

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  
Assistant Clerk of the Board  
Illinois Pollution Control Board  
100 West Randolph Street  
Suite 11-500  
Chicago, Illinois 60601  
**(VIA ELECTRONIC MAIL)**

Carol Webb, Esq.  
Hearing Officer  
Illinois Pollution Control Board  
1021 North Grand Avenue East  
Post Office Box 19274  
Springfield, Illinois 62794-9274  
**(VIA ELECTRONIC 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 the Illinois Environmental Protection Agency and American Bottom Conservancy's JOINT OPPOSITION TO MOTION TO STAY THE PROCEEDING, a copy of which is hereby served upon you.

Respectfully submitted,

Dated: September 20, 2011

By: Maxine Lipeles  
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	)	
Intervenor.	)	

**JONT OPPOSITION TO MOTION TO STAY THE PROCEEDING**

The Illinois Environmental Protection Agency (IEPA) and American Bottom Conservancy (ABC), by and through its undersigned attorneys, hereby submit the following Joint Opposition to U.S. Steel's Motion to Stay the Proceeding.

1. On September 3, 2009, IEPA issued a Clean Air Act Permit Program (CAAPP) Permit for U.S. Steel's Granite City facility (Original CAAPP Permit). ABC timely filed a Petition to Object with the United States Environmental Protection Agency (USEPA) under Section 502(b)(2) of the federal Clean Air Act on October 1, 2009. U.S. Steel then filed its Petition for Review of the Original CAAPP Permit with the Illinois Pollution Control Board (Board) on October 7, 2009.

2. On January 31, 2011, USEPA granted, in part, ABC's Petition to Object and directed the IEPA to revise the Original CAAPP permit. In response, IEPA drafted a revised permit and noticed it for public comment. On May 2, 2011, after the close of the comment period, IEPA issued a 320-page Revised CAAPP Permit which replaces and completely

supersedes the Original CAAPP Permit of September 3, 2009.

3. On August 16, 2011, ABC filed with USEPA a new Petition requesting that the Administrator object to specified provisions of the revised Title V CAAPP operating permit for the U.S. Steel Granite City Works facility. This petition is pending before USEPA. As with the prior petition, a decision by USEPA to grant the petition would require the IEPA to make additional changes to the Revised CAAPP Permit. It would not and could not revive the moribund Original Permit.

4. U.S. Steel did not exercise its right to appeal the Revised CAAPP Permit. By its own admission on page 2 of its Motion to Stay Proceeding, U.S. Steel is currently operating under the conditions and requirements of the Revised CAAPP Permit. The terms and conditions of the Original CAAPP Permit are no longer in effect.

5. 34 Ill. Admin. Code § 101.514 requires that a motion to stay request must be accompanied by sufficient information that demonstrates (1): why a stay is needed; and (2) that a granting of a stay will not result in harm to the parties.

6. U.S. Steel has failed to provide a sufficient explanation for why a stay would be justified. U.S. Steel's sole claim for why a stay is justified is that "there is uncertainty as to how the USEPA will respond to ABC's petition to object and how any response could impact the revised CAAPP permit." However, the company fails to state what uncertainty might exist toward the now moot Original CAAPP Permit or how USEPA's review of the Revised CAAPP Permit might in any way impact the superseded Original CAAPP Permit that is the subject of this proceeding – and that is no longer in effect.

7. In dealing with revised IEPA permits in other situations, the notes to 35 Ill. Adm. Code 703.270 state: “The Board intends that a reissued permit completely supercede the earlier version of that permit.”

8. Furthermore, the general rule is that the issuance of a new air permit renders the superseded permit null and void, and moots and pending appeals thereof. *See, e.g. In The Matter of Quad Graphics Inc. Permit Application*, 1989 WL 266357 (EPA). Likewise here, any issues that U.S. Steel may have with the Original CAAPP permit were mooted by the issuance of the superseding Revised CAAPP Permit.

9. U.S. Steel also has failed to show that granting the stay will not result in harm to any of the parties. Contrary to U.S. Steel’s bald assertions, staying, rather than dismissing as moot, the pending appeal of the superseded Original CAAPP Permit will harm the IEPA, the Board, the public, and ABC. Continuing this proceeding will harm IEPA and the Board (as well as the taxpayers of the state of Illinois) by forcing these state agencies to waste time and resources dealing with moot issues in a time of significant budget deficits and state agency spending cuts. Staying this proceeding would also harm ABC, which will have to continue to spend resources and time responding to irrelevant motions and status conferences, siphoning time away from working on live matters.

10. The cases cited by U.S. Steel in support of its Motion to Stay are irrelevant to the proceeding at hand and do not support its motion. *Midwest Generation EME, LLC v. Illinois EPA*, PCB No. 04-216 (IPCB 2006) involved a stay in a trade secrets case. Midwest Generation desired a stay of Board proceedings because of a concurrent USEPA proceeding that was determining whether the same information at issue before the Board was exempt from public disclosure under federal standards. Likewise, *Commonwealth Edison Co. v Illinois EPA*, PCB

No. 04-215 (IPCB 2006), issued the same day by the same hearing officer, involved the same concurrent USEPA proceeding regarding public disclosure standards, and Commonwealth Edison desired a stay of Board proceedings on the same issue. In *Chicago Coke Co. v. Illinois EPA*, PCB No. 10-75 (IPCB 2010), Chicago Coke filed suit against the IEPA in circuit court and filed a petition for review with the Board. Chicago Coke requested a stay from the Board until the circuit court action was resolved so that the Board would not be dealing with the same issues. Thus, in each of these cases cited by U.S. Steel, the outcome of the related proceeding would aid the Board in resolving a pending matter. This, of course, is not the case here, where ABC's pending Petition to Object before USEPA only addresses the Revised CAAPP Permit and will not impact in any way the now null Original CAAPP Permit that is the subject of this appeal.

11. Finally, in *Atkinson Landfill Co. v. Village of Atkinson*, PCB No. 07-20 (IPCB 2008), also cited by U.S. Steel, both parties requested a motion to stay and the Board granted the motion without commenting on the merits or even the grounds upon which the stay was sought or justified, which is clearly not the case here.

WHEREFORE, for the reasons set forth above, Respondent Illinois Environmental Protection Agency and Intervenor American Bottom Conservancy respectfully request that the Illinois Pollution Control Board deny U.S. Steel's Motion to Stay Proceeding.

Respectfully submitted,

By: Maxine Lipeles

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By: Thomas Davis/mic

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Counsel for American Bottom  
Conservancy

Counsel for Illinois Environmental Protection  
Agency

Dated: September 20, 2011

**CERTIFICATE OF SERVICE**

I, Maxine Lipeles, hereby certify that on September 20, 2011, I served by email on the below listed parties and Board officials the Illinois Environmental Protection Agency and American Bottom Conservancy's Joint Opposition to Motion to Stay the Proceeding:

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