

ILLINOIS POLLUTION CONTROL BOARD  
November 19, 2009

UNITED STATES STEEL	)	
CORPORATION, a Delaware corporation,	)	
	)	
Petitioner,	)	
	)	
v.	)	PCB 10-23
	)	(CAAPP Permit Appeal - Air)
ILLINOIS ENVIRONMENTAL	)	
PROTECTION AGENCY,	)	
	)	
Respondent.	)	

ORDER OF THE BOARD (by T.E. Johnson):

On October 7, 2009, United States Steel Corporation (U.S. Steel) timely filed a petition (Pet.) asking the Board to review the September 3, 2009 issuance of a Clean Air Act Permit Program (CAAPP) permit by the Illinois Environmental Protection Agency (IEPA). The CAAPP permit concerns U.S. Steel’s integrated steel mill plant located at 20th and State Streets in Granite City, Madison County. On October 15, 2009, the Board accepted for hearing U.S. Steel’s appeal, which concerns conditions of the CAAPP permit. Accompanying U.S. Steel’s petition for review was a “Motion to Confirm Automatic Stay of Effectiveness of CAAPP Permit or, in the alternative, to Request Stay of Effectiveness” (Mot. Stay), which the Board rules on today. For the reasons below, the Board grants U.S. Steels’ motion, confirming that the effectiveness of the CAAPP permit issued to U.S. Steel is automatically stayed.<sup>1</sup>

In the motion for stay, U.S. Steel asserts that the provisions of the Administrative Procedure Act (APA) (5 ILCS 100/10-65(b) (2008)) for the “automatic stay” of licenses “apply in CAAPP permits appeals.” Mot. Stay at 5. U.S. Steel therefore requests the Board to “confirm the automatic stay of effectiveness” of the CAAPP permit issued to U.S. Steel, adding that U.S. Steel’s existing permits will continue in full force and effect. *Id.* In the alternative, if the Board decides that the APA’s automatic stay does not apply here, U.S. Steel argues that the Board should exercise its discretion and stay the effectiveness of the entire CAAPP permit to prevent irreparable harm to U.S. Steel. *Id.* at 5-6. IEPA has filed no response to U.S. Steel’s motion for stay and therefore waives any objection to the Board granting the motion. *See* 35 Ill. Adm. Code 101.500(d).

The automatic stay provisions at Section 10-65(b) of the APA state:

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<sup>1</sup> On October 21, 2009, American Bottom Conservancy filed a motion to intervene in this proceeding, accompanied by a motion for counsel to appear *pro hac vice*. The Board reserves ruling on these motions.

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 has been made unless a later date is fixed by order of a reviewing court. 5 ILCS 100/10-65(b) (2008).

Interpreting this language in the context of an appealed National Pollutant Discharge Elimination System (NPDES) permit, the appellate court held in Borg-Warner Corp. v. Mauzy, 100 Ill. App. 3d 862, 427 N.E.2d 415 (3rd Dist. 1981) as follows:

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 [the APA automatic stay], the effectiveness of the renewed permit issued by the EPA is stayed. Borg-Warner, 100 Ill. App. 3d at 870-71, 427 N.E.2d at 421.

The CAAPP implements Title V of the federal Clean Air Act (CAA) (42 U.S.C. §§7661-7661f). Generally, a CAAPP permit is designed to be a single, comprehensive document of all air pollution obligations that apply to a facility. CAAPP permits replace existing State operating permits. *See* 415 ILCS 5/39.5(4) (2008); *see also, e.g.,* Dynegy Midwest Generation, Inc. (Havana Power Station) v. IEPA, PCB 06-71, slip op. at 1, 5 (Feb. 16, 2006).

Here, U.S. Steel represents that it submitted a CAAPP permit application to IEPA pursuant to Section 504(c) of the CAA (42 U.S.C. §7661b(c)) and Section 39.5(5) of the Environmental Protection Act (Act) (415 ILCS 5/39.5(5) (2008)). Pet. at 1; *see also* Mot. at 1. These statutory provisions address the required contents of CAAPP permit applications and when those applications must be submitted. *See* 42 U.S.C. §7661b(c); 415 ILCS 5/39.5(5) (2008). A complete initial application for a CAAPP source in Standard Industrial Classification (SIC) Code 33 (iron and steel products) was due within 12 months after the effective date of Illinois' CAAPP. *See* 35 Ill. Adm. Code 270.201(d); *see also* 415 ILCS 5/39.5(4)(c) (2008); Pet. at 1 ("major source"); Pet., Exh. 1 (initial application); Pet., Exh. 4 (SIC Code 3312). The United States Environmental Protection Agency granted interim approval for Illinois' CAAPP, effective March 7, 1995. *See* 40 C.F.R. 70, App. A. On March 6, 1996, U.S. Steel submitted its application to IEPA. Pet. at 1; Pet., Exh. 1 at 17. On September 3, 2009, IEPA issued the final CAAPP permit, which is the subject of this appeal. Mot. at 1.

Under like circumstances, when moved to do so by a petitioner, the Board has consistently ruled that the APA's automatic stay provisions (5 ILCS 100/10-65(b) (2008)) apply to the CAAPP permit, relying upon Borg-Warner. *See, e.g.,* Dynegy, PCB 06-71, slip op. at 7-8. In such instances, the Board has found it unnecessary to reach petitioner's alternative request that the Board exercise its discretion to stay the effectiveness of the permit. *See, e.g.,* Dynegy, PCB

06-71, slip op. at 7. Accordingly, the Board grants U.S. Steels' motion, confirming that the effectiveness of the CAAPP permit issued to U.S. Steel is automatically stayed under the APA.

IT IS SO ORDERED.

C.K. Zalewski abstained.

I, John Therriault, Assistant Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on November 19, 2009, by a vote of 4-0.

A handwritten signature in black ink that reads "John T. Therriault". The signature is written in a cursive style with a long horizontal flourish extending to the right.

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John Therriault, Assistant Clerk  
Illinois Pollution Control Board