

ILLINOIS POLLUTION CONTROL BOARD
November 21, 2013

UNITED STATES STEEL)	
CORPORATION, a Delaware corporation)	
)	
Petitioner,)	
)	
v.)	PCB 13-53
)	(CAAPP Permit Appeal - Air)
ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Respondent.)	

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

On April 8, 2013, United States Steel Corporation (U.S. Steel) timely filed a petition asking the Board to review a March 4, 2013 determination of the Illinois Environmental Protection Agency (Agency). The Agency’s determination concerns U.S. Steel’s integrated iron and steel mill at 20th and State Streets, Granite City, Madison County.

On October 21, 2013, American Bottom Conservancy (ABC) filed a motion to intervene in this proceeding. U.S. Steel responded to the motion on November 4, 2013. The Board grants ABC’s motion to intervene, subject to the restrictions set forth below.

PROCEDURAL HISTORY

U.S. Steel filed its petition for review on April 8, 2013. Also on April 8, 2013, U.S. Steel filed a motion for stay of effectiveness of the contested permit conditions. On April 18, 2013, the Board accepted the petition for hearing but reserved ruling on the motion for stay until the Agency’s response time had passed. The Agency did not file a response to the motion. On May 2, 2013, the Board granted U.S. Steel’s motion to stay the effectiveness of the contested permit conditions until the Board takes final action in this matter or if the Board orders otherwise. The Agency filed its record on May 28, 2013.

On October 21, 2013, ABC filed its motion to intervene (Mot.). U.S. Steel filed its response (Resp.) on November 4, 2013. To date, the Agency has not filed a response to the motion.

The current decision deadline in this case is May 15, 2014.

MOTION OF AMERICAN BOTTOM CONSERVANCY TO INTERVENE

ABC describes itself as “a grassroots organization based in the Metro-East St. Louis region with members residing and recreating in and around Granite City,” which is where U.S.

Steel operates its integrated iron and steel mill, Granite City Works. Mot. at 1. ABC states that it seeks to intervene in this proceeding “to protect air quality and human health in the Granite City and Metro-East areas.” *Id.*

ABC states that it has actively participated in all phases of U.S. Steel’s Clean Air Act Permit Program (CAAPP) permit process. Mot. at 2. This participation began in 2008 when the Agency issued its original draft permit and has continued through two revised Agency-issued permits, the second of which is the subject of this proceeding. *Id.* at 2-3. ABC states that these revised Agency permits are a result of United States Environmental Protection Agency (USEPA) objections following petitions that ABC filed with USEPA. *Id.* at 3. ABC notes that it is currently an intervening party in a related Board proceeding, U.S. Steel Corporation v. IEPA, PCB 10-23, the subject of which is the Agency’s original 2009 CAAPP permit. *Id.* at 3.

ABC contends that Granite City Works is “the primary source of fine particle pollution in the [Metro-East] region,” and that Granite City Works “emits substantial amounts of many other pollutants that threaten human health and the environment and has a history of air pollution violations.” Mot. at 4. ABC states that these interests are “separate and distinct” from those of the Agency, and that it would be materially prejudiced if it were not allowed to intervene. *Id.* ABC argues that USEPA’s two objections are evidence of the Agency’s repeated failure to issue a CAAPP permit that complies with the federal Clean Air Act. *Id.*

ABC states that it “has the technical capability to participate productively in negotiations, and has played an active role in the development of the CAAPP permit.” Mot. at 4. ABC contends that its motion “is timely filed and will not cause undue delay, materially prejudice the proceeding, or otherwise interfere with an orderly or efficient proceeding.” *Id.* at 5. ABC states that, to date, “no hearing has been scheduled; no dispositive motions are pending; and no discovery orders have been issued.” *Id.* ABC notes that U.S. Steel and the Agency “have held one preliminary meeting thus far.” *Id.* ABC also acknowledges that “it will be bound by the Board and Hearing Officer orders already issued in this proceeding, that it would not control the decision deadline, and that it may not expand the scope of the issues.” *Id.* ABC states that the Agency does not object to its motion. *Id.*

U.S. STEEL’S RESPONSE TO MOTION TO INTERVENE

U.S. Steel does not object to ABC’s motion to intervene, subject to the Board imposing specific limitations on ABC’s intervention. Resp. at 2, citing 35 Ill. Adm. Code 101.402(e).

U.S. Steel states that, pursuant to Section 40.2(a) of the Act, any appeal of a permit by an applicant or persons that participated in the public comment period was due by April 8, 2013, the 35th day following the issuance of the final permit. Resp. at 3, citing 415 ILCS 5/40.2(a) (2012). U.S. Steel contends that, because ABC did not timely file a petition for review, ABC “should be precluded from fully participating in this appeal as an intervenor having all rights of an original party.” *Id.* U.S. Steel therefore requests that the Board limit ABC’s participation in this proceeding in the same manner that the Board limited ABC’s participation in PCB 10-23. *Id.* at 4. U.S. Steel requests that ABC be bound by all hearing officer and Board orders, including any issued to date; that ABC does not control the statutory deadline by which the Board must decide this case; and that ABC cannot raise any issues that are outside the scope of the matters set forth

in U.S. Steel’s petition for review. *Id.*, citing U.S. Steel v. IEPA, PCB 10-23, slip op. at 9 (Dec. 3, 2009) (other citations omitted).

U.S. Steel further asserts that ABC “mischaracterizes the status of the current proceedings” and notes that the “preliminary meeting” that has already occurred

was a working meeting during which U.S. Steel and [the Agency] conducted substantive settlement discussions on technical issues and reached agreement upon the path forward to resolution in this proceeding. Resp. at 5, citing Hearing Officer Order, U.S. Steel v. IEPA, PCB 13-53 (Sept. 30, 2013).

U.S. Steel states that it has already begun on the agreed path, “in which the initial phase involves the agreed plan for ‘how to gather emissions data.’” *Id.*, citing Hearing Officer Order, PCB 13-53 (Sept. 30, 2013). Accordingly, U.S. Steel additionally requests that the Board order that ABC’s intervention in this matter “shall not alter in any way the working meeting agreements between U.S. Steel and [the Agency] on the path for moving forward in this proceeding.” *Id.* at 6.

U.S. Steel requests, should the Board allow ABC to intervene without the limitations sought, that the Board schedule additional briefing on this issue. Resp. at 6.

BOARD DISCUSSION

Section 40.2(a) of the Act addresses appeals of CAAPP permit determinations and provides in pertinent part:

If the Agency refuses to grant or grants with conditions a CAAPP permit, . . . the applicant, any person who participated in the public comment process pursuant to subsection 8 of Section 39.5 of this Act, or any other person who could obtain judicial review pursuant to Section 41(a) of this Act, may, within 35 days after final permit action, petition for a hearing before the Board to contest the decision of the Agency. 415 ILCS 5/40.2(a) (2012).

The Board finds, and the parties do not dispute, that the Board has the authority to grant ABC’s motion to intervene in this proceeding. Section 40.2(a) of the Act allows certain persons to appeal an Agency final CAAPP permit determination to the Board. 415 ILCS 5/40.2(a) (2012). This includes persons who participated in the Agency’s public comment process pursuant to Section 39.5(8) of the Act. *Id.*; 415 ILCS 39.5(8) (2012). The parties do not dispute that ABC participated before the Agency during U.S. Steel’s CAAPP permit application process. Therefore, granting ABC’s motion to intervene “would not give party status to a person without standing to have appealed under Section 40.2(a) of the Act.” U.S. Steel, PCB 10-23, slip op. at 6.

When ruling on a motion to intervene, the Board considers the timeliness of the motion and whether intervention will interfere with an orderly proceeding. 35 Ill. Adm. Code 101.402(b). At the time of ABC’s filing, no hearing has been scheduled, no dispositive motions

are pending, and no discovery orders have been issued. However, the Agency record has been filed and the parties have held four telephone status conferences with the Board's hearing officer. Considering ABC's conflicts with the prior Agency-issued permits, as well as the differing interests from the two parties, the Board finds that ABC would be materially prejudiced if it were not allowed to intervene. *See* 35 Ill. Adm. Code 101.402(d)(2). Further, the Board finds, and the parties do not dispute, ABC and its members are so situated that ABC may be adversely affected by a final Board order. *See* 35 Ill. Adm. Code 101.402(d)(3). The Board also finds that intervention by ABC is timely given the current procedural posture of the case and would not interfere with an orderly proceeding. *See* 35 Ill. Adm. Code 101.402(b).

As an intervenor, ABC "has all the rights of an original party to this proceeding . . . including the right to appeal the Board's final decision." U.S. Steel, PCB 10-23, slip op. at 7, citing 35 Ill. Adm. Code 101.402(e). However, like any intervenor, ABC "must take the case as it finds it." *Id.* The Board has the authority to "limit the rights of the intervenor as justice may require." 35 Ill. Adm. Code 101.402(e). ABC and U.S. Steel agree that ABC's intervention should be limited as follows: ABC is bound by all hearing officer and Board orders; ABC does not control the statutory deadline; and ABC cannot raise issues that were raised or might more properly have been raised at an earlier stage of this proceeding. Mot. at 5, Resp. at 4. The Board agrees with the parties' assessment in limiting ABC's participation in this manner, as set forth in 35 Ill. Adm. Code 101.402(e).

U.S. Steel further requests that the Board order that ABC's intervention "shall not alter in any way the working meeting agreements between U.S. Steel and [the Agency] on the path for moving forward in this proceeding." Resp. at 6. U.S. Steel states that it and the Agency have already begun on this agreed path to gather emissions data (*id.* at 5), and this work is "expected to take an extended period of time." Hearing Officer Order, PCB 13-53 (Sept. 30, 2013). U.S. Steel states that the meeting between it and the Agency contained "substantive settlement discussions on technical issues and reached agreement upon the path forward to resolution in this proceeding." Resp. at 5.

The Board has no involvement with "working meeting agreements" between U.S. Steel and the Agency. Accordingly, the Board cannot direct or limit such discussions or who may participate in them. Further, to the extent these agreements may bring a "resolution in this proceeding," the Board notes that it cannot accept stipulations regarding permit conditions "as stipulations regarding permit conditions are not appropriate in the context of a permit appeal." Phillips 66 Co. v. IEPA, PCB 12-101, slip op. at 28 (March 21, 2013); *see also* L. Keller Oil Properties/Farina v. IEPA, PCB 06-189, PCB 06-190 (consl.), slip op. at 7 (July 25, 2013) (Board could not authorize proposed settlement in a proceeding under Section 40 of the Act (415 ILCS 5/40 (2012))). Because the Board is not authorized to accept a settlement in a permit appeal, the Board finds that it cannot limit ABC's participation in this proceeding based on those "substantive settlement discussions." Accordingly, the Board denies U.S. Steel's request to impose this additional limitation. Similarly, the Board denies U.S. Steel's request to schedule additional briefing on this issue.

CONCLUSION

The Board grants ABC's motion to intervene in this proceeding, subject to limitations. ABC is bound by Board and hearing officer orders already issued or by evidence already admitted; ABC does not control any decision deadline; and ABC cannot raise issues that were not raised or might more properly have been raised at an earlier stage in the proceeding. *See* 35 Ill. Adm. Code 101.402(e).

IT IS SO ORDERED.

I, Don A. Brown, Acting Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on November 21, 2013, by a vote of 4-0.

A handwritten signature in black ink that reads "Don A. Brown". The signature is written in a cursive style with a large, circular initial "D".

Don A. Brown, Acting Clerk
Illinois Pollution Control Board