

CERTIFICATE OF SERVICE

I hereby certify that I did on November 15, 2011, cause to be served by First Class Mail, with postage thereon fully prepaid, by depositing in a United States Post Office Box in Springfield, Illinois, a true and correct copy of the following instruments entitled NOTICE OF ELECTRONIC FILING and AGENCY'S RESPONSE TO AMENDED MOTION TO STAY upon the persons listed on the Service List.



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This filing is submitted on recycled paper.

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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

UNITED STATES STEEL CORPORATION,)	
a Delaware corporation,)	
)	
)	
)	
Petitioner,)	
v.)	PCB No. 10-023
)	(CAAPP Permit Appeal)
ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
)	
)	
Respondent.)	
)	
AMERICAN BOTTOM CONSERVANCY,)	
)	
)	
Intervenor.)	

AGENCY'S RESPONSE TO AMENDED MOTION TO STAY

Respondent, ILLINOIS ENVIRONMENTAL PROTECTION AGENCY, for its Response to the Amended Motion to Stay the Proceeding provides as follows:

1. The Illinois EPA issued on May 2, 2011 a Revised CAAPP Permit to U.S. Steel. The revisions resulted from technical and legal discussions among the Illinois EPA, U.S. Steel and the American Bottom Conservancy (subsequent to the filing of the present permit appeal) as well as directives communicated by USEPA in its resolution (prior to May 2011) of a Petition to Object filed by the American Bottom Conservancy regarding the CAAPP Permit that is the subject of the present permit appeal. The revisions did not result from any formal agreement between any of the parties. In the Statement of Basis for the Revised CAAPP Permit, Illinois EPA provided the following explanation:

The Illinois EPA plans to proceed with revisions to the US Steel permit under the procedures set forth in the CAAPP. In general, this permit revision is an outgrowth of USEPA's public petition process. As set forth in the CAAPP, if a public petition objecting to a CAAPP permit is granted by USEPA after the permit has already been

issued, the Illinois EPA is authorized to revise and resubmit the CAAPP permit to USEPA. See generally, Section 39.5(9)(e)-(g) of the Act and 35 IAC 252.301. This authority, which effectively allows for a formal reconsideration of the issued permit, present an opportunity for the Illinois EPA to reconcile its permitting decision with USEPA's Order. The CAAPP does not specify a time-frame for making such revisions; however, federal requirements provide that a permit authority must act within 90 days to address USEPA's concerns relating to a petition.

Moreover, 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. Notwithstanding the time and resources that have gone into processing US Steel's application and issuance of a CAAPP permit to US Steel, with the issuance of the USEPA's Order, the process of creating an initial CAAPP permit for US Steel is now incomplete. This situation is due, in part, to the administrative processes of the CAAPP and corresponding federal Title V program, including the public petition process, that serve to ensure that a CAAPP permit complies with all legal requirements. In 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.

This discussion quoted above is limited to an initial but not yet effective CAAPP Permit and does not address an effective permit subject to a second Petition to Object before the Administrator. This may be a critical distinction useful for the Board's consideration of the pending motions. Other than providing a definition for the term "Effective date of the CAAPP" as the date of approval by the Illinois EPA, Section 39.5 of the Act does not directly address the issues of when such a permit is effective and of how a subsequently issued permit supercedes a previously issued permit.

2. The initial CAAPP Permit was appealed by U.S. Steel and stayed by the Board in the present proceeding. The May 2, 2011 Revised CAAPP Permit is not the subject of any timely challenge filed with the Board and must be considered as an "effective" and enforceable permit.

3. The American Bottom Conservancy on August 16, 2011 filed with USEPA a Petition to Object regarding the May 2, 2011 Revised CAAPP Permit issued to U.S. Steel. The

August 16, 2011 Petition to Object did not seek and could not effectuate any stay of the effectiveness of the terms and conditions of the revised permit.

4. In its September 2, 2011 Motion to Stay the Proceeding, U.S. Steel refers to the “uncertainty as to the impact of [the August 16, 2011 Petition to Object], as well as USEPA’s future response, on the Revised CAAPP Permit.” Motion at ¶ 3 on p. 2. The Amended Motion seeks to clarify U.S. Steel’s request for stay but the uncertainty remains.

5. The Amended Motion makes it clear that U.S. Steel is not seeking any advisory opinion from the Board. The Board is simply asked to stay the proceeding without any further action. This pending permit appeal would be put on hold and, if the final action by USEPA on the August 16, 2011 Petition to Object “has no impact on the appeal, U.S. Steel will voluntarily dismiss this proceeding.” Amended Motion at ¶ 6 on p. 2.

6. As argued in U.S. Steel’s Response to the Joint Motion to Dismiss, the case law cited and discussed by the American Bottom Conservancy and the Illinois EPA is not strictly on point and may be factually distinguished from the present situation. In particular, the assertion that the initial CAAPP Permit cannot be legally revived is criticized as supported by “no authority whatsoever” in the dismissal argument (incorporated into the amended stay request). Response at ¶ 7 on p. 4. U.S. Steel’s argument is basically that USEPA might terminate or revoke the Revised CAAPP Permit *and* that the initial CAAPP Permit might somehow be reinstated. The Board may certainly consider the possibility of termination or revocation as a legally available option for USEPA although an option that is extremely unlikely in the particular context of objections regarding a revised permit. Termination or revocation after the permit was revised in accordance with a previous ruling (which implicitly affirmed the validity of the initial

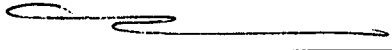
permit) would be unprecedented as well as unreasonable. The reinstatement of a previously challenged permit that USEPA had already (in ruling upon the previous objections) found to be inadequate is another possibility that is both unlikely and unreasonable. This combination of mere possibilities is not enough to avoid mootness.

WHEREFORE, the Illinois EPA continues to object to any stay of these proceedings.

Respectfully submitted,

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Dated: November 14, 2011

THIS FILING PRINTED ON RECYCLED PAPER