

BEFORE THE POLLUTION CONTROL BOARD
OF THE STATE OF ILLINOIS

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FEB 22 2007

STATE OF ILLINOIS
Pollution Control Board

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)

NOTICE OF FILING

To: Sanjay K. Sofat
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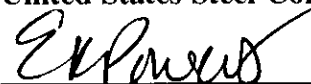
Carol Webb, Hearing Officer
Illinois Pollution Control Board
1021 North Grand Avenue East
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Springfield, IL 62794-9274

PLEASE TAKE NOTICE that on February 22, 2007 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 Motion to Reconsider Order of January 26, 2007** and **United States Steel Corporation's Memorandum in Support of Motion to Reconsider Order of January 26, 2007**, copies of which is herewith served upon you.

Dated: February 22, 2007

Respectfully submitted,

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By:  _____
United States Steel Corporation - Granite City Works,
One of Its Attorneys

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STATES STEEL CORPORATION -)	
GRANITE CITY WORKS,)	
)	
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**UNITED STATES STEEL CORPORATION'S MOTION
TO RECONSIDER ORDER OF JANUARY 26, 2007**

Respondent, United States Steel Corporation - Granite City Works ("U. S. Steel"), pursuant to 35 Ill. Adm. Code §§ 101.520 and 101.902, moves the Board to reconsider its January 26, 2007 Order with respect to the Board's invalidation of the final NPDES permit issued to U. S. Steel's Granite City Works facility ("Granite City Works") on March 8, 2006 (the "Final Permit"). In support of its Motion, U. S. Steel states as follows:

1. On May 4, 2006, the American Bottom Conservancy ("ABC") filed a third-party appeal of the Final Permit, alleging that IEPA violated its administrative duties by denying ABC's request for a public hearing on the proposed permit.

2. On January 26, 2007, the Board entered an Opinion and Order (the "Board's Order") in favor of ABC and found that IEPA should have held a public hearing before issuing the Final Permit. Because of IEPA's purported failure to hold a public hearing, the Board invalidated the Final Permit.

3. U. S. Steel now moves to reconsider only the portion of the Board's Order that invalidated the current NPDES permit because the Board misapplied existing law. Specifically,

the Board should reconsider its invalidation of the Final Permit because ABC did not present any evidence to support such an invalidation.

4. Section 39(a) of the Illinois Environmental Protection Act, 415 ILCS 5/1, *et seq.* (the “Act”) provides that it “shall be the duty of” IEPA to issue an NPDES permit where an applicant shows that its facility’s operations will not cause a violation of the Act, or its attendant water quality standards or regulations.

5. Although the Board found that IEPA failed to hold a public hearing, ABC presented no evidence demonstrating that Granite City Works operations and discharges under the Final Permit violate the Act or any water quality standards or related regulations.

6. In the absence of any such violation, and considering the prejudice to U. S. Steel if the Final Permit is vacated, the Board should instead allow U. S. Steel to continue operating under the Final Permit pending the outcome of the public hearing ordered by the Board. After such hearing is conducted, IEPA can determine whether any modification of the Final Permit is necessary.

7. U. S. Steel hereby incorporates its Memorandum in Support of Motion to Reconsider January 26, 2007 Order file currently herewith.

WHEREFORE, U. S. Steel requests that the Board reconsider its January 26, 2007 Order, reverse its invalidation of the current NPDES permit for the U. S. Steel Granite City Works facility, order IEPA to hold a public hearing on the Final Permit and make modifications to the Final Permit, if necessary, based on the public comments, and grant all relief it deems fair and just.

Dated: February 22, 2007

Respectfully submitted,

U. S. Steel Corporation - Granite City Works

By:



One of Its Attorneys

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**UNITED STATES STEEL CORPORATION'S MEMORANDUM IN SUPPORT OF
MOTION TO RECONSIDER ORDER OF JANUARY 26, 2007**

Respondent, United States Steel Corporation - Granite City Works ("U. S. Steel"), pursuant to 35 Ill. Adm. Code §§ 101.520 and 101.902, moves the Board to reconsider its January 26, 2007 Order with respect to the Board's invalidation of the final NPDES permit issued to U. S. Steel's Granite City Works facility ("Granite City Works") on March 8, 2006 (the "Final Permit"). In support of its Motion, U. S. Steel states as follows:

INTRODUCTION

The American Bottom Conservancy ("ABC") filed a third-party appeal of the Final Permit, alleging that IEPA violated its administrative duties by denying ABC's request for a public hearing on the proposed permit. On January 26, 2007, the Board entered an Opinion and Order (the "Board's Order") in favor of ABC and found that IEPA should have held a public hearing before issuing the Final Permit. Because of IEPA's purported failure to hold a public hearing, the Board invalidated the Final Permit. U. S. Steel now moves to reconsider only the portion of the Board's Order that invalidated the current NPDES permit.

The Board should reconsider its invalidation of the Final Permit because ABC did not present any evidence to support such an invalidation. Section 39(a) of the Illinois Environmental Protection Act, 415 ILCS 5/1, *et seq.* (the “Act”) provides that it “shall be the duty of” IEPA to issue an NPDES permit where an applicant shows that its facility’s operations will not cause a violation of the Act, or its attendant water quality standards or regulations. Although the Board found that IEPA failed to hold a public hearing, ABC presented no evidence demonstrating that Granite City Works operations and discharges under the Final Permit violate the Act or any water quality standards or related regulations. In the absence of any such violation, and considering the prejudice to U. S. Steel if the Final Permit is vacated, the Board should instead allow U. S. Steel to continue operating under the Final Permit pending the outcome of the public hearing ordered by the Board. After such hearing is conducted, IEPA can assess whether any modification of the Final Permit is necessary.¹

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. 135.² This facility has had NPDES permits ever since such permits have been required. R. 554. After conducting a thorough analysis of the facility and its discharges into Horseshoe Lake, on December 19, 2004, IEPA issued a proposed NPDES permit for the Granite City facility (the “Proposed Permit”), which would allow the facility to continue to discharge into Horseshoe Lake in compliance with Illinois water quality standards. R. 518.

¹ In requesting reconsideration only of the portion of the Board’s Order invalidating U. S. Steel’s permit, U. S. Steel does not waive any other issues in the Order that may be raised on appeal. Such a reservation for appealing other issues in the Order is proper under the Board’s rules because U. S. Steel is not required to file a motion to reconsider a particular issue in order to appeal such issue. 35 Ill. Adm. Code § 101.904(f) (“A motion for reconsideration of a final Board order is not a prerequisite for the appeal of that final Board order.”)

² Citations of “R. ___,” will be to the Administrative Record.

2. 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 requested that IEPA hold a public hearing related to the Proposed Permit “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. 532.³ The letter did not state or describe any evidence to support this assertion. The letter did not identify any regulations or sections of the Act that would be violated if the Proposed Permit was issued. R. 532.

3. 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 requested that IEPA hold a public hearing on the Proposed Permit. R. 537. 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. 537.⁴ 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:

³ It should be noted that U. S. Steel does not use lead in its processes. R. 601. The increased limits that appear on paper are due to production changes and are consistent with effluent limitation guidelines and federal rules at 40 C.F.R. 420. *Id.*

⁴ The fish advisory in effect for Horseshoe Lake is for PCBs, which U. S. Steel does not discharge. R. 554.

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 containing the facility's compliance history. R. 537-38. ABC's letter did not identify any provisions of the Act or regulatory standards for the protection of water quality that would be violated if the Proposed Permit was issued as drafted. R. 537-539.

4. On March 8, 2006, IEPA issued the Final Permit for U. S. Steel's Granite City Works facility. R. 637.

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

6. 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.

7. 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.

8. On January 26, 2007, the Board issued an Order finding that IEPA's decision not to hold a public hearing prior to the issuance of the Final Permit violated section 309.115(a) of the Board's regulations. *See* Jan. 26, 2007 Order, p. 14. Specifically, the Board found "that the two public comments filed in this case [*i.e.*, the January 17 and 18, 2005 letters] evidence a significant degree of public interest in the proposed permit." *Id.* Based on its ruling that IEPA improperly failed to hold a public hearing, the Board found that "the permit issued by the

Agency on March 31, 2006, to U.S. Steel for its steelmaking facility at 20th and State Streets, in Granite City, Madison County is invalid.” *Id.*⁵

ARGUMENT

I. Standard of review for motion to reconsider.

Under the standard for a motion to reconsider, the Board should reconsider its decision to invalidate the Final Permit as an error in the application of existing law under the Act. A party can file a motion to reconsider “to bring to the [Board’s] attention newly discovered evidence which was not available at the time of the hearing, changes in the law or **errors in the [Board’s] previous application of existing law.**” *People v. Community Landfill Co, Inc.*, PCB No. 03-191, 2006 Ill. Env. LEXIS 323, *2-3 (June 1, 2006) (emphasis added). Moreover, a “motion to reconsider may specify ‘facts in the record which were overlooked.’” *Id.* (quoting *Wei Enterprises v. IEPA*, PCB No. 04-23, slip op. at 5 (Feb. 19, 2004)).

II. The Board should reconsider its invalidation of the Final Permit because there is no evidence that U. S. Steel’s operation of the Granite City facility under the Final Permit will cause a violation of the Act or its 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) (emphasis added). Under this section, U. S. Steel timely filed an application with IEPA for an NPDES permit and met its burden for the issuance of such a permit. Accordingly, IEPA was required to issue an NPDES permit to Granite City Works because the discharges from the facility will not cause a violation of the Act or its regulations.

⁵ According to 35 Ill. Adm. Code § 101.520(a), “Any motion for reconsideration . . . of a final Board order must be filed within 35 days after the receipt of the order.” U. S. Steel received a copy of the Board’s Order on February 5, 2007. Because the deadline for filing a motion to reconsider is March 12, 2007, this Motion is timely filed.

Despite U. S. Steel's compliance with section 39(a), the Board's Order invalidated the Final Permit. That invalidation should be reconsidered and reversed. At the hearing of this case, ABC did not present any evidence that any issue in the January 17, 2005 or January 18, 2005 comments would demonstrate that the operation of the Granite City facility would cause a violation of the Act or its regulations thereunder. *See* R. 532, 537-539.⁶ Specifically, neither the January 17, 2005 nor January 18, 2005 letters raise any issues alleging that there is a potential for the regulated discharge to exceed established water quality standards if the Proposed Permit was issued as drafted. Instead, the comments discussed issues unrelated to the Granite City facility's operations under 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. Contrary to the implications contained in the comments, U. S. Steel does not use lead as an additive in its processes (R. 601),⁷ and HEJ failed to provide evidence to support its contention concerning lead discharges to the Lake. In other words, the comment may involve an issue with regard to Horseshoe Lake generally, but it did not show that any particular provision in the Proposed Permit or the operation of Granite City Works would cause a violation of the Act or its regulations.

Similarly, the January 18, 2005 letter states that Horseshoe Lake is impaired for various pollutants. That issue, however, is properly addressed through the process related to impaired

⁶ In its Order, the Board properly found that the only evidence that could be considered was the January 17 and 18, 2005 letters because those were the only documents submitted to IEPA during the public comment period. *See* Jan. 26, 2007 Order, pp. 12-13; *see also* 415 ILCS 5/40(e)(2) (a third-party petition "shall include . . . a demonstration that the petitioner raised the issues contained within the petition during the public notice period or during the public on the NPDES permit application, if a public hearing was held; . . .").

⁷ Specifically, IEPA found that "The facility does not use Lead, and the increased load limits are due to increased production." R. 601.

waters and the development of total maximum daily loads under section 303(d) of the federal Clean Water Act, and is irrelevant to whether the issuance of a permit may allow a facility to violate a provision of the Act or its regulations. The January 18, 2005 letter also raises the compliance history of Granite City Works with its permit limits by citing information from an U.S. EPA Enforcement and Compliance Online (ECHO) report. That, however, is not a permitting issue, but involves 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.") This enforcement information is irrelevant to whether a permit should be issued under section 39(a) of the Act.⁸

In addition, ABC alleged that fish with melanoma were caught with melanoma in Horseshoe Lake. R. at 537. Assuming *arguendo* that the allegation is true, ABC presented no evidence that Granite City Works discharges cause such melanoma, or that discharges under the Final Permit would violate the Act or its regulations. ABC did not establish an increased rate of melanoma in Horseshoe Lake that could be connected to potential discharges under the Proposed Permit. Accordingly, the Final Permit should not have been invalidated on the basis of ABC's comment involving melanoma.

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 is irrelevant to the issuance of the Final Permit; cadmium was not detected by the facility in its effluent samples, "nor was any [cadmium] in 19 Agency samples." R. 342. IEPA concluded "that no regulation

⁸ In addition, the information in the ECHO report can be misleading, because a single exceedance 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 erroneously conclude that a facility with a violation in a single sample for a single parameter was out of compliance for the whole quarter.

of cadmium is necessary and that no monitoring beyond the routine requirements is needed.” *Id.* This lack of connection between ABC’s comments and the Final Permit further demonstrates that the Final Permit should not be invalidated.⁹

Because there was no evidence presented by ABC that the Granite City facility’s operation under the Final Permit would cause a violation of the Act or its regulations, the Final Permit should not be invalidated. Instead, the Board should reconsider its Order and allow Granite City Works facility to continue operating under the Final Permit pending the outcome of a public hearing. After it holds the public hearing, IEPA can determine whether the Final Permit needs to be modified as the result of any comments or issues raised at the public hearing. Such a remedy is not only legally proper under section 39(a) of the Act, but it is also a necessary practical solution for addressing the permitted discharge at Granite City Works. Granite City Works has been operating under the Final Permit for almost a year, and has made modifications to its facility and operations as a result of the requirements contained in the Final Permit. Unless the Board reconsiders its Order and allows Granite City Works to continue operating under the Final Permit pending the outcome of a public hearing, U. S. Steel will now have to undo such modifications to comply with its previous NPDES permit until IEPA issues a new permit after the public hearing. If IEPA decides to issue a permit with the same provisions as the Final

⁹ The Final Permit limits for lead, zinc and ammonia increased because the 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 since the prior permit was issued. 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.

Permit, U. S. Steel will then have to again implement modifications to address the new permit.¹⁰
The Board's invalidation of the Final Permit should be reconsidered and reversed.


CONCLUSION

For the foregoing reasons, U. S. Steel requests that the Board reconsider its January 26, 2007 Order, reverse its invalidation of the current NPDES permit for the U. S. Steel Granite City Works facility, order IEPA to hold a public hearing on the Final Permit and make modifications to the Final Permit, if necessary, based on the public comments, and grant all relief it deems fair and just.

Dated: February 22, 2007

Respectfully submitted,

U. S. Steel Corporation - Granite City Works

By: 
One of Its Attorneys

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¹⁰ For example, U. S. Steel has been able to treat its landfill leachate through piping that was constructed in reliance on the issuance of the Final Permit, which allowed for a new outfall. If the Final Permit is invalidated, U. S. Steel will be forced to deconstruct the piping, and treat the leachate by transporting it with vehicles, as U. S. Steel was doing under its prior permit. If IEPA then issues a new permit with new outfall back in place, U. S. Steel will have to re-construct the piping.

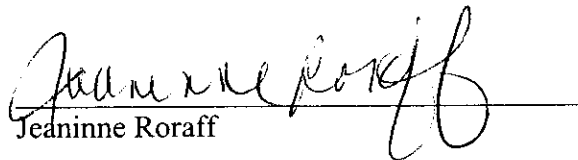
CERTIFICATE OF SERVICE

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 Motion to Reconsider Order of January 26, 2007 and United States Steel Corporation's Memorandum in Support of Motion to Reconsider Order of January 26, 2007**, by U.S. Mail, postage prepaid, from One North Wacker Drive, Suite 4400, Chicago, Illinois 60606, on this 22nd day of February, 2007, upon the following:

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