizations' comments as wanting to attend a potential public hearing. R. 532, 537-539. In addition, even if the Board accepts ABC's analysis that all of the members of the organizations can be counted as making a request for a public hearing (*i.e.*, approximately 27,000 members requested a public hearing), then it follows that only "approximately 100" of those members (ABC's members) deemed the denial of the public hearing request sufficiently important to appeal to the Board. Pet. Br., pp. 9-10. In other words, less than one percent (0.4%) of the members whose public hearing requests were denied actually deemed the denial sufficiently important to file an appeal of IEPA's decision.

Finally, ABC argues that "The organizations chose to express their interest in the U. S. Steel permit by submitting group comment letters rather than asking their members to send in numerous individual comments." Pet. Br., p. 10. This statement should be ignored, as ABC fails to cite the Administrative Record, the transcript from the November 20, 2006 hearing, or any other evidence in support of this statement. Without any evidentiary support, such a factual assertion cannot be properly made, and that lack of support requires that such an unfounded statement be ignored.

In the end, ABC has failed to demonstrate that IEPA abused its discretion in denying ABC's public hearing request. At the November 20, 2006 hearing, multiple witnesses admitted that the January 17, 2005 and January 18, 2005 comments did not identify any individual of the public who would be adversely affected by U. S. Steel's Permit. Trans. 135, 146. Nor do either of the comments identify any individual of the public that would have an interest in attending a public hearing. R. 532, 537-539. ABC has only been able to demonstrate that it alone would be

interested in a public hearing, which is insufficient to show that IEPA abused its discretion in denying ABC's public hearing request.

IV. IEPA did not commit any procedural error and did not abuse its discretion in denying ABC's public hearing request.

ABC argues that "IEPA's failure to provide an explanation for its decision not to hold a public hearing violates administrative law principles requiring agencies to offer a rationale for their decisions." Pet. Br., p. 16. This argument is incorrect and should be denied.¹² In assessing whether it should hold a public hearing, as it did in this case, IEPA can only assess one criteria: whether "there exists a significant degree of public interest in the proposed permit . . . to warrant the holding of such a hearing." 35 Ill. Adm. Code 309.115(a)(1). If IEPA decides to hold a public hearing, it follows that IEPA found a significant degree of public interest during the public notice period. If IEPA decides not to hold a public hearing, as it did in this case, there is only one reason why it could have made such a decision: it did not find that a significant degree of public interest in the permit was demonstrated during the public notice period. Under the singularly-focused inquiry under 35 Ill. Adm. Code 309.115(a)(1), IEPA could not have denied a public hearing for any other reason than the fact that it did not find there was a significant degree of public interest. For ABC to now claim that it does not know the reason why its public hearing request was denied is disingenuous and ignores the straightforward analysis that IEPA is obligated to apply under 35 Ill. Adm. Code 309.115(a)(1). As a result, ABC is well aware that the explanation for why IEPA denied its public hearing request is that IEPA did not find that a

¹² In this same vein, ABC also argues that "IEPA badly misconstrued the standard for a public hearing in the public notice for the permit" as an abuse of discretion because "The regulation actually states that IEPA 'shall' hold a public hearing if it finds a significant degree of public interest." Pet. Br., p. 18. As stated in § Argument, I.A., *supra*, the *Borg-Warner* Court has foreclosed any interpretation of the standard of review of IEPA's decisions under 35 Ill. Adm. Code 309.115(a)(1) is anything other than an abuse of discretion. Accordingly, IEPA did not misconstrue the standard for assessing whether to hold a public hearing.

significant degree of public interest in the permit was demonstrated during the public notice period. IEPA did not abuse its discretion in denying the ABC's request for a public hearing.¹³

V. ABC was not denied a forum for resolving its concerns with Horseshoe Lake.

ABC did not take advantage of the numerous opportunities it had to ask IEPA questions about the Proposed and Final Permits. In its January 18, 2005 letter, ABC stated that IEPA should hold a public hearing for the purpose of allowing "citizens to ask questions and present information and testimony." R. 539. Although IEPA denied that request for a public hearing, ABC had numerous opportunities to raise the issues that were stated in its January 18, 2005 letter to IEPA. As an initial matter, the Notice for the Proposed Permit provided the name and telephone number of an IEPA employee who could be contacted with questions. The Proposed Permit provided "For further information, please call Beth M. Burkard [at IEPA]" R. 518. This opportunity for asking questions was not limited to the 30-day public notice period, and ABC could have called Ms. Burkard at any time prior to the issuance of the Final Permit. *Id.* However, there is nothing in the Record to show that Ms. Andria attempted to reach Ms. Burkard.

Moreover, IEPA considered ABC's comments where it requested a public hearing or, in the alternative, a meeting with ABC and IEPA, and decided to schedule a meeting with ABC to address its January 18, 2005 comments. This decision was entirely consistent with ABC's request which stated, "If [IEPA denies] this request for a hearing, we ask for a meeting with you and your staff. . ." R. 539. Specifically, on February 27, 2006, IEPA stated in an email from Marcia Wilhite, Director of IEPA's Bureau of Water, to Doug Scott, Director of IEPA, that the

¹³ If the Board is inclined to accept ABC's argument regarding IEPA's purported lack of explanation for its denial of ABC's public hearing request, the proper remedy is only to remand for IEPA to provide a written explanation of its denial, as that is the only procedural defect that ABC complains is lacking.

Agency had received ABC's public hearing request and that it "would like to move forward to issue the permit and recommend that a meeting with the environmental group be held instead of a public hearing." SR. XII. IEPA further provided in the email that

American Bottoms [sic] Conservancy (Kathy Andria, principal) requested the hearing due to concerns about increased loading of pollutants to Horseshoe Lake. There will be no actual increase in loading--the limits in the draft renewal permit are different than the previous permit for reasons that are easily explained.

Since hearings are held at the discretion of the Director, I'm asking if you would be comfortable with us denying the hearing request, but having a meeting and issuing the permit as quickly as possible.

Id. The IEPA Director subsequently decided to issue the Final Permit and meet with Ms. Andria. SR. XIII. IEPA then scheduled a meeting with ABC through Kathy Andria for March 15, 2006. SR. XV ("There will be a meeting at the Agency on March 15th with Kathy Andria to discuss Horseshoe Lake, Frank Holten State Park and issues regarding the Granite City Steel NPDES permit.") The Interdisciplinary Environmental Clinic at Washington University in St. Louis, who is representing ABC in this appeal, then confirmed that the meeting would be going forward with one of their representatives being present. SR. XVIII. On March 14, 2006, however, Kathy Andria unilaterally cancelled the March 15, 2006 meeting with IEPA. SR. XX-XXIV. That meeting was never rescheduled. Since ABC's letter of January 18, 2006 asked for a meeting if a hearing was not held, ABC waived its right to either a hearing or a meeting when its representatives cancelled the meeting.

Finally, IEPA also found that "it should be mentioned that the American Bottoms [sic] Conservancy did participate in a recent hearing regarding 303(d) listed water bodies and did make specific comments regarding Horseshoe Lake." SR. X. At the November 20, 2006 hearing, Ms. Andria confirmed that ABC participated in a meeting regarding the 303(d) list that involved the impairment of Horseshoe Lake. Trans. 84. Again, ABC had a forum for addressing

the same issues that it presented in its January 18, 2005 letter at a meeting involving Horseshoe Lake as a 303(d) listed water body. R. 537 (“Horseshoe Lake is impaired.”) Because of the numerous opportunities for ABC to present its concerns about Horseshoe Lake, IEPA did not abuse its discretion in denying ABC’s public hearing request.

CONCLUSION


For the foregoing reasons, U. S. Steel requests that ABC’s Petition for Review and request for a public hearing to IEPA be denied, and that the Board grant all relief it deems fair and just.

Dated: December 18, 2006

Respectfully submitted,

U.S. Steel Corporation - Granite City Works

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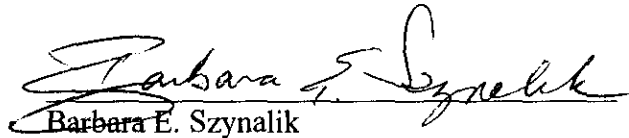
CERTIFICATE OF SERVICE

I, the undersigned, a non-attorney, certify, under penalties pursuant to 735 ILCS 5/1-109, that I caused to be served the attached, **UNITED STATES STEEL CORPORATION'S POST-HEARING BRIEF**, via electronic transmission, on this 18th day of December, 2006, upon the following:

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