

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 **RESPONSE TO JOINT MOTION TO DISMISS**, a copy of which is hereby served upon you.

Respectfully submitted,

UNITED STATES STEEL CORPORATION,
Petitioner,

Dated: November 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
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CERTIFICATE OF SERVICE

I, Monica T. Rios, the undersigned, certify that I have served the attached

RESPONSE TO JOINT MOTION TO DISMISS, 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 November 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.
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Illinois Environmental Protection Agency
1021 North Grand Avenue East
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Springfield, Illinois 62794-9276

by depositing said documents in the United States Mail, postage prepaid, in Springfield,
Illinois, on November 4, 2011.

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

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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AMERICAN BOTTOM CONSERVANCY,)	
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RESPONSE TO JOINT MOTION TO DISMISS

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 and for its Response to Joint Motion to Dismiss provides as follows:

1. On October 21, 2011, Respondent and Intervenor filed a Joint Motion to Dismiss the Appeal (“Joint Motion”) requesting that the Illinois Pollution Control Board (“Board”) dismiss U.S. Steel’s pending CAAPP appeal. Joint Motion to Dismiss the Appeal, *U.S. Steel Corp. v. Illinois EPA*, PCB No. 10-23 (Ill.Pol.Control.Bd. Oct. 21, 2011) (proceeding hereafter cited as “PCB. No 10-23”). Today, U.S. Steel filed an Amended Motion to Stay the Proceeding (“Amended Motion”) in order to address a statement made in the Joint Motion stating that U.S. Steel is asking the Board to issue an “advisory opinion” in this matter. As stated in the Amended Motion, U.S. Steel is merely asking for a stay of this proceeding.

2. Intervenor and Respondent request that the Board dismiss U.S. Steel's appeal because "it would be improper for the Board to render an advisory opinion that cannot bind any party." Joint Motion at ¶ 16. Again, as explained in the Amended Motion, U.S. Steel is requesting a stay of the proceeding and is not requesting that the Board issue an advisory opinion on any issue. U.S. Steel's Motion to Stay the Proceeding ("Motion") and Reply to Joint Opposition to Motion to Stay the Proceeding¹ ("Reply") clearly outline the basis for U.S. Steel's requested stay, and U.S. Steel maintains that a stay of this proceeding is appropriate until the United States Environmental Protection Agency ("USEPA") takes final action on the Petition to Object. Motion to Stay the Proceeding, PCB No. 10-23 (Ill.Pol.Control.Bd. Sept. 2, 2011); Reply to Joint Opposition to Motion to Stay the Proceeding, PCB No. 10-23 (Ill.Pol.Control.Bd. Oct. 4, 2011).

3. Respondent and Intervenor, again cite 35 Ill. Admin. Code § 703.270 and the single *Quad Graphics* case as a basis for a rule on superseding permits. Joint Motion at ¶¶ 6-7. U.S. Steel explained to the Board in its Reply that these two references serve as a poor basis for any discussion on this particular issue since Section 703.270 addresses RCRA permits, rather than CAAPP permits, and the *Quad Graphics* case is a single decision regarding a PSD construction permit issued by Wisconsin Department of Natural Resources in an Environmental Appeals Board case from over twenty years ago. Reply at ¶7.

¹ Respondent and Intervenor state that the Reply should be stricken as unauthorized by the rules. Joint Motion at Footnote 1. Respondent and Intervenor selectively cite from Section 101.500(e) of the Board's rules, and do not include the remaining text of Section 101.500(e), which provides that a "motion for leave to file a reply must be filed with the Board within 14 days after service of the response." 35 Ill. Admin. Code § 101.500(e). As required by the rule, U.S. Steel filed a Motion for Leave to File Instantly within the appropriate timeframe, and thus, the Motion for Leave to File Instantly and the Reply are properly before the Board for consideration.

4. Further, Respondent and Intervenor have provided no authority pursuant to Section 39.5 of the Illinois Environmental Protection Act, Title V of the Clean Air Act, or the regulations promulgated thereunder to support their conclusion that the Revised CAAPP permit superseded the initial CAAPP permit and would continue to do so should USEPA terminate the Revised CAAPP permit.

5. Respondent and Intervenor also generally argue that this appeal is moot and should be dismissed. In fact, however, neither the Respondent and Intervenor nor U.S. Steel can conclusively determine the impact on this appeal of any USEPA action taken on the Petition to Object. The Petition to Object pending before USEPA has resulted in uncertainty regarding the status of the Revised CAAPP permit, and the impact of any USEPA action on this appeal. *See generally* Motion and Reply.

6. As explained in the Reply, there is a possibility (albeit, perhaps, remote) that USEPA could terminate or revoke the Revised CAAPP permit, and if it does so, such action could have a significant impact.² The parties do not know what happens, both procedurally and substantively, if USEPA terminates or revokes the Revised CAAPP permit. Because none of the parties can know the action USEPA will take, it is best that this proceeding be stayed until the federal proceeding is resolved.

7. While Intervenor and Respondent boldly assert that, “the new petition is pending before the USEPA” and “[w]hatever the outcome of that proceeding, neither USEPA nor IEPA can revive the moribund Original CAAPP Permit,” they have provided

² Section 505(b)(3) of the Clean Air Act provides that, “[u]pon receipt of an objection by the Administrator under this subsection, the permitting authority may not issue the permit unless it is revised and issued in accordance with subsection (c) of this section. If the permitting authority has issued a permit prior to receipt of an objection by the Administrator under paragraph (2) of this subsection, the Administrator shall modify, *terminate, or revoke such permit* and the permitting authority may thereafter only issue a revised permit in accordance with subsection (c) of this section.” 42 U.S.C. § 7661d(b)(3). (Emphasis added.)

no authority whatsoever to support this assertion. Petitioner further notes that Respondent and Intervenor also seem to recognize that the Original CAAPP Permit has not been officially terminated, as the Respondent and Intervenor refer to the Original CAAPP Permit as being “moribund,” i.e., on the verge of termination, as opposed to actually expired or terminated.

8. In addition, Respondent, in its Statement of Basis to the Revised CAAPP Permit states, “[m]oreover, it is important to note that this permit revision is a *continuation of the initial CAAPP permit proceeding*, which stands in contrast to other proceedings addressed separately under the CAAPP.” Respondent goes on to state, “[i]n any event, *it is hoped* that this further permitting action will bring to a close those procedures of the CAAPP relating to the issuance of US Steel’s initial CAAPP permit.” Statement of Basis for a Planned Revision of the Clean Air Act Permit Program (CAAPP) Permit for U. S. Steel Corporation, Granite City Works, 20th and State Streets, Granite City, Illinois at 13-14 (Illinois EPA Mar. 2011). (Emphasis added.)

9. Further, Respondent and Intervenor cite *Commonwealth Edison* and wrongly conclude that it is similar to this proceeding. Joint Motion at ¶ 9-10 (citing *Commonwealth Edison Co. v. Pollution Control Board*, 51 Ill. App. 3d 345 (Ill. App. Ct. Aug. 17, 1977)). U.S. Steel, once again, disagrees with Intervenor’s analysis because the pending matter is not similar to the *Commonwealth Edison* case. Intervenor inaccurately states that a “permit was issued by IEPA that mooted any prior issues or requirements.” Joint Motion at ¶ 10. In *Commonwealth Edison*, Commonwealth Edison (“ComEd”) contended that “the Board improperly interpreted section 21(e) of the Act by concluding that Edison’s disposal operation was not within a statutory exemption from the permit

requirement of section 21(e).” *Commonwealth Edison* at 346. Since ComEd obtained a permit, the Court held that ComEd’s petition for review was moot. *Id.* at 348-49.

10. Unlike in *Commonwealth Edison*, where the Court could determine whether the issue raised by ComEd’s petition was moot, U.S. Steel’s case has not reached that point of determination. Due to the uncertainty associated with USEPA’s actions on the Petition to Object and the impact of such actions, the parties do not know whether there are only moot questions involved here. In addition, there is no reason for the Board, at this time, to determine “mootness,” as U.S. Steel merely seeks a stay until the USEPA proceeding is resolved. Once USEPA takes action on the Petition to Object, the parties should know whether the appeal of the initial CAAPP permit is moot.

11. As U.S. Steel has explained in detail in its Motion, Reply, and Amended Motion, there is too much uncertainty regarding the impact of USEPA’s action on the federal level, and thus, a stay of this proceeding is justified. A stay of this proceeding results in no harm to the parties, the Board, or the public. Further, as is typical in permit appeals filed with the Board, the petitioners usually dismiss the appeal, and in this case, U.S. Steel will voluntarily dismiss the appeal once U.S. Steel determines that USEPA’s action on the Petition to Object does not impact this appeal.

12. Based on U.S. Steel’s filings in this matter, this proceeding should be stayed until the matter pending before USEPA is resolved. U.S. Steel is not requesting any advisory opinion or requesting that the Board to take any other action beyond staying this proceeding, as Respondent and Intervenor incorrectly argue. Accordingly, the Joint Motion should be denied, and this proceeding should be stayed.

WHEREFORE, Petitioner, UNITED STATES STEEL CORPORATION, prays
that the Illinois Pollution Control Board deny the Joint Motion to Dismiss the Appeal.

Respectfully submitted,

UNITED STATES STEEL CORPORATION,
Petitioner,

Dated: November 4, 2011

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USSC:003/Fil/Response to Joint Motion to Dismiss