

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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

NOTICE OF FILING

TO: Mr. John Therriault	Carol Webb, Esq.
Assistant Clerk of the Board	Hearing Officer
Illinois Pollution Control Board	Illinois Pollution Control Board
100 West Randolph Street	1021 North Grand Avenue East
Suite 11-500	Post Office Box 19274
Chicago, Illinois 60601	Springfield, Illinois 62794-9274
(VIA ELECTRONIC MAIL)	(VIA FIRST CLASS 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 of United States Steel Corporation's **MOTION FOR LEAVE TO FILE INSTANTER** and **REPLY TO JOINT OPPOSITION TO MOTION TO STAY THE PROCEEDING**, a copy of which is hereby served upon you.

Respectfully submitted,

UNITED STATES STEEL CORPORATION,
Petitioner,

Dated: October 4, 2011

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

Katherine D. Hodge
Monica T. Rios
HODGE DWYER & DRIVER
3150 Roland Avenue
Post Office Box 5776
Springfield, Illinois 62705-5776
(217) 523-4900

CERTIFICATE OF SERVICE

I, Monica T. Rios, the undersigned, certify that I have served the attached
MOTION FOR LEAVE TO FILE *INSTANTER* and REPLY TO JOINT OPPOSITION
TO MOTION TO STAY THE PROCEEDING 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 4, 2011; and upon:

Carol Webb, Esq.
Hearing Officer
Illinois Pollution Control Board
1021 North Grand Avenue East
P.O. Box 19274
Springfield, Illinois 62794-9274

Maxine I. Lipeles, Esq.
Washington University School of Law
One Brookings Drive
Campus Box 1120
St. Louis, Missouri 63130-4899

Thomas E. Davis, Esq.
Chief of Environmental Bureau
Office of the Illinois Attorney General
500 South Second Street
Springfield, Illinois 62706

Julie K. Armitage, Esq.
Sally A. Carter, Esq.
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 4, 2011.

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

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MOTION FOR LEAVE TO FILE *INSTANTER*

NOW COMES Petitioner, UNITED STATES STEEL CORPORATION (“Petitioner” or “U.S. Steel”), by and through its attorneys, HODGE DWYER & DRIVER, pursuant to 35 Ill. Admin. Code § 101.500(e) and requests that the Illinois Pollution Control Board (“Board”) allow the filing *instanter* of Petitioner’s Reply to Jont [sic] Opposition to Motion to Stay the Proceeding being filed herewith. In support of this Motion, U.S. Steel states as follows:

1. On September 2, 2011, U.S. Steel filed a Motion to Stay the Proceeding, (“Motion to Stay”), and on September 20, 2011, Respondent and Intervenor filed a Jont [sic] Opposition to Motion to Stay the Proceeding (“Joint Response”). The Joint Response makes statements that warrant clarification by the Petitioner.

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**REPLY TO JOINT OPPOSITION
TO MOTION TO STAY THE PROCEEDING**

NOW COMES Petitioner, UNITED STATES STEEL CORPORATION (“Petitioner” or “U.S. Steel”), by and through its attorneys, HODGE DWYER & DRIVER, pursuant to 35 Ill. Admin. Code § 101.500(e) and for its Reply to Jont [sic] Opposition to Motion to Stay Proceeding provides as follows:

1. On September 2, 2011, U.S. Steel filed a Motion to Stay the Proceeding (“Motion”), requesting that this proceeding be stayed until such time that the United States Environmental Protection Agency (“USEPA”) has taken final action on the Petition Requesting That the Administrator Object to the Issuance of the Revised Title V/CAAPP Operating Permit for the U.S. Steel Granite City Works Facility (“Petition to Object”), filed by the American Bottom Conservancy (“Intervenor”) on August 16, 2011. Motion to Stay the Proceeding, *United States Steel Corporation v. Illinois EPA*, PCB No. 10-23 (Ill.Pol.Control.Bd. Sept. 2, 2011) (appeal hereafter cited as “PCB No. 10-23”).
2. On September 20, 2011, Intervenor and the Illinois Attorney General’s Office (“Respondent”) filed the Jont [sic] Opposition to Motion to Stay the Proceeding

("Joint Response") requesting that the Illinois Pollution Control Board ("Board") deny U.S. Steel's Motion. Joint Response, PCB No. 10-23 (Ill.Pol.Control.Bd. Sept. 20, 2011).

3. In this Reply to the Joint Response, U.S. Steel seeks to address and/or clarify statements made by Respondent and Intervenor in the Joint Response.

4. In the Joint Response, Respondent and Intervenor allege that U.S. Steel has not explained why a stay is justified in this proceeding. Joint Response at 6. However, U.S. Steel clearly stated in its Motion that it does not know how USEPA will respond to the Petition to Object (nor does Respondent or Intervenor) and it is unclear as to how USEPA's response could impact the Revised CAAPP Permit. Motion at 2. Nor is it clear or has it been established how any such response could affect the initial CAAPP permit which is the subject of this proceeding, as this matter appears to be a matter of first impression before the Board. U.S. Steel further explained that "[i]t is impossible for U.S. Steel to determine whether the status of the CAAPP permit that is the subject of this appeal could be meaningful until there is sufficient information to determine whether the Revised CAAPP Permit will withstand scrutiny by USEPA." *Id.*

5. In addition, the Illinois Environmental Protection Act, 415 ILCS 5/39.5(9), provides that Illinois EPA may revise and resubmit the CAAPP permit after the receipt of an objection from USEPA, and if Illinois EPA fails to do so, USEPA "shall, modify, terminate, or revoke" the permit. 415 ILCS 5/39.5(9)(g); *see also* 415 ILCS 5/39.5(15) and (16) (Reopening for Cause by the Agency and USEPA). Given that the parties do not know whether USEPA will grant or deny the Petition to Object, and if granted, whether Illinois EPA will respond and whether USEPA will have to modify,

terminate, or revoke the permit, a stay of the proceeding is undoubtedly proper in this proceeding. Simply, it is not clear as to the status of the initial CAAPP permit issued by Illinois EPA if USEPA revokes the Revised CAAPP permit. Neither USEPA, nor any other authority including the Board, has ever rendered an initial CAAPP permit, to which the Petition for Review pertains, invalid or superseded. Because the statutory language presents the possibility that the Revised Permit could be "revoked," the status of the previous permit is not clear in such a scenario. The uncertainty regarding the resolution of the USEPA's proceeding and its unknown impact on U.S. Steel's permit serves as a reasonable basis to stay this proceeding, especially since neither the parties to this appeal nor the Board have encountered these particular circumstances, where an Intervenor has objected to a Revised CAAPP permit while an appeal of Petitioner's initial CAAPP permit is pending before the Board.

6. Although U.S. Steel's statements explaining why a stay is justified in this proceeding were brief, such conciseness does not nullify the substance of U.S. Steel's statements. As required by Board regulation and contrary to Respondent's and Intervenor's allegations, U.S. Steel did provide sufficient justification for a stay in this proceeding. Because such uncertainty exists and there is no harm to the parties or the public resulting from the stay, the Board should grant U.S. Steel's Motion.

7. Also note that Respondent and Intervenor cite 35 Ill. Admin. Code § 703.270, which is a section of the Board's rules on modification or reissuance of RCRA permits. The reference that Respondent and Intervenor rely upon is from a Board Note, and although Respondent and Intervenor reference "other situations," citation to Section 703.270 is completely out of context in this situation, where a CAAPP permit is on

appeal. In addition, Respondent and Intervenor cite a single case, *In the Matter of Quad Graphics, Inc.*, 1990 EPA App. LEXIS 39 (EAB April 13, 1990) for a “general rule” regarding superseding permits. This order, however, from over twenty years ago, is from the Environmental Appeals Board regarding an appeal of a PSD construction permit (and not an operating permit) issued by Wisconsin DNR. First, while Respondent and Intervenor state that, “the general rule is that the issuance of a new air permit renders the *superseded* (emphasis added) permit null and void,” it is significant to note that no authority has held that the initial CAAPP permit to which this matter pertains has ever been superseded, nor has any authority rendered it null and void. Second, and most significantly, Respondent and Intervenor take great leaps as applying a single case that is over twenty years old in an EAB matter as a “general rule” to any Board proceeding.

8. Respondent and Intervenor further state that the Board cases cited by U.S. Steel are “irrelevant” because they are “not the case here.” Of course the cases cited are not identical to the pending proceeding because the Board has yet to address this very situation where there is a CAAPP permit appeal and a pending Petition to Object. However, the cases are analogous to this proceeding in that in each matter, there was a non-Board proceeding, and the Board granted a stay while the other proceeding was pending. Thus, as U.S. Steel articulated in its Motion, the Board has the authority to stay proceedings, and there is precedent for doing so.

9. Respondent and Intervenor also allege that a stay of the proceeding harms Illinois EPA, the Board, the public, and ABC because they will have to spend resources and time responding to “irrelevant motions and status conferences. . .” A review of the docket in this proceeding shows that the only motion filed prior to the Motion to Stay,

was Intervenor's Motion to Intervene so Petitioner is left to question what irrelevant motions have been filed and why Respondent and Intervenor would imply that there is likely to be numerous motions filed in the future in this proceeding when that has not been the case in the past.

10. U.S. Steel disagrees with Respondent and Intervenor's assertions that the parties and public will be harmed. A stay of the proceeding is merely that – a stay. The case will remain on the Board's docket until such time it is dismissed. In the interim, neither the Board nor Illinois EPA are obligated to take any action. Should the hearing officer schedule a status conference, a minimal amount of the parties' time would be required. Otherwise, all parties, as well as the public, will be waiting for the pending USEPA matter to be resolved. Thus, contrary to Respondent's and Intervenor's assertions, a stay of the proceeding would result in less time and resources being spent by the parties since, as noted, all parties and the Board will simply be waiting for resolution of the USEPA proceeding.

11. Due to the uncertainty regarding the impact of the Petition to Object on the Revised CAAPP Permit and because there is no harm to the parties resulting from granting a stay of the proceeding, U.S. Steel respectfully requests that the Board stay this

proceeding until the USEPA matter is resolved. U.S. Steel commits to updating the Board when there has been final resolution of the proceeding before USEPA.

Respectfully submitted,

UNITED STATES STEEL CORPORATION,
Petitioner,

Dated: October 4, 2011

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USSC:003/Fil/Reply-Motion To Stay