

ILLINOIS POLLUTION CONTROL BOARD
February 21, 2013

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

ORDER OF THE BOARD (by J.A. Burke):

United States Steel Corporation (U.S. Steel) appealed the September 3, 2009 issuance of a Clean Air Act Permit Program (CAAPP) permit by the Illinois Environmental Protection Agency (IEPA). This CAAPP permit concerns U.S. Steel’s integrated steel mill plant located at 20th and State Streets in Granite City, Madison County. After accepting the appeal for hearing, the Board granted the motion of American Bottom Conservancy (ABC) to intervene in this proceeding.

On February 2, 2012, the Board granted U.S. Steel’s motion to stay this proceeding for one year, through February 4, 2013, unless the Board issued an order terminating the stay earlier. No order terminating the stay was issued. On January 28, 2013, U.S. Steel filed a “status report and motion for extension of stay” (Mot.). The Board did not receive any response to the motion.

Today, the Board grants U.S. Steel’s unopposed motion for extension of stay, through February 4, 2014, unless the Board terminates the stay earlier.

U.S. STEEL’S MOTION FOR EXTENSION OF STAY

Background

U.S. Steel’s September 2, 2011 motion to stay (2011 Mot.) this appeal of the September 3, 2009 *original* CAAPP permit explained that on May 2, 2011, IEPA issued a *revised* CAAPP permit. 2011 Mot. at 2. U.S. Steel added that the company is “currently operating under the conditions and requirements of the Revised CAAPP Permit.” *Id.* U.S. Steel stated that, on August 16, 2011, ABC filed with the United States Environmental Protection Agency (USEPA) a “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.” *Id.*, attaching as Exh. 1 ABC’s “Petition to Object.” U.S. Steel asked that the instant Board proceeding, an appeal of the *original* CAAPP permit, be stayed “until the proceeding currently pending before USEPA [ABC’s contest of the *revised* CAAPP permit] is resolved.” 2011 Mot. at 3.

U.S. Steel moved to stay the appeal before the Board on the grounds that ABC’s pending objection before USEPA “creates uncertainty as to the impact of its filing, as well as USEPA’s future response, on the Revised CAAPP Permit.” 2011 Mot. at 2. U.S. Steel argued that it could not be known whether the “status” of the original CAAPP permit “could be meaningful until there is sufficient information to determine whether the Revised CAAPP Permit will withstand scrutiny by USEPA.” *Id.*

In U.S. Steel’s most recent status report, U.S. Steel states that, on December 3, 2012, USEPA issued an order that granted in part and denied in part ABC’s petition to object to the revised CAAPP permit. Mot. at 2, citing USEPA, Order Granting in Part and Denying in Part Petition for Objection to Permit, Petition Number V-2011-2 (Dec. 3 2012) (attached to motion as Mot. Exh. 1). U.S. Steel believes that IEPA is preparing a response to the USEPA order, and that IEPA intends to resubmit an updated revised CAAPP permit with a “statement of basis” to USEPA for approval. Mot. at 2.

Motion for Extension of Stay

U.S. Steel requests that the Board extend the stay of this proceeding for an additional year or until the Board issues an order terminating the stay. Mot. at 3. U.S. Steel states that neither it nor IEPA know how USEPA will respond to IEPA’s “statement of basis” and updated revised CAAPP permit being prepared by IEPA. *Id.* U.S. Steel contends

[i]t is impossible for [U.S. Steel] to determine whether the status of the Initial CAAPP Permit that is the subject of this appeal could be meaningful until there is sufficient information to determine whether [IEPA’s] updated Revised CAAPP permit will withstand additional scrutiny by USEPA. *Id.*

U.S. Steel reminds the Board that an open waiver of the decision deadline in this matter was filed on August 23, 2011. Mot. at 3. Accordingly, no waiver is included with U.S. Steel’s motion and there is no immediate requirement to hold a hearing. *Id.*

U.S. Steel does not believe that extending the stay in this matter will result in any harm to the parties. Mot. at 3. Additionally, U.S. Steel contends that IEPA, ABC, and the public are not harmed because U.S. Steel continues to operate under the terms and conditions of the revised CAAPP permit. *Id.*

U.S. Steel quotes the Board’s previous ruling in stating,

[t]he Board finds the present uncertainty over the impact that the USEPA proceeding could have on this appeal supports a stay, as does U.S. Steel’s

representation that it is currently operating under the terms and conditions of the revised permit. Mot. at 3-4, citing United States Steel Corporation v. IEPA, slip op. at 12 (Feb. 2, 2012).

U.S. Steel contends “[t]he same uncertainty that the Board recognized when it granted the stay in February 2012 continues to exist.” *Id.* at 4. U.S. Steel therefore requests that the Board extend the stay of this proceeding for one additional year unless the Board issues an order terminating the stay prior to that time. *Id.* U.S. Steel also commits to updating the Board when there has been final resolution of the proceeding before USEPA, and commits to filing interim status reports, if the Board so orders. *Id.*

DISCUSSION

Legal Background

Under Section 101.514(a) of the Board’s procedural rules, a motion to stay a proceeding must be accompanied by sufficient information detailing why a stay is needed, and in decision deadline proceedings, by a waiver of any decision deadline. A status report detailing the progress of the proceeding must be included in the motion. 35 Ill. Adm. Code 101.514(a).

The decision to grant or deny a motion for stay is “vested in the sound discretion of the Board.” *See People v. State Oil Co.*, PCB 97-103 (May 15, 2003), *aff’d sub nom State Oil Co. v. PCB*, 822 N.E.2d 876, 291 Ill. Dec. 1 (2nd Dist. 2004).

Board Finding on Motion for Extension of Stay

U.S. Steel contends that extending the stay in this proceeding results in no harm to the parties or public, and that the same uncertainty that existed when the Board granted the initial stay in this proceeding continues to exist. Mot. at 3. The Board did not receive any responsive filings to U.S. Steel’s motion. IEPA and ABC have therefore waived any objection to the Board granting the motion. *See* 35 Ill. Adm. Code 101.500(d).

The Board grants U.S. Steel’s motion to extend the stay of this proceeding for a period of one year, through February 4, 2014. Present uncertainty over the impact that the USEPA proceeding could have on this appeal supports a stay, as does U.S. Steel’s representation that it is currently operating under the terms and conditions of the revised CAAPP permit. U.S. Steel has also filed an open waiver of the Board’s statutory deadline for deciding the case. Under these circumstances, the Board finds that U.S. Steel has established that a stay is appropriate. *See, e.g., Midwest Generation EME, LLC v. IEPA*, PCB 04-216, slip op. at 7-8 (Apr. 6, 2006) (stay of Board proceeding granted where potentially relevant USEPA proceeding is pending); *see also* 415 ILCS 5/39.5(9)(g) (2010).

As with the Board's previous ruling, U.S. Steel must file with the Board a status report on the federal proceeding in six months, *i.e.*, on August 21, 2013, unless there has been final resolution of the USEPA proceeding before then. During the stay, if there is final resolution of the federal proceeding, U.S. Steel must promptly provide written notification to the Board. If a final resolution of the proceeding before USEPA does not take place during this one-year stay, any motion by U.S. Steel to further stay the appeal must be directed to the Board and accompanied by a report on the status of the USEPA proceeding.

CONCLUSION

The Board grants U.S. Steel's motion to extend the stay of this proceeding through February 4, 2014, unless the Board issues an order terminating the stay earlier. During the stay, U.S. Steel is subject to reporting as provided in this order.

IT IS SO ORDERED.

Chairman Holbrook abstained.

I, John Therriault, Assistant Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on February 21, 2013, by a vote of 4-0 .



John Therriault, Assistant Clerk
Illinois Pollution Control Board