



OFFICE OF THE ATTORNEY GENERAL  
STATE OF ILLINOIS

Lisa Madigan  
ATTORNEY GENERAL

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STATE OF ILLINOIS  
Pollution Control Board

October 30, 2009

John T. Therriault, Assistant Clerk  
Assistant Clerk of the Board  
Illinois Pollution Control Board  
James R. Thompson Center, Ste. 11-500  
100 West Randolph  
Chicago, Illinois 60601

Re: **United States Steel Corporation v. Illinois EPA**  
**PCB No. 10-23**

Dear Clerk:

Enclosed for filing please find the original and 10 copies of a Notice of Filing, Entry of Appearance and Illinois EPA's Response to Motion to Intervene in regard to the above-captioned matter. Please file the originals and return file-stamped copies to me in the enclosed envelope.

Thank you for your cooperation and consideration.

Very truly yours,


A handwritten signature in black ink, appearing to read "Thomas Davis", is written over a horizontal line.

Thomas Davis, Chief  
Environmental Bureau  
500 South Second Street  
Springfield, Illinois 62706  
(217) 782-9031

TD/pjk  
Enclosures



Litigation Division

BY:   
\_\_\_\_\_  
THOMAS DAVIS, Chief  
Environmental Bureau

500 South Second Street  
Springfield, Illinois 62706  
217/782-9031  
Dated: October 29, 2009

## CERTIFICATE OF SERVICE

I hereby certify that I did on October 30, 2009, send by First Class Mail, with postage thereon fully prepaid, by depositing in a United States Post Office Box a true and correct copy of the following instruments entitled NOTICE OF FILING, ENTRY OF APPEARANCE and ILLINOIS EPA'S RESPONSE TO MOTION TO INTERVENE

To: Katherine D. Hodge  
Monica T. Rios  
Hodge, Dwyer & Driver  
3150 Roland Avenue  
P.O. Box 5776  
Springfield, IL 62705-5776

Elizabeth Hubertz  
Interdisciplinary Environmental Clinic  
Washington University School of Law  
One Brookings Drive, Campus Box 1120  
St. Louis, MO 63120

Sally A. Carter  
Illinois EPA  
1021 North Grand Avenue East  
P.O. Box 19276  
Springfield, IL 62794-9276

and the original and ten copies by First Class Mail with postage thereon fully prepaid of the same foregoing instrument(s):

To: John T. Therriault, Assistant Clerk  
Illinois Pollution Control Board  
James R. Thompson Center  
Suite 11-500  
100 West Randolph  
Chicago, Illinois 60601

A copy was also sent by First Class Mail with postage thereon fully prepaid to:

Carol Webb  
Hearing Officer  
Illinois Pollution Control Board  
1021 North Grand Avenue East  
Springfield, IL 62794

  
THOMAS DAVIS, Chief  
Environmental Bureau

This filing is submitted on recycled paper.

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

UNITED STATES STEEL CORPORATION, )  
a Delaware corporation, )

Petitioner, )

v. )

ILLINOIS ENVIRONMENTAL )  
PROTECTION AGENCY, )

Respondent. )

PCB No. 10-023  
(CAAPP Permit Appeal)

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Pollution Control Board

ENTRY OF APPEARANCE

On behalf of the ILLINOIS ENVIRONMENTAL PROTECTION AGENCY, by LISA MADIGAN, Attorney General of the State of Illinois, Thomas Davis, Assistant Attorney General of the State of Illinois, hereby enters his appearance as attorney of record pursuant to Section 101.400(a) of the Board's Procedural Rules.

Respectfully Submitted,

ILLINOIS ENVIRONMENTAL  
PROTECTION AGENCY

LISA MADIGAN,  
Attorney General of the State of Illinois,

MATTHEW J. DUNN, Chief  
Environmental Enforcement/Asbestos  
Litigation Division

BY: 

THOMAS DAVIS, Chief  
Environmental Bureau  
Assistant Attorney General

Attorney Reg. No. 3124200  
500 South Second Street  
Springfield, Illinois 62706  
217/782-7968  
Dated: October 30, 2009

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

UNITED STATES STEEL CORPORATION, )  
a Delaware corporation, )  
 )  
Petitioner, )  
v. )  
ILLINOIS ENVIRONMENTAL )  
PROTECTION AGENCY, )  
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Respondent. )

PCB No. 10-023  
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ILLINOIS EPA'S RESPONSE TO MOTION TO INTERVENE

Respondent, ILLINOIS ENVIRONMENTAL PROTECTION AGENCY, by its attorney, LISA MADIGAN, Attorney General of the State of Illinois, hereby responds to the Motion to Intervene filed by the American Bottom Conservancy and states as follows:

1. The American Bottom Conservancy seeks permissive intervention as afforded by Section 101.402(d) of the Board's Procedural Rules. In particular, the American Bottom Conservancy asserts as grounds that it may be materially prejudiced absent intervention and is so situated that it may be adversely affected by a final Board order.
2. The American Bottom Conservancy also contends that it qualifies pursuant to Section 40.2(a) of the Act as a person who participated in the public comment process under Section 39.5(8) of the Act. In this instance Section 40.2(a) provides an unconditional statutory right to the American Bottom Conservancy to petition the Board to contest this permit decision. Since intervention procedures are remedial and must therefore be construed liberally, this right to seek review of the administrative determination on the permit ought to essentially translate to a right to intervene in a pending review action regarding that permit.

3. The Board's procedural rules and case precedent clearly indicate that the grant of intervention is discretionary. For instance, absent a statutory right to intervene (or an alternative showing of material prejudice) even local governmental units have been denied intervention. In *Kibler Development Corporation and Marion Ridge Landfill, Inc. v. Illinois EPA*, PCB 05-35 (Order May 4, 2006), the Board stated: "Consistent with well-settled precedent, this order denies leave to the City of Marion, the City of Herrin, and the Williamson County Airport Authority . . . to intervene as party respondents in this permit appeal. The Board finds that they have not persuaded the Board that they have any statutory right to intervene here, or that they will be materially prejudiced absent intervention." Order at page 1. The Board noted that, in opposing the requests for intervention, the Illinois EPA "argue[d] that Section 40(a)(1) of the Act does not grant the Board authority to hear third-party appeals in cases of this type, citing e.g., *City of Waukegan et al. v. IEPA and North Shore Sanitary District*, PCB 02-173 (May 2, 2002) (citing *Landfill Inc. v. PCB*, 74 Ill.2d 541, 387 N.E.2d 258 (1978)." Order at page 3. Here, Section 40.2(a) of the Act does indeed grant the Board authority to hear third-party appeals in cases of this type.

4. The Board ruling in the *Kibler Development* also noted: "The Agency further points out a recent Board decision involving the effect of the Board's recent amendment of its procedural rule concerning intervention, 35 Ill. Adm. Code 101.402. In *Sutter Sanitation, Inc. et al. v. IEPA*, PCB 04-187 (Sept. 16, 2004) (denying intervention in a landfill permit appeal case) the Board held that in adopting Section 101.402 the Board had no intention of disturbing existing case law involving interpretation of the Act." Order at page 3. In its discussion and reliance upon the well-settled precedent cited by the Illinois EPA, the Board did not distinguish between a statutory

right to seek review of a permit and a statutory right to intervene in a permit review. In fact, the Board used the terms “appeal” and “intervene” as fungible terms. The Board quite correctly heeded the Supreme Court’s decision in *Landfill Inc.* that “the Board has no authority to, by rule, extend appeal rights beyond those granted in the Act under Section 40.” Order at page 4. In denying the motions to intervene, the Board expressed its rationale as follows: “Were the Board to grant Marion, Herrin, and the Airport Authority intervenor status in this appeal of a permit to develop a new municipal solid waste landfill brought under Section 40(a)(1) of the Act, the Board would be unlawfully extending appeal rights.” Order at page 4. Here, consistent with well-settled precedent, granting intervenor status to the American Bottom Conservancy in this appeal of a CAAPP permit would in no way unlawfully extend appeal rights.

5. In any event, the Illinois EPA does not object to this particular intervention request. The motion is timely. Intervention will not unduly delay or materially prejudice the proceeding or otherwise interfere with an orderly or efficient proceeding. The Board may properly exercise its discretion to afford “appeal rights” to the American Bottom Conservancy by allowing its request to intervene.

WHEREFORE, Respondent, ILLINOIS ENVIRONMENTAL PROTECTION AGENCY, by its attorney, LISA MADIGAN, Attorney General of the State of Illinois, asks that the Motion to Intervene filed by the American Bottom Conservancy be GRANTED.

Respectfully Submitted,

ILLINOIS ENVIRONMENTAL  
PROTECTION AGENCY

LISA MADIGAN,  
Attorney General of the State of Illinois,



MATTHEW J. DUNN, Chief  
Environmental Enforcement/Asbestos  
Litigation Division

BY: 

THOMAS DAVIS, Chief  
Environmental Bureau  
Assistant Attorney General

[tdavis@atg.state.il.us](mailto:tdavis@atg.state.il.us)

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217/782-7968

Dated: October 30, 2009

