

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

UNITED STATES STEEL)	
CORPORATION, a Delaware corporation,)	
)	
Petitioner,)	
)	
v.)	PCB No. ____ - ____
)	(CAAPP Permit Appeal)
ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Respondent.)	

NOTICE OF FILING

TO: Mr. John Therriault	Division of Legal Counsel
Assistant Clerk of the Board	Illinois Environmental Protection Agency
Illinois Pollution Control Board	1021 North Grand Avenue East
100 West Randolph Street	Post Office Box 19276
Suite 11-500	Springfield, Illinois 62794-9276
Chicago, Illinois 60601	(VIA FIRST CLASS MAIL)
(VIA ELECTRONIC MAIL)	

(SEE PERSONS ON ATTACHED SERVICE LIST)

PLEASE TAKE NOTICE that I have today filed with the Office of the Clerk of the Illinois Pollution Control Board a copy each of United States Steel Corporation's **PETITION FOR REVIEW, MOTION TO CONFIRM AUTOMATIC STAY OF EFFECTIVENESS OF CAAPP PERMIT OR, IN THE ALTERNATIVE, REQUEST STAY OF EFFECTIVENESS, ENTRY OF APPEARANCE OF KATHERINE D. HODGE and ENTRY OF APPEARANCE OF MONICA T. RIOS**, copies of which are hereby served upon you.

Respectfully submitted,

UNITED STATES STEEL CORPORATION,
Petitioner,

Dated: October 7, 2009

By: /s/ Katherine D. Hodge
One of Its Attorneys

Katherine D. Hodge
Monica T. Rios
HODGE DWYER & DRIVER
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Post Office Box 5776
Springfield, Illinois 62705-5776
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CERTIFICATE OF SERVICE

I, Katherine D. Hodge, the undersigned, certify that I have served the attached PETITION FOR REVIEW, MOTION TO CONFIRM AUTOMATIC STAY OF EFFECTIVENESS OF CAAPP PERMIT OR, IN THE ALTERNATIVE, TO REQUEST STAY OF EFFECTIVENESS, ENTRY OF APPEARANCE OF KATHERINE D. HODGE and ENTRY OF APPEARANCE OF MONICA T. RIOS upon:

Mr. John Therriault
Assistant Clerk of the Board
Illinois Pollution Control Board
100 West Randolph Street
Suite 11-500
Chicago, Illinois 60601

via electronic mail on October 7, 2009; and upon:

Division of Legal Counsel
Illinois Environmental Protection Agency
1021 North Grand Avenue East
Post Office Box 19276
Springfield, Illinois 62794-9276

by depositing said documents in the United States Mail, postage prepaid, in Springfield, Illinois, on October 7, 2009.

/s/Katherine D. Hodge
Katherine D. Hodge

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PETITION FOR REVIEW

NOW COMES, Petitioner, UNITED STATES STEEL CORPORATION (hereinafter "U.S. Steel") by and through its attorneys, HODGE DWYER & DRIVER, pursuant to Section 40.2 of the Illinois Environmental Protection Act, 415 ILCS 5/40.2 ("Act") and 35 Ill. Admin. Code Part 105.Subpart C, and petitions the Illinois Pollution Control Board ("Board") for review of the Clean Air Act Permit Program ("CAAPP") permit issued to U.S. Steel by the Illinois Environmental Protection Agency ("Illinois EPA") pursuant to Section 39.5 of the Act on September 3, 2009.

In support thereof, U.S. Steel states as follows:

I. BACKGROUND

U.S. Steel owns and operates an integrated steel mill plant in Granite City, Illinois (the "Facility"), which is classified as a "major source" for purposes of Title V of the Clean Air Act and Section 39.5 of the Act.

Pursuant to Section 504 of the Clean Air Act, 42 U.S.C. § 7661b(c), and Section 39.5(5) of the Act, U.S. Steel submitted an application for a CAAPP permit for the Facility to the Illinois EPA on March 6, 1996.

On October 6, 2008, the Illinois EPA issued a Draft CAAPP Permit (“Draft Permit”) for public comment. The Illinois EPA also issued a “Project Summary for the Draft Clean Air Act Permit Program (CAAPP) Permit” (“Project Summary”) (attached hereto as Exhibit 1).

A public hearing was held on December 2, 2008. The hearing officer extended the public comment period from January 2, 2009 until February 13, 2009, and subsequently, upon request, granted an additional extension of the public comment period from February 13, 2009 until February 27, 2009. *See* Illinois EPA Order (Dec. 17, 2008) and Illinois EPA Order (Feb. 5, 2009), (attached hereto as Exhibit 2).

Public comments were received during the hearing and public comment period with regard to U.S. Steel’s CAAPP permit. U.S. Steel submitted comments (attached hereto as Exhibit 3) on the Draft Permit on February 27, 2009. The Illinois EPA also received comments from Washington University School of Law and the American Bottom Conservancy during the public comment period.

Subsequently, on June 19, 2009, the Illinois EPA submitted a Proposed CAAPP Permit (“Proposed Permit”), dated June 15, 2009, to the United States Environmental Protection Agency (“USEPA”) for review. A “Revised Permit” indicating revisions to the CAAPP permit is available on USEPA’s database.¹ It appears that the “Revised Permit” is a redline version of the Proposed Permit showing revisions made by the Illinois EPA to the Draft Permit. U.S. Steel did not have the opportunity to review the Proposed Permit prior to its submission to USEPA.

¹ USEPA Region V maintains a database of federal and state permits issued by Region V states to various facilities. The Illinois EPA Air Pollution Control Permit Record for the Final Permit is available at http://yosemite.epa.gov/r5/in_permt.nsf/93a421690cb50df18625762300769ee3/b1ce62b74f7f23a88625764600495273!OpenDocument&Highlight=0.96030056 (last accessed Oct. 5, 2009).

On September 3, 2009, the Illinois EPA issued the Final CAAPP Permit (“Final Permit”) (attached hereto as Exhibit 4) for the Facility. At the same time, the Illinois EPA also issued its “Responsiveness Summary for Public Questions and Comments on the U.S. Steel Corporation Granite City Works, Stein Steel Mill Services, AKJ Industries, Inc., and Tube City IMS, LLC for Initial CAAPP Permits and Granite City Slag, LLC and Oil Technology, Inc. for CAAPP Permit Renewals in Granite City, Illinois” (“Responsiveness Summary”) (attached hereto as Exhibit 5).

Although several of U.S. Steel’s concerns were addressed in the Final Permit, many issues raised by U.S. Steel in its February 27, 2009 comments were not addressed and/or U.S. Steel did not have the opportunity to provide comments on new and revised conditions that were included in the Final Permit. Thus, for the reasons stated herein, the Illinois EPA’s determination in regards to conditions of the Final Permit was arbitrary, capricious, and not supported by the Act or Board regulations. Accordingly, U.S. Steel seeks review of the Final Permit as provided by Section 40.2 of the Act. U.S. Steel reserves the right to amend this Petition as necessary in order to raise newly discovered issues arising from the Final Permit and/or to provide additional specificity regarding the conditions of the Final Permit, if required by the Board.

II. GENERAL COMMENTS ON FINAL PERMIT

By this Petition, U.S. Steel seeks review of the following general issues associated with the Illinois EPA’s decision on the Final Permit.

A. Illinois EPA has exceeded its limited gap-filling authority.

Section 39.5(7)(d)(ii) of the Act states:

To meet the requirements of this subsection with respect to monitoring, the petitioner shall:

* * *

- ii. Where the applicable requirement does not require periodic testing or instrumental or noninstrumental monitoring (which may consist of recordkeeping designed to serve as monitoring), require periodic monitoring sufficient to yield reliable data from the relevant time period that is representative of the source's compliance with the permit, as reported pursuant to paragraph (f) of this subsection. The Agency may determine that recordkeeping requirements are sufficient to meet the requirements of this subparagraph.

415 ILCS 5/39.5(7)(d)(ii). The Act provides the Illinois EPA limited authority, in accordance with Section 39.5(7)(d)(ii) of the Act, to include periodic monitoring requirements in CAAPP permits in situations where the underlying applicable requirement does not include such monitoring requirements. A similar federal requirement at 40 C.F.R. § 70.6(a)(3)(i)(B) authorizing gap-filling has been the subject of USEPA guidance, as well as litigation. USEPA stated:

Section 70.6(a)(3)(i)(B) requires each Part 70 permit to contain periodic monitoring sufficient to yield reliable data from the relevant time period that are representative of the source's compliance with the permit, if the underlying applicable requirements do not otherwise specify such monitoring. This is a "gap-filling" provision to fill any "holes" that allow the source to verify compliance with any or all applicable requirements. In order to meet this "gap-filling" provision, the periodic monitoring terms for each emission limit in the permit must include not only the appropriate method of monitoring, but also the minimum frequency at which the monitoring must be done in order to yield sufficient data to represent the source's compliance with the permit. If the Part 70 permit's monitoring requirements do not specify frequency, the monitoring methods they institute can not be considered periodic.

Letter to D. Smith, Minnesota Pollution Control Agency from R. Miller, USEPA Region V (May 14, 1998). USEPA has clarified that "gapfilling means taking an EXISTING condition and adding whatever is needed to make it clear and enforceable as a practical matter." Memo to Region 10 State and Local Air

Pollution Agencies From J. Cabreza, USEPA Region X (Feb. 29, 1996).

(Emphasis in original.) In addition, according to USEPA, “. . . State permitting authorities have significant discretion to tailor the application of the gap-filling requirement in ways that are effective and reasonable.” Letter to Region V States from USEPA Region V (Jan. 15, 1997). Further, a federal appellate court held that:

State permitting authorities therefore may not, on the basis of EPA’s Guidance or 40 C.F.R. § 70.6(a)(3)(i)(B), require in permits that the regulated source conduct more frequent monitoring of its emissions than that provided in the applicable State or federal standard, unless that standard requires no periodic testing, specifies no frequency, or requires only a one-time test.

Appalachian Power Co., et al. v. EPA, 208 F.3d 1015 (D.C. Cir. 2000).

Although the Illinois EPA has limited authority to gap-fill, the gap-filling provisions must be reasonable, effective, and not require more frequent monitoring than the underlying regulation, except in certain circumstances. The Illinois EPA has utilized its “gap-filling” authority in the Final Permit issued to U.S. Steel. For example,² Condition 7.2.3-7(d) of the Final Permit requires testing for parameters for which no emission limits have been established. *See* Exhibit 4 at Condition 7.2.3-7(d). However, the requirements of Condition 7.2.3-7(d) go beyond the Illinois EPA’s limited gap-filling authority by requiring testing that is unnecessary to show compliance with the Final Permit. The Illinois EPA actions are arbitrary and capricious, and serve as a basis of appeal of the Final Permit.

² Additional examples of the Illinois EPA establishing requirements beyond its limited gap-filling authority are included in, but not limited to, those conditions listed in Section III of this Petition.

B. Illinois EPA has not provided a sufficient Statement of Basis.

As referenced above, the Illinois EPA issued a Project Summary on October 6, 2008, in conjunction with the issuance of the Draft Permit, and issued a Responsiveness Summary on September 3, 2009, in conjunction with the issuance of the Final Permit to U.S. Steel. Neither the Project Summary nor the Responsiveness Summary serve as a sufficient statement of basis as required by the Act. Although the Responsiveness Summary lists the comments submitted during the public comment period and the Illinois EPA's response to such comments, the Illinois EPA has not provided a sufficient statement of basis for the Final Permit's conditions. Section 39.5(7)(n) of the Act requires the Illinois EPA to "specify and reference the origin and authority for each term or condition, and identify any difference in form as compared to the applicable requirement upon which the term or condition is based." 415 ILCS 5/39.5(7)(n). The Responsiveness Summary is not sufficient to serve as a statement of basis since it was compiled by the Illinois EPA after the submission of public comments and neither provided U.S. Steel the opportunity to learn the basis for the Illinois EPA's decisions nor provided an opportunity for U.S. Steel to challenge the Illinois EPA's rationale for its decisions. Because the Illinois EPA failed to issue a statement of basis in accordance with the Act's requirements, the Final Permit is defective, and can be appealed on such grounds.

C. Illinois EPA did not provide the Opportunity to Comment on New or Revised Conditions.

In addition, as discussed below, U.S. Steel neither had the opportunity to comment on new conditions added to the Final Permit after the issuance of the Draft Permit nor had the opportunity to comment on revisions to conditions that occurred after

the Draft Permit was issued. The Act provides that the “Agency shall provide notice to the public, including an opportunity for public comment and a hearing, on each draft CAAPP permit for issuance . . .” 415 ILCS 5/39.5(8)(a). In addition, the Act states that “the Agency shall give notice of each draft CAAPP permit to the applicant . . . on or before the Agency has provided notice to the public. . . .” 415 ILCS 5/39.5(8)(c). Further, the Act requires that the Illinois EPA comply “with all applicable provisions regarding public notice and affected state review consistent with subsection 8 of this Section and applicable regulations.” 415 ILCS 5/39.5(10)(a)(v). Although the Illinois EPA issued a draft permit for public comment and held a hearing in this matter, substantial revisions were made to the Draft Permit, including the addition of new conditions, prior to submitting the Proposed Permit to USEPA for review. Since substantive changes were made to the Draft Permit, U.S. Steel, as well as other interested parties, were required to have the opportunity to provide comment on the new conditions and revisions to conditions of the Draft Permit. *See In the Matter of Orange Recycling and Ethanol Production Facility, Pencor-Masada Oxynol, LLC*, 2001 EPA CAA Title V LEXIS 4 at 17-26 (USEPA May 2, 2001) (ordering state agency to re-open portions of a Title V permit to “provide for public participation based on the changes made after the initial comment period,” where the Administrator determined that the changes were “significantly different from those in the draft permit”); *see also* 66 Fed. Reg. 30904 (June 8, 2001). By failing to allow review of the new and revised conditions, the Illinois EPA failed to properly provide notice to the public of such conditions. As such, the Illinois EPA failed to comply with the Act’s public notice requirements, which serves as an additional basis for appeal of the Final Permit.

D. Additional Errors in Final Permit

The Final Permit contains errors, such as typos and incorrect cross-references. Such errors will need to be addressed and corrected by the Illinois EPA in order to develop and implement an accurate CAAPP permit for the Facility.

III. COMMENTS ON SPECIFIC CONDITIONS IN FINAL PERMIT

U.S. Steel seeks review of the following issues related to the Illinois EPA's decision on specific conditions of the Final Permit:

1. Condition 5.5(b) – Source-Wide Control Requirements and Work Practices (p. 25)³

- b. Visual inspections of air pollution control equipment identified above shall be conducted on a monthly basis. This condition has been established pursuant to 39.5(7)(b).

Justification: Condition 5.5(b) was not included in the Draft Permit for public comment as required by the Act and its regulations, and thus, U.S. Steel did not have the opportunity to comment on this condition. In addition, Condition 5.5(b) requires monthly inspections of air pollution control equipment, which goes beyond the Illinois EPA's limited authority to gap-fill, and thus, this condition is beyond the scope of Act and Board requirements, as well as Title V permitting requirements.

2. Condition 5.6.3(b)(ii) – Other Source-Wide Production and Emission Limitations (p. 26)

- b. ii. Annual emissions from the fuel combustion units identified in Condition 5.6.3(b)(i) above shall not exceed the following limits in tons/year:

PM/PM10	SO ₂	NO _x	VOM	CO	Lead
274	641	706	2	1295	0.06

³ All page numbers are to the Final Permit.

Justification: Condition 5.6.3(b)(ii) establishes a total emission limit for SO₂ of 641 tons per year. However, such a limitation is inconsistent with the requirement in Condition 7.4.15(a), which requires U.S. Steel, in accordance with the Consent Order, to use the correct emission factor when calculating SO₂ emissions for Blast Furnace Gas. Use of the emission factor required by the Consent Order is not consistent with the SO₂ limit in this condition.

3. Condition 5.6.3(b)(iii)(B) – Other Source-Wide Production and Emission Limitations (p. 26)

- iii. Annual emissions from each individual fuel used in the fuel combustion units identified in Condition 5.6.3(b)(i) above shall not exceed the following limits:

* * *

B. BFG

<u>Pollutant</u>	<u>Emission Factor (Lbs/mmcf)</u>	<u>Maximum Emissions (Tons/Yr)</u>
PM	2.90	268.29
PM10	2.90	268.29
SO ₂	6.65	615.22
NO _x	5.28	488.48
CO	13.70	1,267.46

Justification: Condition 5.6.3(b)(iii)(B) establishes an emission factor for SO₂ emissions (6.65 Lbs/mmcf) from the combustion of Blast Furnace Gas, as well as a limitation on annual emissions of SO₂ (615.22 Tons/Yr). However, such factor and limitation are inconsistent with the requirement in Condition 7.4.15(a), which requires U.S. Steel, in accordance with the Consent Order, to use the correct emission factor when calculating SO₂ emissions for Blast Furnace Gas. Use of the emission factor required by

the Consent Order is not consistent with the SO₂ limit for Blast Furnace Gas in this condition.

4. Condition 5.7(c) – Source-Wide Testing Requirements (p. 31)

c. Opacity Testing

The Permittee shall perform the tests to demonstrate no visible emissions from the units described in Condition 5.3.2(d)(i)(A), (B) and (C) in order to avoid applicability of appropriate standards of 35 212.458(b) (see also Condition 5.3.2(d)(i)).

- i. The Permittee shall identify the group of emission units subject to the emission limit addressed in Condition 5.3.2(d)(i)(A), keep the records of identified emission units and submit the list of such emission units to the Illinois EPA within 40 days after issuance of this permit.
- ii. The Permittee shall conduct annual visible emission observations of the following emission units by using USEPA Method 22: caster spray chambers; Blast Furnace stoves; reheat furnaces; and emission units identified by Permittee in Condition 5.7(c)(i) above.
- iii. If the visible emissions are detected from the affected unit(s) during testing, then corrective action and subsequent test(s) shall be conducted within 5 (five) days. If the subsequent test(s) fails to demonstrate no visible emissions from the affected unit(s), then the source shall notify the Illinois EPA that the source is planning to conduct compliance performance tests by using USEPA Methods 5 and/or 9. These tests shall be conducted within 90 days of the previously failed test(s) and in accordance with Conditions 8.6.2 and 8.6.3 of this permit.

Justification: Condition 5.7(c) was not included in the Draft Permit for public comment as required by the Act and its regulations, and thus, U.S. Steel did not have the opportunity to comment on this condition.

5. Condition 5.10 – Source-Wide Reporting Requirements (pp. 38-40)

Justification: Condition 5.10 establishes reporting requirements that are inconsistent with other conditions of the Final Permit, as well as Act and Board requirements. Such inconsistencies contribute to difficulty in determining the applicable reporting requirements for the Facility. U.S. Steel previously provided comments to the Illinois EPA regarding reporting requirements. *See* Exhibit 3 at 25.

6. Condition 7.2.7-3(a)(v) - Testing Requirements (p. 75)

v. Pursuant to 40 CFR 63.309(h)(1), for a flare installed to meet the requirements of 40 CFR 63.307(b) (see Condition 7.2.3-8(b)):

Compliance with the provisions in 40 CFR 63.307(c) (visible emissions for flares) shall be determined using Method 22 in appendix A to 40 CFR Part 60, with an observation period of 2 hours.

Justification: Condition 7.2.7-3(a)(v) was not included in the Draft Permit for public comment as required by the Act and its regulations, and thus, U.S. Steel did not have the opportunity to comment on this condition. In addition, the flares subject to this requirement are emergency flares, and thus, because of their intermittent use, it would be extremely difficult, if not impossible, to perform Method 22 testing.

7. Condition 7.2.7-3(d) - Testing Requirements (pp. 79-80)

d. Coke Oven Underfiring (combustion stacks)

i. One year before renewal date of this CAAPP permit, the Permittee shall conduct performance test(s) and furnish the Illinois EPA a written report of the results of such test(s).

ii. These tests shall be designed to measure the PM, VOM, CO and NO_x emissions from the coke ovens combustion stacks under conditions which are representative of maximum emissions.

- iii. The following USEPA test methods shall be used for testing of emissions, unless another method is approved by the Illinois EPA. Refer to 40 CFR 51, Appendix M, and 40 CFR 60, Appendix A, for test methods.

Location of Sample Points	Method 1
Gas Flow and Velocity	Method 2
Flue Gas Weight	Method 3
Moisture	Method 4
PM	Method 5
VOM	Method 18 or 25A
CO	Method 10
NOx	Method 7

- iv. Test notification and reporting shall be done by the Permittee in accordance with Conditions 8.6.2 and 8.6.3 of this permit.

Justification: Condition 7.2.3-7(d) for the Coke Oven Underfiring (Combustion Stacks) was not included in the Draft Permit for public comment as required by the Act and its regulations, and thus, U.S. Steel did not have the opportunity to comment on this condition. In addition, Condition 7.2.3-7(d) requires testing for parameters for which no emission limits have been established, which goes beyond the Illinois EPA's limited authority to gap-fill, and thus, this condition is beyond the scope of Act and Board requirements, as well as Title V permitting requirements.

8. Condition 7.3.6(e) - Control Requirements and Work Practices (pp. 116-117)

- e. Flares: 40 CFR Part 60 Subpart A (40 CFR 60.18(c) through (f)).
 - i. Flares shall be designed for and operated with no visible emissions as determined by the methods specified in 40 CFR 60.18(f), except for periods not to exceed a total of 5 minutes during any 2 consecutive hours.
 - ii. Flares shall be operated with a flame present at all times, as determined by the methods specified in 40 CFR 60.18(f).

- iii. An owner/operator has the choice of adhering to either the heat content specifications in 40 CFR 60.18(c)(3)(ii) and the maximum tip velocity specifications in CFR 60.18(c)(4), or adhering to the requirements in CFR 60.18 (c)(3)(i).
- A. 1. Flares shall be used that have a diameter of 3 inches or greater, are non-assisted, have a hydrogen content of 8.0 percent (by volume), or greater, and are designed for and operated with an exit velocity less than 37.2 m/sec (122 ft/sec) and less than the velocity, V_{\max} , as determined by the following equation:
- $$V_{\max} = (X_{\text{H}_2} - K_1) * K_2$$
- Where:
- V_{\max} = Maximum permitted velocity, m/sec.
 K_1 = Constant, 6.0 volume-percent hydrogen.
 K_2 = Constant, 3.9(m/sec)/volume-percent hydrogen.
 X_{H_2} = The volume-percent of hydrogen, on a wet basis, as calculated by using the American Society for Testing and Materials (ASTM) Method D1946- 77. (Incorporated by reference as specified in 40 CFR 60.17).
2. The actual exit velocity of a flare shall be determined by the method specified in CFR 60.18(f)(4).
- B. Flares shall be used only with the net heating value of the gas being combusted being 11.2 MJ/scm (300 Btu/scf) or greater if the flare is steam-assisted or air-assisted; or with the net heating value of the gas being combusted being 7.45 MJ/scm (200

Btu/scf) or greater if the flare is nonassisted. The net heating value of the gas being combusted shall be determined by the methods specified in 40 CFR 60.18(f)(3).

- iv. A. Steam-assisted and nonassisted flares shall be designed for and operated with an exit velocity, as determined by the methods specified in 40 CFR 60.18(f)(4), less than 18.3 m/sec (60 ft/sec), except as provided in 40 CFR 60.18(c)(4)(ii) and (iii).
- B. Steam-assisted and nonassisted flares designed for and operated with an exit velocity, as determined by the methods specified in 40 CFR 60.18(f)(4), equal to or greater than 18.3 m/sec (60 ft/sec) but less than 122 m/sec (400 ft/sec) are allowed if the net heating value of the gas being combusted is greater than 37.3 MJ/scm (1,000 Btu/scf).
- C. Steam-assisted and nonassisted flares designed for and operated with an exit velocity, as determined by the methods specified in 40 CFR 60.18(f)(4), less than the velocity, V_{max} , as determined by the method specified in 40 CFR 60.18 (f)(5), and less than 122 m/sec (400 ft/sec) are allowed.
- v. Air-assisted flares shall be designed and operated with an exit velocity less than the velocity, V_{max} , as determined by the method specified in 40 CFR 60.18 (f)(6).
- vi. Flares used to comply with 40 CFR 60.18 shall be steam-assisted, air-assisted, or nonassisted.
- vii. Flares used to comply with provisions of 40 CFR 60.18 shall be operated at all times when emissions may be vented to them.
- viii. For other specific testing and monitoring requirements for flares, see appropriate subsections of Section 7.3 of this permit.

Justification: The flare referenced in Condition 7.3.6(e) is not subject to either 40 C.F.R. Part 60 or Part 61, and thus, this condition is beyond the scope of Act and Board requirements, as well as Title V permitting requirements.

9. Condition 7.3.8(c) - Testing Requirements (pp. 118-119)

c. Flare [40 CFR 60.18(f)]:

- i. Method 22 of Appendix A to 40 CFR Part 60 shall be used to determine the compliance of flares with the visible emission provisions of this subpart. The observation period is 2 hours and shall be used according to Method 22.
- ii. The presence of a flare pilot flame shall be monitored using a thermocouple or any other equivalent device to detect the presence of a flame.
- iii. The net heating value of the gas being combusted in a flare shall be calculated using the following equation:

[Equation omitted.]

where:

HT = Net heating value of the sample, MJ/scm;
where the net enthalpy per mole of offgas is based on combustion at 25°C and 760 mm Hg, but the standard temperature for determining the volume corresponding to one mole is 20°C;

K = [Equation omitted.]

C_i = Concentration of sample component i in ppm on a wet basis, as measured for organics by Reference Method 18 and measured for hydrogen and carbon monoxide by ASTM D1946-77 or 90 (Reapproved 1994) (Incorporated by reference as specified in 40 CFR 60.17); and

H_i = Net heat of combustion of sample component i, kcal/g mole at 25°C and 760 mm Hg. The heats of

combustion may be determined using ASTM D2382-76 or 88 or D4809-95 (incorporated by reference as specified in 40 CFR 60.17) if published values are not available or cannot be calculated.

- iv. The actual exit velocity of a flare shall be determined by dividing the volumetric flow rate (in units of standard temperature and pressure), as determined by Reference Methods 2, 2A, 2C, or 2D as appropriate; by the unobstructed (free) cross sectional area of the flare tip.
- v. The maximum permitted velocity, V_{max} , for flares complying with 40 CFR 60.18(c)(4)(iii) shall be determined by the following equation.

$$\text{Log}_{10}(V_{max}) = (HT + 28.8)/31.7$$

V_{max} = Maximum permitted velocity, M/sec

28.8 = Constant

31.7 = Constant

HT = The net heating value as determined in 40 CFR 60.18 (f)(3).

- vi. The maximum permitted velocity, V_{max} , for air-assisted flares shall be determined by the following equation.

$$V_{max} = 8.706 + 0.7084 (HT)$$

V_{max} = Maximum permitted velocity, m/sec

8.706 = Constant

0.7084 = Constant

HT = The net heating value as determined in 40 CFR 60.18 (f)(3).

- vii. Opacity readings discussed above shall be contacted annually to assure compliance with no visible emissions from the flare. This condition is established pursuant to 39.5(7)(d) and (p) of the Act.

Justification: The flare referenced in Condition 7.3.8(c) is not subject to either 40 C.F.R. Part 60 or Part 61, and thus, this condition is beyond the scope of Act and Board requirements, as well as Title V permitting requirements.

10. Condition 7.3.10(a) - Monitoring Requirements (p. 124)

- a. Flares [40 CFR 60.18].
 - i. Flares shall be designed for and operated with no visible emissions as determined by the methods specified in 40 CFR 60.18(f), except for periods not to exceed a total of 5 minutes during any 2 consecutive hours.
 - ii. Flares shall be operated with a flame present at all times, as determined by the methods specified in 40 CFR 60.18 (f).
 - iii. Owners or operators of flares used to comply with the provisions of 40 CFR 60.18 shall monitor these control devices to ensure that they are operated and maintained in conformance with their designs.
 - iv. Flares used to comply with provisions of 40 CFR 60.18 shall be operated at all times when emissions may be vented to them.

Justification: The flare referenced in Condition 7.3.10(a) is not subject to either 40 C.F.R. Part 60 or Part 61, and thus, this condition is beyond the scope of Act and Board requirements, as well as Title V permitting requirements.

11. Condition 7.3.12(d) - Reporting Requirements (p. 136)

The Permittee shall submit the following reports:

* * *

- d. The Permittee shall promptly notify the Illinois EPA, Air Compliance Unit, of deviations of the affected by-product recovery plant with the permit requirements, pursuant to Section 39.5(7)(f)(ii) of the Act. Reports shall describe the

probable cause of such deviations, and any corrective actions or preventive measures taken:

The Permittee shall notify the Illinois EPA, Air Compliance Section within 30 days of operations of the affected byproduct recovery plant deviating from the requirements specified in this subsection.

Justification: The Final Permit is inconsistent in regards to when deviation reports are required. Condition 7.3.12(d) requires reporting deviations of this subsection within 30-days. However, other subsections require notification within 30-days if an emission or production limit is exceeded. U.S. Steel previously provided comments to the Illinois EPA regarding reporting requirements. *See* Exhibit 3 at 25.

12. Condition 7.4.7-1(a) - Inspection Requirements (pp. 149-150)

- a. The Permittee shall perform detailed inspections of the flare's ignition system associated with blast furnace operations on the monthly basis, with an initial inspection performed before any maintenance and repair activities are conducted during the period the process is out of service and a follow-up inspection performed after any such activities are completed [Sections 39.5(7)(a) and (d) of the Act].

Justification: Condition 7.4.7-1(a) was not included in the Draft Permit as required by the Act and its regulations, and thus, U.S. Steel did not have the opportunity to provide comment on this condition. In addition, Condition 7.4.7-1(a) requires inspections of the flare's ignition system associated with blast furnace operations on a monthly basis. The flare subject to this requirement is continuously burning, and thus, monthly inspections would be difficult to complete. This monthly requirement goes beyond the Illinois EPA's limited authority to gap-fill, and thus, this condition is beyond the scope of Act and Board requirements, as well as Title V permitting requirements.

13. Condition 7.4.7-2(b)(i) - Testing Requirements (pp. 151-153)

- b. Testing requirements for blast furnace casthouse.
 - i. For uncaptured emissions (roof monitor):
 - A. The Permittee shall have the opacity of the exhaust of the building housing the blast furnace casthouse determined by a qualified observer in accordance with USEPA Method 9 while the affected blast furnace(s) is operating, as further specified below.
 - B. The duration of opacity observations for each test shall be at least 30 minutes (five 6-minute averages) unless no visible emissions are observed as determined by USEPA Method 22 or the average opacities for the first 12 minutes of observations (two six-minute averages) conducted for the point of release that displays the greatest opacity are both less than 20.0 percent.
 - C. 1. Observations of opacity shall be conducted on the following frequency unless absence of adequate daylight or weather conditions preclude scheduled observation, in which case, the next observations shall be conducted on the next operating day of the cast house during which observations of opacity can reasonably be conducted in accordance with USEPA Method 9:
 - i. On a weekly basis (at least once every 7 operating days of the casthouse) except as provided below.
 - ii. On a daily basis (at least 5 days out of 7 operating days of the casthouse) if any of the five previous observations measured opacity of 20

percent or more, continuing on a daily basis until the maximum opacities measured in five consecutive daily observations are all less than 20 percent, at which time observations on a weekly basis shall resume.

2. Upon written request by the Illinois EPA, additional opacity observations shall be conducted within 5 operating days by the casthouse from the date of the request by the Illinois EPA or on the date agreed upon by the Illinois EPA, whichever is later. For such observations conducted pursuant to a request from the Illinois EPA:

- i. The Permittee shall notify the Illinois EPA at least 24 hours in advance of the date and time of these observations, in order to enable the Illinois EPA to witness the observations. This notification shall include the name and employer of the qualified observer(s).
- ii. The Permittee shall promptly notify the Illinois EPA of any changes in the time or date for observations.
- iii. The duration of these observations shall cover a complete heat or cycle of the affected blast furnace.
- iv. The Permittee shall provide a copy of the current certification for the opacity observer and observer's readings to the Illinois EPA

at the time of the
observations, if the Illinois
EPA personnel are present.

- D. The Permittee shall keep records for all opacity measurements for the casthouse made in accordance with USEPA Method 9 for the affected operations that the Permittee conducts or that are conducted at its behest by individuals who are qualified to make such observations. For each occasion on which such measurements are made, these records shall include the formal report for the measurements if conducted pursuant to Condition 7.4.7-2(b)(i), or otherwise the identity of the observer, a description of the measurements that were made, the operating condition of the affected operations, the observed opacity, and copies of the raw data sheets for the measurements.

Justification: Condition 7.4.7-2(b)(i) was not included in the Draft Permit as required by the Act and its regulations, and thus, U.S. Steel did not have the opportunity to comment on this condition. In addition, Condition 7.4.7-2(b)(i) requires opacity observations on a daily and weekly basis. Not only does this condition establish a new testing requirement for the blast furnace casthouse, but it also requires frequent testing observations that are beyond the scope of the Illinois EPA's limited authority to gap-fill. Thus, this condition is beyond the scope of Act and Board requirements, as well as Title V permitting requirements.

14. Condition 7.4.7-2(c) - Testing Requirements (p. 153-155)

- c. Flares:

Opacity readings shall be conducted annually to assure compliance with no visible emissions from the flare. USEPA Method 22 shall be used for the opacity reading and the Permittee may use the following testing procedure as outlined in 40 CFR 60.18(f):

- i. Method 22 of Appendix A to 40 CFR Part 60 shall be used to determine the compliance of flares with the visible emission provisions of this subpart. The observation period is 2 hours and shall be used according to Method 22.
- ii. The presence of a flare pilot flame shall be monitored using a thermocouple or any other equivalent device to detect the presence of a flame.
- iii. The net heating value of the gas being combusted in a flare shall be calculated using the following equation:

[Equation omitted.]

where:

HT = Net heating value of the sample, MJ/scm; where the net enthalpy per mole of offgas is based on combustion at 25°C and 760 mm Hg, but the standard temperature for determining the volume corresponding to one mole is 20°C;

K = [Equation omitted.]

C_i = Concentration of sample component i in ppm on a wet basis, as measured for organics by Reference Method 18 and measured for hydrogen and carbon monoxide by ASTM D1946-77 or 90 (Reapproved 1994) (Incorporated by reference as specified in 40 CFR 60.17); and

H_i = Net heat of combustion of sample component i, kcal/g mole at 25°C and 760 mm Hg. The heats of combustion may be determined using ASTM D2382-76 or 88 or D4809-95 (incorporated by reference as specified in 40 CFR 60.17) if published values are not available or cannot be calculated.

- iv. The actual exit velocity of a flare shall be determined by dividing the volumetric flowrate (in units of standard temperature and pressure), as determined by Reference Methods 2, 2A, 2C, or 2D

as appropriate; by the unobstructed (free) cross sectional area of the flare tip.

- v. The maximum permitted velocity, V_{max} , for flares complying with 40 CFR 60.18(c)(4)(iii) shall be determined by the following equation.

$$\text{Log}_{10} (V_{max}) = \text{HT} + 28.8) / 31.7$$

V_{max} = Maximum permitted velocity, M/sec

28.8 = Constant

31.7 = Constant

HT = The net heating value as determined in 40 CFR 60.18 (f)(3).

- vi. The maximum permitted velocity, V_{max} , for air-assisted flares shall be determined by the following equation.

$$V_{max} = 8.706 + 0.7084 (\text{HT})$$

V_{max} = Maximum permitted velocity, m/sec

8.706 = Constant

0.7084 = Constant

HT = The net heating value as determined in 40 CFR 60.18 (f)(3).

Justification: Condition 7.4.7-2(c) was not included in the Draft Permit as required by the Act and its regulations, and thus, U.S. Steel did not have the opportunity to comment on this condition. In addition, it is infeasible to use a thermocouple on the flare subject to this condition. Further, this condition references testing procedures in 40 C.F.R. § 60.18; however, the flare subject to this condition is not subject to 40 C.F.R. Part 60 or Part 61. Thus, this condition is beyond the scope of Act and Board requirements, as well as Title V permitting requirements.

15. Condition 7.4.9(c) - Monitoring Requirements (p. 159)

- c. Inspection of Flares

The Permittee shall perform detailed inspections of the flare's ignition system associated with blast furnace operations on the monthly basis, with an initial inspection performed before any maintenance and repair activities are conducted during the period the process is out of service and a follow-up inspection performed after any such activities are completed [Sections 39.5(7)(a) and (d) of the Act].

Justification: Condition 7.4.9(c) was not included in the Draft Permit as required by the Act and its regulations, and thus, U.S. Steel did not have the opportunity to comment on this condition. In addition, this condition requires monthly inspections of the flare's ignition system; however, because the blast furnaces associated with the flare are not shut down each month, such monthly inspections are infeasible.

16. Condition 7.4.11(e) - Recordkeeping Requirements (p. 166)

The Permittee shall maintain records of the following items for the affected Blast Furnaces, pursuant to Sections 39.5(7)(a), (e) and (p) of the Act:

* * *

- e. Records showing the dates and times the furnaces were backdrafted for planned shutdowns and/or routine maintenance. This shall include, at a minimum for each occurrence, the blast furnace identification, timeframe of backdraft, reason, and steps taken to minimize emissions during the backdraft period. This condition is established pursuant to Title I of the CAA, specifically PSD for purposes of minimizing emissions released during operations [T1N].

Justification: Condition 7.4.11(e) was revised after U.S. Steel submitted its comments on the Draft Permit to the Illinois EPA, and thus, U.S. Steel did not have the opportunity to provide comment on the revised portion of this condition. Further, U.S. Steel maintains, as stated in its comments, that the recordkeeping requirement for backdrafting is beyond the scope of Title V permitting, as there are no existing regulations that require

such recordkeeping, and it is not necessary to determine compliance with the Final Permit. In addition, this condition is designated as a new Title I condition. However, U.S. Steel did not request such condition, and thus, the addition of the condition is beyond the scope of the Illinois EPA's authority to include Title I conditions in Title V permits. *See generally* Memorandum of Understanding between USEPA and Illinois EPA (February 2000); *see also* USEPA, Title V Task Force, Final Report to the Clean Air Act Advisory Committee: Title V Implementation Experience at 66-69 (April 2006) (explaining that new and revised terms are not created by the Illinois EPA without request from the source).

Also, the Illinois EPA did not provide adequate public notice of the new Title I condition as required by both federal and state statutes and regulations. The Illinois EPA's Notice of Comment Period and Public Hearing ("Notice") generally stated that "CAAPP permits may contain 'Title I Conditions,' i.e., conditions established under the permit programs for new and modified emission units, pursuant to Title I of the Act." *See* Notice of Comment Period and Public Hearing at 2. Federal regulations, as well as the Memorandum of Understanding cited above, require more specific information regarding Title I conditions be provided in the public notice. The Notice issued in this case does not provide any details regarding the actions taken by the Illinois EPA on Title I conditions, and thus, this condition was not properly noticed, and accordingly, should be removed from the Final Permit. *See In the Matter of Midwest Generation, LCC, Waukegan Generating Station*, 2005 EPA CAA Title V LEXIS 14 at 16-19 (USEPA Sept. 22, 2005) (stating that the notice issued by the Illinois EPA did "not indicate clearly whether IEPA made any title I changes in the permit action" and requiring that the

“notice must clearly state that the permitting action includes action on title I terms if it has established, modified, streamlined or deleted any title I terms in the permit action, and the statement of basis must discuss the bases for any changes to title I permit terms”); *see also* 70 Fed. Reg. 65898 (Nov. 1, 2005).

17. Condition 7.4.11(f) - (i) - Recordkeeping Requirements (p. 166)

The Permittee shall maintain records of the following items for the affected Blast Furnaces, pursuant to Sections 39.5(7)(a), (e) and (p) of the Act:

* * *

- f. Records of iron pellets charged (tons/month and tons/year).
- g. Records of slag processed (tons/month and tons/year).
- h. Records of amount of iron pellets screened (tons/month and tons/year).
- i. If the Permittee operates under manufacturer’s specifications or manufacturer’s instructions, such manufacturer’s documentation shall be kept at the source as part of the required records.

Justification: Conditions 7.4.11(f) – (i) were not included in the Draft Permit for comment as required by the Act and its regulations, and thus, U.S. Steel did not have the opportunity to comment on these conditions.

18. Condition 7.4.12(c) - Reporting Requirements (p. 170)

- c. The Permittee shall promptly notify the Illinois EPA, Air Compliance Unit, of deviations of the affected blast furnace processes with the permit requirements, pursuant to Section 39.5(7)(f)(ii) of the Act. Reports shall describe the probable cause of such deviations, and any corrective actions or preventive measures taken.
- i. The Permittee shall report whether operations of the affected blast furnace processes deviated from the

requirements specified in this subsection within 30 days of such occurrence.

- ii. The Permittee shall report whether an exceedance of the production/emission limits of Conditions 7.4.5 and 5.6.3 occurred within 30 days of such occurrence.

Justification: The Final Permit is inconsistent in regards to when deviation reports are required. Condition 7.4.12(c) requires reporting deviations of this subsection within 30-days. However, other subsections require notification within 30-days if an emission or production limit is exceeded. U.S. Steel previously provided comments to the Illinois EPA regarding reporting requirements. *See* Exhibit 3 at 25.

19. Condition 7.5.5-1(b)(v) - Work Practices Operation and Maintenance Plan (p. 180)

7.5.5-1 Work Practices: Operation and Maintenance Plan (40 CFR 63.7800)

* * *

- b. The Permittee shall prepare and operate at all times according to a written operation and maintenance plan for each capture system or control device subject to an operating limit in 40 CFR 63.7790(b). Each plan shall address the following elements:

* * *

- v. Corrective action procedures for electrostatic precipitators equipped with COMS. In the event an electrostatic precipitator exceeds the operating limit in 40 CFR 63.7790(b)(3), the Permittee shall take corrective actions consistent with the site-specific monitoring plan in accordance with 40 CFR 63.7831(a).

Justification: Condition 7.5.5-1(b)(v) was not included in the Draft Permit as required by the Act and its regulations, and thus, U.S. Steel did not have the opportunity to

provide comment on this condition. In addition, Condition 7.5.5-1(b)(v) incorrectly references 40 C.F.R. § 63.7831(a).

20. Condition 7.5.5-3(a)(i) – Work Practices Incorporated from previously issued State Permits #72080043, #95010001 and #83050042 (p. 182)

- a. i. Overlapping operations of the BOF vessels is allowed under the following conditions:
 - A. The hot metal charge of the second vessel shall be initiated and completed during the time between completion of the blow and start of tap on the first vessel while sufficient draft at the ESP capture system is established and maintained for both vessels.
 - B. The charge and/or blow on one vessel shall not begin until sufficient draft has been established at the associated ESP capture system (a.k.a., doghouse) and the alloy addition at the vessel tapping has been completed for at least 1 minute.
 - C. Sufficient draft at the ESP capture system of the vessel being tapped shall be maintained for at least 1 minute after alloy addition has been completed. After such period, the capture system draft may be transferred over to the other vessel in order to satisfy condition (A) above.
 - D. Only overlapping of the hot metal charge of the second vessel after the end of blow and prior to onset of tap of the first vessel and overlapping of tapping of the first vessel, after alloy addition, and the hot metal charge and/or blow on the second vessel are allowed.
 - E. Condition B and C above shall be part of the Standard Operating Procedure (SOP) of the BOF vessels.

Justification: Under the USEPA's flexible permit approach, the requirements in Condition 7.5.5-3(a)(i) should be incorporated into an operations and maintenance plan in order to allow changes in operation without requiring a modification of the CAAPP permit. *See* Exhibit 3 at 18. USEPA recently re-promulgated the Flexible Air Permit ("FAP") Rule, and although the FAP Rule is not effective until November 5, 2009, it provides USEPA's position on streamlining and flexibility. *See* Final Rule, Operating Permit Programs; Flexible Air Permitting Rule, 74 Fed. Reg. 51418 (Oct. 6, 2009).

21. Condition 7.5.7-2(d) - Testing Requirements (pp. 190-191)

- d. For uncaptured emissions (roof monitor):
 - i. The Permittee shall have the opacity of the exhaust of the building housing the BOF determined by a qualified observer in accordance with USEPA Method 9 while the affected BOF(s) is operating, as further specified below.
 - ii. The duration of opacity observations for each test shall be at least 30 minutes (five 6-minute averages) unless no visible emissions are observed as determined by USEPA Method 22 or the average opacities for the first 12 minutes of observations (two six-minute averages) conducted for the point of release that displays the greatest opacity are both less than 20.0 percent.
 - iii. A. Observations of opacity shall be conducted on the following frequency unless absence of adequate daylight or weather conditions preclude scheduled observation, in which case, the next observations shall be conducted on the next operating day of the BOF during which observations of opacity can reasonably be conducted in accordance with USEPA Method 9:
 - 1. On a weekly basis (at least once every 7 operating days of BOF) except as provided below.

2. On a daily basis (at least 5 days out of 7 operating days of BOF) if any of the five previous observations measured opacity of 20 percent or more, continuing on a daily basis until the maximum opacities measured in five consecutive daily observations are all less than 20 percent, at which time observations on a weekly basis shall resume.
- B. Upon written request by the Illinois EPA, additional opacity observations shall be conducted within 5 operating days by the BOF from the date of the request by the Illinois EPA or on the date agreed upon by the Illinois EPA, whichever is later. For such observations conducted pursuant to a request from the Illinois EPA:
1. The Permittee shall notify the Illinois EPA at least 24 hours in advance of the date and time of these observations, in order to enable the Illinois EPA to witness the observations. This notification shall include the name and employer of the qualified observer(s).
 2. The Permittee shall promptly notify the Illinois EPA of any changes in the time or date for observations.
 3. The duration of these observations shall cover a complete heat or cycle of the affected BOF.
 4. The Permittee shall provide a copy of the current certification for the opacity observer and observer's readings to the Illinois EPA at the time of the observations, if the Illinois EPA personnel are present.

- iv. The Permittee shall keep records for all opacity measurements for the BOF made in accordance with USEPA Method 9 for the affected operations that the Permittee conducts or that are conducted at its behest by individuals who are qualified to make such observations. For each occasion on which such measurements are made, these records shall include the formal report for the measurements if conducted pursuant to Condition 7.5.7-2(d), or otherwise the identity of the observer, a description of the measurements that were made, the operating condition of the affected operations, the observed opacity, and copies of the raw data sheets for the measurements.

Justification: Condition 7.5.7-2(d) was not included in the Draft Permit as required by the Act and its regulations, and thus, U.S. Steel did not have the opportunity to comment on this condition. In addition, this condition requires opacity observations on a weekly and daily basis, which is inconsistent with other Final Permit conditions requiring weekly observations. See Condition 7.5.7-1(c) (referencing Permit No. 95010001). Further, this condition requires frequent testing observations that are beyond the scope of the Illinois EPA's limited authority to gap-fill. Thus, this condition is beyond the scope of Act and Board requirements, as well as Title V permitting requirements.

22. Condition 7.5.10(f) - (g) - Recordkeeping Requirements (p. 201)

The Permittee shall maintain records of the following items for the affected BOF, pursuant to Sections 39.5(7)(a) and (e) of the Act:

* * *

- f. If the Permittee operates under manufacturer's specifications or manufacturer's instructions, such manufacturer's documentation shall be kept at the source as part of the required records.
- g. For Material handling operations (flux dump and conveyor transfer points), see the recordkeeping requirements established in Conditions 5.9.3(c) and (d).

Justification: Conditions 7.5.10(f) - (g) were not included in the Draft Permit as required by the Act and its regulations, and thus, U.S. Steel did not have the opportunity to comment on these conditions.

23. Condition 7.5.11(c) - Testing Requirements (pp. 205-206)

- c. The Permittee shall promptly notify the Illinois EPA, Air Compliance Unit, of deviations of the affected BOF operations with the permit requirements, pursuant to Section 39.5(7)(f)(ii) of the Act. The reports submitted by the Permittee shall describe the probable cause of such deviations, and any corrective actions or preventive measures taken.
 - i. The Permittee shall report whether operations of the affected BOF deviated from the requirements specified in this subsection within 30 days of such occurrence.
 - ii. The Permittee shall report whether an exceedance of the production/emission limits of Conditions 7.5.6 and 5.6.3 occurred, within 30 days of such occurrence.

Justification: The Final Permit is inconsistent in regards to when deviation reports are required. Condition 7.5.11(c) requires reporting deviations of this subsection within 30-days. However, other subsections require notification within 30-days if an emission or production limit is exceeded. U.S. Steel previously provided comments to the Illinois EPA regarding reporting requirements. *See* Exhibit 3 at 25.

24. Condition 7.5.14(b) - Compliance Schedule and Current Enforcement Status (pp. 206-208)

The Permittee was sent Violation Notice A-2007-00009 by the Illinois EPA for violations related to the affected BOF shop. The violation notice alleged exceedances of the 20% opacity limit on uncaptured emissions from openings in the building housing the BOF shop. The violations were referred to the Office of the Illinois Attorney General by the Illinois EPA. The violations were resolved via consent order 05-CH-750, which was entered on December 18,

2007 in the Circuit Court for the Third Judicial Circuit, Madison County, Illinois. By March 31, 2008, U.S. Steel was required to submit a compliance schedule that would demonstrate compliance with the above referenced violations. That schedule was submitted on time by US Steel, however, the schedule was not approvable as required under Section 39.5(10)(a)(ii).

* * *

b. Submittal of Progress Reports

Monthly Progress Reports shall be submitted beginning with August 2009 and ending upon the achievement of compliance. Each monthly report shall be submitted no later than 5 days after the end of the corresponding calendar month. The Progress Report shall contain at least the following:

- i. The required date for achieving commitments, and actual dates when such commitments were achieved.
- ii. Any commitments accepted by the Permittee or otherwise established for the affected BOF as part of the resolution of the above referenced Consent Order, with the associated timing for each commitment.
- iii. A discussion of progress in complying with commitments that are subject to future deadlines.
- iv. If any commitment was not met, an explanation of why the required timeframe or commitment was not met, and any preventive or corrective measures adopted to achieve required commitment.

Justification: Condition 7.5.14(b) was revised after the issuance of the Draft Permit, and thus, U.S. Steel did not have the opportunity to comment on the revisions to this condition. The Final Permit is inconsistent in regards to the schedule for submission of progress reports under the Consent Order. Condition 7.5.14(b) requires the submittal of monthly progress reports regarding the compliance schedule for the BOF Roof beginning

in August 2009. However, the Consent Order and the Draft Permit required quarterly progress reports. The requirement to submit monthly progress reports goes beyond the Illinois EPA's limited authority to gap-fill. Thus, this condition is beyond the scope of Act and Board requirements, as well as Title V permitting requirements.

25. Condition 7.6.6(b) – Control Requirements and Work Practices
(p. 213)

The affected continuous casting operations are part of the PM10 Contingency Plan as described in 35 IAC Part 212, Subpart U and Condition 5.3.4

Justification: Condition 7.6.6(b) references Condition 5.3.4, which requires the submission of a PM10 contingency measure plan that is incorporated by reference into the CAAPP permit. Thus, Condition 7.6.6(b) should be removed from the Final Permit because it dictates the operations that should be included in the contingency measure plan rather than allowing U.S. Steel to develop and implement a plan to include only those activities or operations that will most effectively meet applicable requirements.

26. Condition 7.6.8 - Testing Requirements (pp. 214-216)

The Permittee shall conduct testing of the continuous casting operation building for uncaptured emissions (roof monitor) in accordance with the test procedures outlined below [39.5(7)(d) and (p) of the Act]:

- a. The Permittee shall have the opacity of the exhaust of the building housing continuous casting operations determined by a qualified observer in accordance with USEPA Method 9 while the affected continuous is operating, as further specified below.
- b. The duration of opacity observations for each test shall be at least 30 minutes (five 6-minute averages) unless no visible emissions are observed as determined by USEPA Method 22 or the average opacities for the first 12 minutes of observations (two six-minute averages) conducted for

the point of release that displays the greatest opacity are both less than 5.0 percent.

- c.
 - i. Observations of opacity shall be conducted on the following frequency unless absence of adequate daylight or weather conditions preclude scheduled observation, in which case, the next observations shall be conducted on the next operating day of the cast house during which observations of opacity can reasonably be conducted in accordance with USEPA Method 9:
 - A. On a weekly basis (at least once every 7 operating days of the casthouse) except as provided below.
 - B. On a daily basis (at least 5 days out of 7 operating days of the continuous casting) if any of the five previous observations measured opacity of 5 percent or more, continuing on a daily basis until the maximum opacities measured in five consecutive daily observations are all less than 5.0 percent, at which time observations on a weekly basis shall resume.
 - ii. Upon written request by the Illinois EPA, additional opacity observations shall be conducted within 5 operating days by the continuous casting from the date of the request by the Illinois EPA or on the date agreed upon by the Illinois EPA, whichever is later. For such observations conducted pursuant to a request from the Illinois EPA:
 - A. The Permittee shall notify the Illinois EPA at least 24 hours in advance of the date and time of these observations, in order to enable the Illinois EPA to witness the observations. This notification shall include the name and employer of the qualified observer(s).
 - B. The Permittee shall promptly notify the Illinois EPA of any changes in the time or date for observations.

- C. The duration of these observations shall cover a complete cycle of the continuous casting.
 - D. The Permittee shall provide a copy of the current certification for the opacity observer and observer's readings to the Illinois EPA at the time of the observations, if the Illinois EPA personnel are present.
- d. The Permittee shall keep records for all opacity measurements for the continuous casting made in accordance with USEPA Method 9 for the affected operations that the Permittee conducts or that are conducted at its behest by individuals who are qualified to make such observations. For each occasion on which such measurements are made, these records shall include the formal report for the measurements if conducted pursuant to Condition 7.6.8, or otherwise the identity of the observer, a description of the measurements that were made, the operating condition of the affected operations, the observed opacity, and copies of the raw data sheets for the measurements.

Justification: The opacity testing requirement in Condition 7.6.8 for the Continuous Casters Roof was not included in the Draft Permit as required by the Act and its regulations, and thus, U.S. Steel did not have the opportunity to comment on this condition. In addition, the 5.0 percent opacity limit referenced in this condition is inapplicable to the Continuous Casters Roof.

27. Condition 7.7.5(c) – Startup Provisions (p. 221)

- c. The Permittee shall fulfill applicable recordkeeping and reporting requirements of Condition 7.7.10 and Condition 5.10.7, respectively.

Justification: Condition 7.7.5(c) was not included in the Draft Permit as required by the Act and its regulations, and thus, U.S. Steel did not have the opportunity to provide comment on this condition. In addition, this condition requires clarification because it is

a recordkeeping requirement, and accordingly, it should not be included in the Startup Provisions section. The quantities of emissions generated during startup of the reheat furnaces cannot be determined on a prior basis, as explained in Exhibit 203-2 of U.S. Steel's CAAPP permit application (attached hereto as Exhibit 6). This requirement goes beyond the Illinois EPA's limited authority to gap-fill. Thus, this condition is beyond the scope of Act and Board requirements, as well as Title V permitting requirements.

28. Condition 7.7.7(a) - Production and Emission Limitations (p. 222)

The following production and operating limits are established for the affected slab reheat furnaces:

- a. The process weight rate of all slabs heated in the reheat furnaces shall not exceed 931 tons per hour.

Justification: Condition 7.7.7(a) requires clarification because the process weight rate limit identified in the Final Permit should be based on a monthly average. *See* U.S. Steel comment in regard to Condition 7.7.10(a), Exhibit 3 at 20. Permit No. 72080038 issued to U.S. Steel requires that “. . . the Permittee shall submit a monthly log of the tons of slabs heated and the fuel used . . .” Thus, Condition 7.7.7(a) requires clarification regarding the monthly average of the process weight rate of slabs heated in the reheat furnaces.

In addition, the term “process weight rate” is defined at 35 Ill. Admin. Code § 211.5250, and it implies that compliance is averaged over more than a single hour. 35 Ill. Admin. Code § 211.5250. Further, the regulatory requirement from which this condition derives appears to limit emissions of particulate matter (“PM”). 35 Ill. Admin. Code § 212.321. In U.S. Steel's case, there are no PM emissions resulting from the slabs themselves; rather, the PM emissions from the reheat furnaces are a result of fuel

combustion at the reheat furnaces. The level of throughput does not affect the emissions of PM from the reheat furnaces. Also, because PM emissions are not related to the slab throughput of the furnaces, the Illinois EPA has gone beyond its limited authority to gap-fill. Thus, this condition is beyond the scope of Act and Board requirements, as well as Title V permitting requirements.

This condition is also an obsolete requirement from prior state permits that should be removed from the Final Permit. *See generally* USEPA, White Paper For Streamlined Development of Part 70 Applications at 12-14 (July 10, 1995) (explaining that terms from NSR permits that are “obsolete, extraneous, environmentally insignificant, or otherwise not required as part of the SIP or a federally-enforceable NSR program” do not need to be incorporated into the Title V permit). U.S. Steel is subject to a process weight rate requirement at 35 Ill. Admin. Code § 212.321, as referenced in Conditions 7.7.3(c) and (d). Thus, Condition 7.7.7(a), which, as stated above, is a provision carried over from previously issued state permits, is unnecessary since U.S. Steel complies with the regulatory requirement for process weight rate.

Finally, due to the limited types of fuel that can be utilized for the reheat furnaces (*see* Conditions 7.7.7(b) – (f)), U.S. Steel would not exceed the PM limits imposed by the application of the process weight rate requirement, and thus, Condition 7.7.7(a) is unnecessary and should be removed from the Final Permit. U.S. Steel is subject to fuel usage restrictions that are intended to limit the emissions from the reheat furnaces, and such restrictions are more stringent than the emission limits that would be calculated by using the 931 tons per hour limit in a process weight rate formula. In accordance with USEPA’s policy on permit streamlining, the process weight rate limit should be removed

from the Final Permit because the fuel usage restrictions are more stringent than the process weight rate requirement. *See generally* USEPA, White Paper 2 for Improved Implementation of the Part 70 Operating Permits Program at 1-3 (Mar. 5, 1996) (stating that “multiple emission limits may be streamlined into one limit if that limit is at least as stringent as the most stringent limit”).

29. Condition 7.7.10(h)(A)(2) - Recordkeeping Requirements (p. 224)

The Permittee shall maintain records of the following items for the affected slab reheat furnaces, pursuant to Sections 39.5(7)(a) and (e) of the Act:

* * *

h. Records for Startup

The Permittee shall maintain the following records, pursuant to Section 39.5(7)(b) of the Act, for each affected slab reheat furnace subject to Condition 7.7.5, which at a minimum shall include:

A. The following information for each startup of an affected slab reheat furnace:

* * *

2. If normal operation was not achieved within 2 hours, an explanation why startup could not be achieved within this time.

Justification: Condition 7.7.10(h)(a)(2) requires revision as to the two hour limit within which to reach normal operation since the slab reheat furnaces cannot achieve normal operation within two hours. U.S. Steel stated in Exhibit 203-2 of its CAAPP permit application that the “anticipated length of time during startup for furnaces can vary from 2 to 10 hours.” *See* Exhibit 6.

30. Condition 7.7.11 - Reporting Requirements (pp. 224-225)

- a. The Permittee shall promptly notify the Illinois EPA, Air Compliance Section, of deviations of the affected slab reheat furnaces with the permit requirements as follows, pursuant to Section 39.5(7)(f)(ii) of the Act. Reports shall describe the probable cause of such deviations, and any corrective actions or preventive measures taken.
 - i. The Permittee shall report whether emissions of PM/PM10 had been released in excess of the limits specified in Condition 7.7.3-1 within 30 days of such occurrence.
 - ii. The Permittee shall report whether an exceedance of the production limits of Condition 7.7.7 occurred within 30 days of such occurrence.
- b. All other deviations not specifically addressed by Section 7.7.11 shall be reported in the semi-annual reports [39.5(7)(b) and (f) of the Act].

Justification: Condition 7.7.11 was revised after the issuance of the Draft Permit. Thus, U.S. Steel did not have the opportunity to comment on the revisions to this condition. In addition, the Final Permit is inconsistent in regards to when deviation reports are required. Condition 7.7.11 requires reporting deviations of this subsection within 30-days. However, other subsections require notification within 30-days if an emission or production limit is exceeded. U.S. Steel previously provided comments to the Illinois EPA regarding reporting requirements. *See* Exhibit 3 at 25.

31. Condition 7.8.11(d) - Recordkeeping Requirements (p. 239)

The Permittee shall maintain records of the following items for the affected finishing operations, pursuant to Sections 39.5(7)(a) and (e) of the Act:

* * *

- d. If the Permittee operates under manufacturer's specifications or manufacturer's instructions, such

manufacturer's documentation shall be kept at the source as part of the required records.

Justification: Condition 7.8.11(d) was not included in the Draft Permit as required by the Act and its regulations, and thus, U.S. Steel did not have the opportunity to comment on this condition.

32. Condition 7.9.3(b) - Applicable Provisions and Regulations (p. 243)

- b. No person shall cause or allow the discharge of more than 3.6 kg/hr (8 lbs/hr) of organic material into the atmosphere from any emission unit, except as provided in 35 IAC 219.302, 219.303, and 219.304 and the following exception: If no odor nuisance exists this limitation shall apply only to photochemically reactive material [35 IAC 219.301].

Justification: Condition 7.9.3(b) is not applicable to wastewater treatment operations because the operation is not discharging organic material as defined in 35 Ill. Admin. Code § 211.4250.

33. Condition 7.9.7 - Testing Requirements (p. 244)

7.9.7 Testing Requirements

See Condition 5.7(c) for the test/measurement procedures required by 40 CFR 61.355.

Justification: Condition 7.9.7 requires clarification because Condition 5.7(c) in the Final Permit refers to opacity testing. However, Condition 5.7(c) in the Draft Permit referred to test methods and procedures for Total Annual Benzene Quantity Waste Determination.

34. Condition 7.9.9(a) - Recordkeeping Requirements (p. 244)

The Permittee shall maintain records of the following items for the affected wastewater treatment plant, pursuant to Sections 39.5(7)(a) and (e) of the Act:

- a. See Condition 5.9.5 for the records required by 40 CFR 61.356 (Subpart FF, Benzene Waste Operations).

Justification: Condition 7.9.9(a) requires clarification because Condition 5.9.5 refers to records required by Permit 95010001 in the Final Permit. However, Condition 5.9.5 in the Draft Permit referred to records required by 40 C.F.R. § 61.356 (Benzene Waste Operations, Subpart FF).

35. Condition 7.9.10(a)(i) - Reporting Requirements (p. 244)

- a. The Permittee shall promptly notify the Illinois EPA, Air Compliance Section, of deviations of the affected wastewater treatment plant with the permit requirements, pursuant to Section 39.5(7)(f)(ii) of the Act. Reports shall describe the probable cause of such deviations, and any corrective actions or preventive measures taken.
 - i. The Permittee shall report whether an exceedance of emission limits specified in Condition 7.9.3(b) and all other deviations occurred within 30 days of such occurrence.

Justification: The Final Permit is inconsistent in regards to when deviation reports are required. Condition 7.9.10(a)(i) requires reporting deviations of this subsection within 30-days. However, other subsections require notification within 30-days if an emission or production limit is exceeded. U.S. Steel previously provided comments to the Illinois EPA regarding reporting requirements. *See* Exhibit 3 at 25.

36. Condition 7.9.10(b) - Reporting Requirements (p. 245)

- b. See Condition 5.10.5 for the reports required by 40 CFR 61.357 (Subpart FF, Benzene Waste Operations).

Justification: Condition 7.9.10(b) requires clarification because Condition 5.10.5 refers to reporting for fugitive emissions operating program, agency requests and 40 C.F.R. Part 63, Subpart FFFFFF in the Final Permit. However, in the Draft Permit, Condition 5.10.5 referred to reporting requirements established in 40 C.F.R. § 61.357.

37. Condition 7.10.3(b)(ii) - Applicable Provisions and Regulations (p. 246)

b. The affected boilers shall not exceed the following PM10 limitations of 35 IAC 212.458(b)(9) and 212.458(b)(22):

* * *

ii. 2.15 ng/J (0.005 lb/mmBtu) of heat input from the steel works boilers located at the steel making facilities at steel plants in the vicinity of Granite City, as defined in 35 IAC 212.324(a)(1)(C).

Justification: Condition 7.10.3(b)(ii) was not included in the Draft Permit as required by the Act and its regulations, and thus, U.S. Steel did not have the opportunity to comment on this condition. In addition, the steel works boilers referenced in this condition are no longer in operation, and thus, this condition is not required.

38. Condition 7.10.7 - Testing Requirements (p. 252)

- a. The Permittee shall conduct testing of the affected boilers in accordance with the test procedures outlined below.
- b. Particulate matter emissions subject to the limit established in Condition 7.10.3(b) shall be determined in accordance with procedures published in 40 CFR Part 60, Appendix A, Methods 1 through 5 (or Method 201A).
- c. Testing to determine PM10 emissions shall be conducted in accordance with 35 IAC 212.108.
- d. The testing shall be conducted once in five years at the time of renewal of this permit and may be done on one of the boilers representing each group of boilers described in Condition 7.10.2.
- e. These conditions are established in accordance with 39.5(7)(c),(d) and (p) of the Act.

Justification: Condition 7.10.7 was revised after the issuance of the Draft Permit. Thus, U.S. Steel did not have the opportunity to comment on the revisions to this condition.

39. Condition 7.10.9(f) - Recordkeeping Requirements (p. 253)

The Permittee shall maintain records of the following items for the affected boilers, pursuant to Sections 39.5(7)(a) and (e) of the Act:

* * *

- f. If the Permittee operates under manufacturer's specifications or manufacturer's instructions, such manufacturer's documentation shall be kept at the source as part of the required records.

Justification: Condition 7.10.9(f) was not included in the Draft Permit as required by the Act and its regulations, and thus, U.S. Steel did not have the opportunity to comment on this condition.

40. Condition 7.11.8(d) – Testing Requirements (pp. 257-258)

- d. If the annual operation of the emergency generator exceeds 500 hr/yr, then the Permittee shall conduct testing of PM, CO, NOx and SO2 emissions to verify compliance with the emission limits in Condition 7.11.7(b). Notification and testing procedures shall be conducted in accordance with subsection 8.6 of this permit.

Justification: Condition 7.11.8(d) was not included in the Draft Permit as required by the Act and its regulations, and thus, U.S. Steel did not have the opportunity to comment on this condition.

41. Condition 7.11.11(b)(i)(C) - Reporting Requirements (p. 260)

- b. The Permittee shall comply with the reporting required by 40 CFR 63.6650:
 - i. Applicable reports described in Table 7 of Subpart *ZZZZ*:

* * *

- C. Reports on the fuel flow rate of each fuel;
and

Justification: Condition 7.11.11(b)(i)(C) is not applicable to this unit because it does not utilize digester gas or landfill gas.

WHEREFORE, UNITED STATES STEEL CORPORATION petitions the Illinois Pollution Control Board for a hearing on the Illinois EPA's final action on U.S. Steel's CAAPP permit application, with respect to the permit conditions referenced herein, and a determination that the Illinois EPA's action was arbitrary, capricious, and not supported by the Act or Board regulations. And, as set forth in the accompanying Motion, U.S. Steel requests confirmation that the effectiveness of the Final Permit is automatically stayed until the Board's final determination in this matter or, in the alternative, requests the Board grant a stay of effectiveness of the entire Final Permit. U.S. Steel reserves the right to amend this Petition as necessary in order to raise newly discovered issues arising from the Final Permit and/or to provide additional specificity regarding the conditions of the Final Permit, if required by the Board.

Respectfully submitted,

UNITED STATES STEEL
CORPORATION
Petitioner,

Dated: October 7, 2009

By: /s/ Katherine D. Hodge
One of Its Attorneys

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USSC:003/Fil/Petition for Review - Final

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

UNITED STATES STEEL)	
CORPORATION, a Delaware corporation,)	
)	
Petitioner,)	
)	
v.)	PCB No. ____ - ____
)	(CAAPP Permit Appeal)
ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Respondent.)	

MOTION TO CONFIRM AUTOMATIC STAY OF EFFECTIVENESS OF CAAPP PERMIT OR, IN THE ALTERNATIVE, TO REQUEST STAY OF EFFECTIVENESS

NOW COMES, Petitioner, UNITED STATES STEEL CORPORATION (hereinafter "U.S. Steel"), by and through its attorneys, HODGE DWYER & DRIVER, and hereby requests the Illinois Pollution Control Board ("Board") confirm the automatic stay of effectiveness of U.S. Steel's Clean Air Act Permit Program ("CAAPP") permit or, in the alternative, grant a stay of effectiveness of the entire CAAPP permit.

In support thereof, U.S. Steel states as follows:

1. On September 3, 2009, the Illinois Environmental Protection Agency ("Illinois EPA") issued a final CAAPP permit (No. 96030056) ("Final Permit") for U.S. Steel's integrated steel mill plant in Granite City, Illinois.
2. Today, October 7, 2009, U.S. Steel has filed a Petition for Review seeking Board review of the Final Permit.
3. Section 105.304 of the Board's rules states that the "petition may include a request to stay the effectiveness of a denial of the CAAPP permit until final action is taken by the Board pursuant to Section 40.3 of the Act." 35 Ill. Admin. Code § 105.304.

4. The Board, as discussed in more detail below, has held that the provision of the Administrative Procedure Act (“APA”), 5 ILCS 100/1, *et seq.*, regarding automatic stays of licenses¹ is applicable to the appeal of CAAPP permits issued by the Illinois EPA. *In the Matter of: Dynegy Midwest Generation, Inc. (Havana Power Station) v. Illinois EPA*, PCB 06-71 (Ill.Pol.Control.Bd. Feb. 16, 2006) (hereafter cited as “Dynegy”).²

5. The APA states, in part, in regards to licensing:

- (a) When any licensing is required by law to be preceded by notice and an opportunity for a hearing, the provisions of this Act concerning contested cases shall apply.
- (b) When a licensee has made timely and sufficient application for the renewal of a license or a new license with reference to any activity of a continuing nature, the existing license shall continue in full force and effect until the final agency decision on the application

¹ The APA defines “license” to include “the whole or part of any agency permit . . .” 5 ILCS 100/1-35. “Licensing” includes “the agency process respecting the grant, denial, renewal, revocation, suspension, annulment, withdrawal, or amendment of a license.” 5 ILCS 100/1-40.

² See also *Midwest Generation, LLC, Crawford Generating Station v. Illinois EPA*, PCB 06-56 (Ill.Pol.Control.Bd. Feb. 16, 2006); *Midwest Generation, LLC, Fisk Generating Station v. Illinois EPA*, PCB 06-57 (Ill.Pol.Control.Bd. Feb. 16, 2006); *Midwest Generation, LLC, Joliet Generating Station v. Illinois EPA*, PCB 06-58 (Ill.Pol.Control.Bd. Feb. 16, 2006); *Midwest Generation, LLC, Powerton Generating Station v. Illinois EPA*, PCB 06-59 (Ill.Pol.Control.Bd. Feb. 16, 2006); *Midwest Generation, LLC, Will County Generating Station v. Illinois EPA*, PCB 06-60 (Ill.Pol.Control.Bd. Feb. 16, 2006); *Southern Illinois Power Cooperative v. Illinois EPA*, PCB 06-61 (Ill.Pol.Control.Bd. Feb. 16, 2006); *Kincaid Generation, LLC v. Illinois EPA*, PCB 06-62 (Ill.Pol.Control.Bd. Feb. 16, 2006); *Dynegy Midwest Generation, Inc. (Baldwin Energy Complex) v. Illinois EPA*, PCB 06-63 (Ill.Pol.Control.Bd. Feb. 16, 2006); *Ameren Energy Generating Company, Coffeen Power Station v. Illinois EPA*, PCB 06-64 (Ill.Pol.Control.Bd. Feb. 16, 2006); *Electric Energy Incorporation v. Illinois EPA*, PCB 06-65 (Ill.Pol.Control.Bd. Feb. 16, 2006); *Ameren Energy Resources Generating Company, Duck Creek Power Station v. Illinois EPA*, PCB 06-66 (Ill.Pol.Control.Bd. Feb. 16, 2006); *Ameren Energy Resources Generating Company, Edwards Power Station v. Illinois EPA*, PCB 06-67 (Ill.Pol.Control.Bd. Feb. 16, 2006); *Ameren Energy Generating Company, Newton Power Station v. Illinois EPA*, PCB 06-68 (Ill.Pol.Control.Bd. Feb. 16, 2006); *Ameren Energy Generating Company, Merodosia Power Station v. Illinois EPA*, PCB 06-69 (Ill.Pol.Control.Bd. Feb. 16, 2006); *Ameren Energy Generating Company, Hutsonville Power Station v. Illinois EPA*, PCB 06-70 (Ill.Pol.Control.Bd. Feb. 16, 2006); *Dynegy Midwest Generation, Inc. (Hennepin Power Station) v. Illinois EPA*, PCB 06-72 (Ill.Pol.Control.Bd. Feb. 16, 2006); *Dynegy Midwest Generation (Vermilion Power Station) v. Illinois EPA*, PCB 06-73 (Ill.Pol.Control.Bd. Feb. 16, 2006); *Dynegy Midwest Generation, Inc. (Wood River Power Station) v. Illinois EPA*, PCB 06-74 (Ill.Pol.Control.Bd. Feb. 16, 2006); *City of Springfield v. Illinois EPA*, PCB 06-75 (Ill.Pol.Control.Bd. Feb. 16, 2006).

has been made unless a later date is fixed by order of a reviewing court.

- (d) Except as provided in subsection (c), no agency shall revoke, suspend, annul, withdraw, amend materially, or refuse to renew any valid license without first giving written notice to the licensee of the facts or conduct upon which the agency will rely to support its proposed action and an opportunity for a hearing in accordance with the provisions of this Act concerning contested cases. At the hearing, the licensee shall have the right to show compliance with all lawful requirements for the retention, continuation, or renewal of the license. If, however, the agency finds that the public interest, safety, or welfare imperatively requires emergency action, and if the agency incorporates a finding to that effect in its order, summary suspension of a license may be ordered pending proceedings for revocation or other action. Those proceedings shall be promptly instituted and determined.
- (e) Any application for renewal of a license that contains required and relevant information, data, material, or circumstances that were not contained in an application for the existing license shall be subject to the provisions of subsection (a).

5 ILCS 100/10-65. (Emphasis added.)

6. In *Borg-Warner Corporation v. Mauzy*, 100 Ill. App. 3d 862 (3d Dist. 1981) (“*Borg-Warner*”), the only case to interpret the APA licensing provision in the context of the Act and its regulations, the petitioner filed a timely application to renew its NPDES permit. Although the court addressed several issues, it did determine that the Section 10-65 of the APA applied to NPDES permits and concluded that the petitioner’s original NPDES permit continued in effect until the Board issued a final decision on the NPDES permit appeal. Similarly, the Board has held that “the APA’s automatic stay provision applies to . . . CAAPP permit[s].” *Dynegy* at *7.

7. In *Dynegy*, Dynegy Midwest Generation (“DMG”) appealed a CAAPP permit issued by the Illinois EPA to DMG for its facility located in Havana, Illinois. In its appeal, DMG argued that the APA’s automatic stay procedures apply to the appeal of CAAPP permits. The Board, in making the determination that the APA’s automatic stay provisions apply to CAAPP permits, reviewed Section 10-65 of the APA, and quoting the *Borg-Warner* Court stated:

Under applicable Illinois statutes, such a stay of the effectiveness of a renewal permit is required. In this case Borg-Warner made application for renewal of its NPDES permit, that application was timely and sufficient on the record before us, and therefore its original permit continues in effect until final action on the application by the administrative bodies charged with making the determination. A final decision, in the sense of a final and binding decision coming out of the administrative process before the administrative agencies with decision making power, will not be forthcoming in the instant case until the PCB rules on the permit application, after Borg-Warner has been given its adjudicatory hearing before the PCB. Thus, until that time, under section 16(b), the effectiveness of the renewed permit issued by the EPA is stayed.

Dynegy at *5 (quoting *Borg-Warner* at 870-871.)

8. Thus, the Board held in *Dynegy* that stays of CAAPP permits are automatic by operation of law.

9. The Board also noted in *Dynegy* that “[i]f necessary, the Agency may certainly choose to bring legislative attention to the problem.” *Dynegy* at *8. The “problem” being any concern USEPA may have with “the applicability of the APA stay provisions in CAAPP appeals” *Id.* Subsequently, in 2008, legislation was introduced in the Illinois General Assembly that would have amended the APA to provide that the automatic stay provision in Section 10-65 of the APA no longer applies

to CAAPP permits. *See* S.B. 2640, 95th Gen. Assem. (Ill. 2008). However, the proposed legislation was never enacted into law.

10. The Board determined in *Dynegy* that the automatic stay provisions apply in CAAPP permit appeals. Accordingly, the Final Permit issued on September 3, 2009 to U.S. Steel is automatically stayed, and the Final Permit is not effective. Further, the Final Permit for U.S. Steel will not be effective until a final order is issued by the Board on U.S. Steel's Petition for Review, and the Illinois EPA acts in accordance with the Board's order. Thus, the stay of the U.S. Steel permit was automatic by operation of law on the day of issuance, September 3, 2009.

11. U.S. Steel, therefore, requests confirmation from the Board that the Final Permit was automatically stayed, pursuant to the APA, until the final Board decision on the permit has been made. Accordingly, the Final Permit was never effective, and U.S. Steel's existing permits will continue in full force and effect. In addition, U.S. Steel remains subject to all applicable federal and state regulations.

12. In the alternative, should the Board determine that the automatic stay in accordance with the APA does not apply in this instance, U.S. Steel requests that the Board exercise its discretion and stay the effectiveness of the entire Final Permit, in accordance with Section 105.304(b) of the Board's rules, in order to prevent irreparable harm to U.S. Steel and to protect the clearly ascertainable right of U.S. Steel to appeal permit conditions. The Board has stated:

In determining whether a discretionary stay is appropriate, the Board may refer to four factors: (1) a certain and clearly ascertainable right needs protection; (2) irreparable injury will occur without the stay; (3) no adequate remedy at law exists; and (4) there is a probability of success on the merits.

Board Order, *Bridgestone/Firestone Off-Road Tire Co. v. Illinois EPA*, PCB No. 02-31 at *6 (Ill.Pol.Control.Bd. Nov. 1, 2001) (hereafter "*Bridgestone*"). (Citations omitted.); *see also* Board Order, *Oasis Industries, Inc. v. Illinois EPA*, PCB No. 04-166 at *1 (Ill.Pol.Control.Bd. May 6, 2004) (hereafter "*Oasis*"). The Board has also held that "it is not required to specifically address each of these factors in making a stay determination." *Oasis* at *1 (citing *Bridgestone*).

13. As noted above, U.S. Steel has a certain and clearly ascertainable right to appeal CAAPP permit conditions. 415 ILCS 5/40.2; *see also Bridgestone* at *7 (stating the "Board finds that the petitioner's right to appeal the permit condition is a certain and ascertainable right that needs protection"). The Final Permit imposes requirements not found in previous permits issued to U.S. Steel and are not supported by the Act or Board regulations. U.S. Steel would be irreparably harmed if required to implement the requirements of the Final Permit. *See Id.* (stating "the Board is persuaded that the petitioner's appeal of the permit condition would be rendered moot if it had to comply with the contested condition during appeal"). In addition, the issuance of a stay of the entire Final Permit will not harm the public or the environment as the Facility will continue to operate in accordance with all applicable federal and state regulations, and the Facility's existing permits remain in full force and effect.

WHEREFORE, Petitioner, UNITED STATES STEEL CORPORATION requests the Board to confirm the automatic stay of effectiveness of U.S. Steel's CAAPP permit

or, in the alternative, grant a stay of effectiveness of the entire CAAPP permit until the Board's final action in this matter.

Respectfully submitted,

UNITED STATES STEEL
CORPORATION,
Petitioner,

Dated: October 7, 2009

By: /s/ Katherine D. Hodge
One of Its Attorneys

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USSC:003/Fil/Motion for Stay (10.7.09)

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

UNITED STATES STEEL)	
CORPORATION, a Delaware corporation,)	
)	
Petitioner,)	
)	
v.)	PCB No. ____ - ____
)	(CAAPP Permit Appeal)
ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Respondent.)	

ENTRY OF APPEARANCE OF KATHERINE D. HODGE

NOW COMES Katherine D. Hodge, of the law firm of HODGE DWYER & DRIVER, and hereby enters her appearance on behalf of Petitioner, UNITED STATES STEEL CORPORATION, in the above-referenced matter.

Respectfully submitted,

UNITED STATES STEEL CORPORATION,
Petitioner,

By: /s/ Katherine D. Hodge
One of Its Attorneys

Dated: October 7, 2009

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USSC:003/Fil/EOA KDH

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

UNITED STATES STEEL)	
CORPORATION, a Delaware corporation,)	
)	
Petitioner,)	
)	
v.)	PCB No. ____ - ____
)	(CAAPP Permit Appeal)
ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Respondent.)	

ENTRY OF APPEARANCE OF MONICA T. RIOS

NOW COMES Monica T. Rios, of the law firm of HODGE DWYER & DRIVER, and hereby enters her appearance on behalf of Petitioner, UNITED STATES STEEL CORPORATION, in the above-referenced matter.

Respectfully submitted,

UNITED STATES STEEL CORPORATION,
Petitioner,

By: /s/ Monica T. Rios
Monica T. Rios

Dated: October 7, 2009

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USSC:003/Fil/EOA MTR