

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 AGENCY'S RESPONSE TO AMENDED MOTION TO STAY AND INTERVENOR'S OPPOSITION TO AMENDED MOTION TO STAY THE PROCEEDING**, copies of which are hereby served upon you.

Respectfully submitted,

UNITED STATES STEEL CORPORATION,
Petitioner,

Dated: November 30, 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 AGENCY'S
RESPONSE TO AMENDED MOTION TO STAY AND INTERVENOR'S
OPPOSITION TO AMENDED 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 November 30, 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 November 30, 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 Agency’s Response to Amended Motion to Stay and Intervenor’s Opposition to Amended Motion to Stay the Proceeding (“Reply”) being filed herewith. In support of this Motion, U.S. Steel states as follows:

1. On November 4, 2011, U.S. Steel filed an Amended Motion to Stay the Proceeding, (“Amended Motion”), and on November 15, 2011, Respondent filed the Agency’s Response to Amended Motion to Stay (“Agency’s Response”), and on November 18, 2011, Intervenor filed its Opposition to Amended Motion to Stay the Proceeding (collectively “Responses”). The Responses make statements that warrant clarification by the Petitioner.

2. Section 101.500(e) provides that “a motion for leave to file a reply must be filed within 14 days after service of the response.” This Motion is filed within 14 days of filing of the Agency’s Response, and thus, it is timely.

3. Further, at this time, the Board has not yet ruled on U.S. Steel’s Motion to Stay the Proceeding or the Amended Motion, and thus, granting this Motion will not unduly delay this matter.

4. Therefore, U.S. Steel respectfully requests leave to file the attached Reply *instanter* in order to address and clarify statements made by Respondent and Intervenor in their Responses.

WHEREFORE, UNITED STATES STEEL CORPORATION, requests leave to file *instanter* the Reply to Agency’s Response to Amended Motion to Stay and Intervenor’s Opposition to Amended Motion to Stay the Proceeding.

Respectfully submitted,

UNITED STATES STEEL CORPORATION,
Petitioner,

Dated: November 30, 2011

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USSC:003/Fil/Motion for Leave to File Instanter – Reply to Responses to Amd. Motion

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)	(CAAPP Permit Appeal)
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**REPLY TO AGENCY'S RESPONSE TO
AMENDED MOTION TO STAY AND INTERVENOR'S
OPPOSITION TO AMENDED 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 and for its Reply to Agency's Response to Amended Motion to Stay and Intervenor's Opposition to Amended Motion to Stay the Proceeding ("Reply") provides as follows:

1. On November 4, 2011, U.S. Steel filed an Amended Motion to the Stay the Proceeding ("Amended Motion") in order to clarify that U.S. Steel is merely requesting a stay of this proceeding and not requesting that the Illinois Pollution Control Board ("Board") issue an advisory opinion. Amended Motion, *United States Steel Corporation v. Illinois EPA*, PCB No. 10-23 (Ill.Pol.Control.Bd. Nov. 4, 2011) (hereafter matter cited as "PCB No. 10-23"). On November 15, 2011, the State filed the Agency's Response to Amended Motion to Stay ("Agency's Response"), and on

November 18, 2011, American Bottom Conservancy filed its Intervenor's Opposition to Amended Motion to Stay the Proceeding ("Intervenor's Opposition").

2. By its own filing, the State recognizes the uncertainty associated with the Petition to Object pending before United States Environmental Protection Agency ("USEPA") and the possible impact on the pending appeal proceeding before the Board. Agency Response at ¶ 4 (stating in regards to the Amended Motion that it "seeks to clarify U.S. Steel's request for stay but uncertainty remains"). Further, the State acknowledges that, although unlikely, termination or revocation of the Revised CAAPP Permit is an option available to USEPA. *Id.* at ¶ 6.

3. In addition, the Board should note that Respondent's and Intervenor's Responses are inconsistent. Intervenor alleges that the initial CAAPP permit is void, although no authority is provided to support such a position. However, Respondent recognizes the possible impact that the USEPA proceeding could have on the proceeding before the Board. The Board has yet to address these circumstances in previous cases so the law on these issues is not settled, and the uncertainty itself, as described in U.S. Steel's filings, is sufficient to justify a stay of the proceeding until the USEPA matter is resolved.

4. Respondent, after having recognized that termination or revocation of the Revised CAAPP Permit is a possibility, states that such a possibility, as well as the possibility that the previous CAAPP permit could be reinstated, is "not enough to avoid mootness." Agency Response at ¶ 6. Respondent does not provide any authority for its position that the issues raised in U.S. Steel's filings should be deemed moot. In fact, it is the "mere possibilities" that Respondent notes in its Response that serve as a basis for

granting a stay of this proceeding. Furthermore, Respondent misrepresents the burden to establish mootness. "An appeal is moot if it is *impossible* for a reviewing court to grant effective relief to either party." *Tuminaro v. Tuminaro*, 198 Ill. App. 3d 686, 691 (Ill. App. Ct. 1990) (citing *George W. Kennedy Construction Co. v. City of Chicago*, 112 Ill. 2d 70 (1986)). (Emphasis added.) So, contrary to Respondent's argument, "mere possibilities" of any USEPA anticipated action on the subject appeal is sufficient to avoid mootness, i.e., in its own filing, Respondent has shown that it is not impossible for the Board to grant the parties relief. If USEPA revokes the Revised CAAPP Permit and reinstates the permit under appeal as Respondent agrees is a possibility, the Board most definitely would be able to grant relief to the parties. Because U.S. Steel rightfully sought and obtained a stay of the initial CAAPP permit, the stay of the initial permit should remain in effect in the event that USEPA revokes the Revised CAAPP Permit and reinstates the initial CAAPP permit.

5. Considering that the State itself recognizes and acknowledges the uncertainty and possibility of termination or revocation of the Revised CAAPP Permit, it is appropriate to stay this proceeding until such time that the matter pending before USEPA is resolved. *See generally* 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); Amended Motion; and Response to Joint Motion to Dismiss, PCB No. 10-23 (Ill.Pol.Control.Bd. Nov. 4, 2011).

6. Intervenor, again, alleges that there are only moot questions before the Board, and again, U.S. Steel strongly disagrees. The circumstances presented to the Board regarding the Petition to Object and its potential impact on this appeal proceeding,

as far as U.S. Steel can tell, have not been addressed by the Board before. Mootness, at this time, cannot be determined because the parties do not yet know how USEPA's action on the Petition to Object could impact this proceeding. Therefore, a stay is justified until the USEPA proceeding is resolved. At which time, U.S. Steel will voluntarily dismiss the appeal should the resolution of the USEPA proceeding have no impact on this Board proceeding.

7. Further, Intervenor complains that it is U.S. Steel that is "content to keep filing motions and continue discussions of moot issues." Intervenor's Opposition at ¶ 4. U.S. Steel has simply asked for a stay of this proceeding. It is the Intervenor that has continued to "waste time and resources" with additional filings in this matter. Finally, note that it was only based on discussions with the State that U.S. Steel was prompted to file an Amended Motion to clarify its request for a stay.

8. As clarified in its Amended Motion, U.S. Steel is not requesting that the Board make any determination or issue an advisory opinion. U.S. Steel is asking for a stay of the proceeding. Rather, it is the Intervenor that is requesting the Board make a legal determination that is not necessary at this time.

9. U.S. Steel, through its filings in this matter, has demonstrated that a stay of this proceeding is warranted. However, Respondent and Intervenor have yet to demonstrate that the Permittee's appeal should be dismissed. It is not U.S. Steel's burden to explain why dismissal is not appropriate. Respondent and Intervenor have not met their burden, and therefore, this proceeding should be stayed rather than dismissed.

10. Based on its filings in this matter, U.S. Steel requests that the Board stay this proceeding until the USEPA matter is resolved.

Respectfully submitted,

UNITED STATES STEEL CORPORATION,
Petitioner,

Dated: November 30, 2011

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