

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

UNITED STATES STEEL
CORPORATION, a Delaware corporation

Petitioner,

v.

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY,

Respondent

PCB 2010-923
(CAAPP Permit Appeal)

NOTICE OF FILING

TO: Mr. John Therriault
Assistant Clerk of the Board
Illinois Pollution Control Board
therriaj@ipcb.state.il.us
(Via Electronic Mail)

Katherine D. Hodge
Hodge Dwyer & Driver
khodge@hddattorneys.com
(Via Electronic Mail)

Carol Webb
Hearing Officer
Illinois Pollution Control Board
webbc@ipcb.state.il.us
(Via Electronic Mail)

John Kim
Chief Legal Counsel
Illinois Environmental Protection Agency
john.kim@illinois.gov
(Via Electronic Mail)

Monica T. Rios
Hodge Dwyer & Driver
mrios@hddattorneys.com
(Via Electronic Mail)

PLEASE TAKE NOTICE that I have today filed with the Office of the Clerk of the Illinois Pollution Control Board a copy of each of American Bottom Conservancy's: 1) American Bottom Conservancy's Motion to Intervene; 2) Entry of Appearance of Elizabeth Hubertz; 3) Entry of Appearance of Melissa Katz; 4) Motion for Pro Hac Vice Admission of Robert R. Kuehn; and 5) Certificate of Service, copies of which are hereby served upon you.

Respectfully submitted,

Dated: October 21, 2009

By: _____/s/_____
Elizabeth Hubertz, Staff Attorney
Interdisciplinary Environmental Clinic
Washington University School of Law
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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

UNITED STATES STEEL CORPORATION,)	
a Delaware Corporation,)	
)	
Petitioner,)	
)	
vs.)	PCB 2010-023
)	(CAAPP Permit Appeal)
ILLINOIS ENVIRONMENTAL PROTECTION)	
AGENCY,)	
)	
Respondent.)	

AMERICAN BOTTOM CONSERVANCY'S MOTION TO INTERVENE

NOW COMES American Bottom Conservancy (ABC), by and through its undersigned attorneys at the Washington University School of Law Interdisciplinary Environmental Clinic, and for its Motion to Intervene states as follows:

1. In this action, Petitioner challenges certain provisions of the United States Steel – Granite City Works (USS-GCW) CAAPP Permit issued September 3, 2009, by the Illinois Environmental Protection Agency (IEPA).
2. As set forth in the comments submitted by ABC to IEPA on the draft CAAPP Permit, the USS-GCW facility, located in a residential community and adjacent to a state park, is the primary source of fine particle pollution in the region, emits substantial amounts of many other pollutants that threaten human health and the environment, and has a history of air pollution violations. The region is in air pollution nonattainment for fine particulate matter (PM_{2.5}) and ground-level ozone. Madison County, in which the facility is located,

has the highest population, second densest population, and highest percentage of urban land cover in the Metro-East St. Louis region.¹

3. Title V of the federal Clean Air Act was passed in 1990 and requires consolidation of a facility's air emission permits into one comprehensive CAAPP Permit. USS-GCW applied for a CAAPP Permit in 1996. Despite these two important occurrences, it took IEPA 19 years after CAAPP permit requirements were incorporated into the Clean Air Act to issue a CAAPP permit for the facility.²
4. As also stated in its February comments to IEPA, ABC is a grassroots organization based in the Metro-East St. Louis region with members residing and recreating in and around Granite City. USS-GCW is located in a residential area and adjacent to a state park. More than fifty percent of the population surrounding the USS-GCW is minority and almost thirty percent live in poverty. The combination of poor air quality and at-risk individuals creates serious health threats for the communities surrounding the facility.³
5. ABC's involvement in air and water permitting at this facility is longstanding and extensive. When IEPA issued USS-GCW's initial draft CAAPP Permit for public comment in 2003, ABC commented on the draft permit, which was eventually withdrawn by IEPA.⁴

¹ See Letter from Maxine I. Lipeles & Peter W. Goode, IEC, to Annet Godiksen, Hearing Officer, IEPA (Feb. 27, 2009)(Exhibit 1).

² *Id.*

³ *Id.*

⁴ See *American Bottom Conservancy's Petition to Object to Title V Permit for United States Steel Corporation—Granite City Works Issued by the Illinois Environmental Protection Agency*, Permit No. 96030056, October 1, 2009 (Exhibit 2).

6. In both January and December 2005, ABC commented on the facility's NPDES Permit (IL0000329) and requested a public hearing. It then appealed the NPDES Permit to the Illinois Pollution Control Board (Board), which ruled in ABC's favor.⁵
7. ABC commented in December 2007 to IEPA on four proposed air construction permits for USS-GCW: Emissions Reduction Credits Permit (06070022), Cogeneration Project Permit (06070023), Coke Conveyance System Permit (06070088), and Coke Plant Permit (06070020). On August 31, 2009, ABC submitted comments to IEPA on the Draft Significant Modification to the CAAPP Permit, regarding case-by-case MACT determination. ABC also filed with USEPA an objection to IEPA's request for an Exceptional Event determination for PM_{2.5} exceedances.
8. Over the past two years, ABC has participated in NO_x RACT Rulemaking before the Board regarding USS-GCW facility.⁶ ABC appeared at the Board's public hearing, submitted oral comments, and presented questions to USS-GCW.
9. Regarding the CAAPP Permit that is the subject of the present appeal before the Board, ABC has actively and extensively participated in the latest permitting process, which began when IEPA published a draft permit and Project Summary for public comment in October 2008. ABC participated in the December 2, 2008 public hearing on the draft permit by presenting information and questions to IEPA, including some questions that required a detailed written response from IEPA in January 2009. On February 27, 2009, ABC submitted 72 pages of written comments to IEPA on the draft permit.⁷ IEPA's September 3, 2009 Responsiveness Summary (Exhibit 5 to USS-GCW's Petition for

⁵ PCB 06-171, available at <http://www.ipcb.state.il.us/cool/external/CaseView.aspx?referer=results&case=12945>.

⁶ R08-19, available at <http://www.ipcb.state.il.us/cool/external/CaseView.aspx?referer=results&case=13461>.

⁷ Exhibit 1.

Review) addressed 106 separate comments by ABC, the greatest number of comments submitted by any interested party.

10. When IEPA issued the Final CAAPP Permit on September 3, 2009, ABC timely filed a Petition to Object to the Final CAAPP Permit with the U.S. Environmental Protection Agency (USEPA) under Section 502(b)(2) of the federal Clean Air Act on October 1, 2009.⁸ The 38-page Petition to Object identified over 50 provisions in the Final CAAPP Permit that are not in compliance with the requirements of the federal Clean Air Act. ABC's Petition is presently pending before USEPA.
11. The Board's rules provide for intervention by persons who may be materially prejudiced absent intervention or who are so situated that they may be adversely affected by a final Board order. 35 Ill.Adm.Code 101.402(d)(2)-(3). The Board will consider the timeliness of the motion and whether intervention will unduly delay, materially prejudice, or otherwise interfere with an orderly or efficient proceeding. 35 Ill.Adm.Code 101.402(b).
12. Section 40.2(a) of the Illinois Environmental Protection Act (415 ILCS 5/40.2(a) (2008)) allows ABC, as a person who participated in the public comment process under Section 39.5(8) of the Act (415 ILCS 5/39.5(8) (2008)), to petition for a hearing before the Board to contest IEPA's CAAPP permitting decision.
13. ABC has interests separate and distinct from those of IEPA, as evidenced by the substantial disagreements that ABC has set forth in its objections to the CAAPP permit that is the subject of this appeal. Therefore, IEPA cannot and should not be expected to advance the interests unique to ABC in this action.

⁸ Exhibit 2.

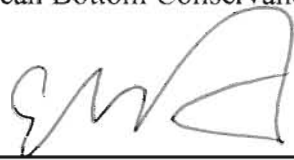
14. The record amply demonstrates that ABC's interests are at issue in this action. Absent intervention, ABC will be unable to voice its substantial objections to USS-GCW's requests for weaker permit provisions. Moreover, an adverse Board decision may adversely affect or materially prejudice ABC's interests because such a decision may weaken or defeat objections in ABC's petition pending before USEPA. For example, USS-GCW's first claim in its Petition for Review that alleges IEPA exceeded its gap filling authority is directly at odds with ABC's position in its pending petition before USEPA that IEPA has failed to include periodic monitoring sufficient to assure compliance with the terms and conditions of USS-GCW's CAAPP permit as required under Sierra Club v. EPA, 536 F.3d 673 (D.C. Cir. 2008).

15. ABC's Motion to Intervene is timely, as this appeal was only filed on October 7, 2009, and will not cause undue delay, materially prejudice the proceeding, or otherwise interfere with an orderly or efficient proceeding. In fact, ABC has more to gain from an orderly and efficient resolution of these matters than the present parties as the health and welfare of its members will be better protected by having an effective CAAPP permit in place as soon as possible.

WHEREFORE, for the reasons set forth above, American Bottom Conservancy respectfully requests that the Board grant this Motion to Intervene.

Respectfully submitted,

American Bottom Conservancy

By: 
Elizabeth Hubertz, Staff Attorney
Interdisciplinary Environmental Clinic

Washington University School of Law
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Dated: October 21, 2009

CERTIFICATE OF SERVICE

I, Elizabeth Hubertz, hereby certify that on October 21, 2009, I served by email on the below listed parties and Board officials: 1) American Bottom Conservancy's Motion to Intervene; 2) Entry of Appearance of Elizabeth Hubertz; 3) Entry of Appearance of Melissa Katz; 4) Motion for Pro Hac Vice Admission of Robert R. Kuehn; and 5) Notice of Filing:

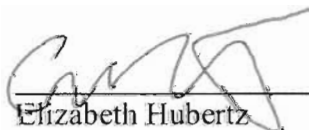
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Elizabeth Hubertz

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

UNITED STATES STEEL
CORPORATION, a Delaware Corporation,

Plaintiff,

v.

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY,

Respondent.

PCB No. 2010 - 023
(CAAPP Permit Appeal)

CONSENT FOR LAW STUDENT REPRESENTATION

American Bottom Conservancy hereby consents to representation by Melissa Katz in this matter. It is my understanding that Ms. Katz is a certified Senior Law Student pursuant to Illinois Supreme Court Rule 711 and that she is acting under the supervision of licensed attorney Elizabeth Hubertz, Staff Attorney at the Interdisciplinary Environmental Clinic at Washington University School of Law. This Consent is effective immediately and shall terminate on May 31, 2010.

This Consent is signed on this 20th day of October, 2009.

American Bottom Conservancy

By:


Kathy Andria, President

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

UNITED STATES STEEL
CORPORATION, a Delaware Corporation,

Plaintiff,

v.

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY,

Respondent.

PCB 2010 - 923
(CAAPP Permit Appeal)

MOTION FOR PRO HAC VICE ADMISSION OF ROBERT R. KUEHN

Pursuant to 35 Ill. Adm. Code § 101.400(a)(3), I, Robert R. Kuehn, respectfully request that the Illinois Pollution Control Board authorize me to appear *pro hac vice* in the above-captioned matter on behalf of proposed Intervenor American Bottom Conservancy. The grounds for this motion are as follows:

1. I am a licensed attorney in the State of Missouri and have been a practicing attorney since 1981. My attorney registration number in Missouri is 61579 and I am in good standing.
2. I am also a member in good standing of the bar of U.S. District Court for the Southern District of Illinois.
3. No disciplinary proceedings are pending or have ever been brought against me.
4. Proposed Intervenor American Bottom Conservancy is represented by the Interdisciplinary Environmental Clinic at Washington University School of Law. I am the Co-Director of the Clinic.

Wherefore, I, Robert R. Kuehn, respectfully request permission to appear *pro hac vice* on behalf of American Bottom Conservancy.

Respectfully submitted,

/s/

Robert R. Kuehn, Co-Director
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Subscribed and Sworn to before me this ____ day of _____, 2009

City, State, Zip: _____
