

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

UNITED STATES STEEL)	
CORPORATION, a Delaware corporation,)	
)	
Petitioner,)	
)	
v.)	PCB No. 13-53
)	(CAAPP Permit Appeal - Air)
ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Respondent.)	

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 **UNITED STATES STEEL CORPORATION'S RESPONSE TO MOTION OF AMERICAN BOTTOM CONSERVANCY TO INTERVENE, and ENTRY OF APPEARANCE OF JOSHUA J. HOUSER**, a copy of which is hereby served upon you.

Respectfully submitted,

UNITED STATES STEEL CORPORATION,
Petitioner,

Dated: November 4, 2013

By: /s/Katherine D. Hodge
One of Its Attorneys

Katherine D. Hodge
Joshua J. Houser
HODGE DWYER & DRIVER
3150 Roland Avenue
Post Office Box 5776
Springfield, Illinois 62705-5776
(217) 523-4900

CERTIFICATE OF SERVICE

I, Katherine D. Hodge, the undersigned, certify that I have served the attached UNITED STATES STEEL CORPORATION'S RESPONSE TO MOTION OF AMERICAN BOTTOM CONSERVANCY TO INTERVENE, and ENTRY OF APPEARANCE OF JOSHUA J. HOUSER, 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 4, 2013; and upon:

Carol Webb, Esq.
Hearing Officer
Illinois Pollution Control Board
1021 North Grand Avenue East
Post Office Box 19274
Springfield, Illinois 62794-9274

Amanda Kimmel, Esq.
Assistant Attorney General
Office of the Illinois Attorney General
500 South Second Street
Springfield, Illinois 62706

Division of Legal Counsel
Illinois Environmental Protection Agency
1021 North Grand Avenue East
Post Office Box 19276
Springfield, Illinois 62794-9276

Maxine I. Lipeles, Esq.
Washington University School of Law
One Brookings Drive
Campus Box 1120
St. Louis, Missouri 63130-4899

by depositing said documents in the United States Mail, postage prepaid, in Springfield, Illinois, on November 4, 2013.

/s/Katherine D. Hodge
Katherine D. Hodge

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

UNITED STATES STEEL)	
CORPORATION, a Delaware corporation,)	
)	
Petitioner,)	
)	
v.)	PCB No. 13-53
)	(CAAPP Permit Appeal)
ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Respondent.)	

UNITED STATES STEEL CORPORATION'S RESPONSE TO MOTION OF AMERICAN BOTTOM CONSERVANCY TO INTERVENE

NOW COMES, Petitioner, UNITED STATES STEEL CORPORATION ("U.S. Steel"), by and through its attorneys, HODGE DWYER & DRIVER, pursuant to 35 Ill. Admin. Code § 101.500, for its Response to Motion of American Bottom Conservancy to Intervene ("Motion") states as follows:

1. On April 8, 2013, U.S. Steel filed a Petition for Review ("Petition") of the Clean Air Act Permit Program ("CAAPP") permit (No. 96030056) ("Permit") issued on March 4, 2013, by the Illinois Environmental Protection Agency ("Illinois EPA") for U.S. Steel's integrated steel mill plant located in Granite City, Illinois. Petition for Review, *United States Steel Corporation v. Illinois EPA*, PCB No. 13-53 (Ill.Pol.Control.Bd. Apr. 8, 2013) (hereafter appeal cited as "PCB No. 13-53").

2. On April 18, 2013, the Illinois Pollution Control Board ("Board") accepted U.S. Steel's Petition for hearing. Board Order, PCB No. 13-53 (Ill.Pol.Control.Bd. Apr. 18, 2013) (hereafter "Board Order"). On October 21, 2013, American Bottom Conservancy ("ABC") filed its Motion requesting the Board allow

ABC to intervene in this matter. Motion of ABC to Intervene, PCB No. 13-53 (Ill.Pol.Control.Bd. Oct. 21, 2013).

3. As discussed in more detail below, although U.S. Steel does not object to ABC's intervention in this matter, U.S. Steel requests that, should the Board grant ABC's Motion, ABC's participation in this appeal be limited due to ABC's failure to timely file an appeal in this matter. Specifically, U.S. Steel requests that the Board impose the same limits upon ABC's participation in this appeal that the Board imposed on ABC's participation in U.S. Steel's previous CAAPP permit appeal. *See* Board Order, PCB No. 10-23 (Ill.Pol.Control.Bd. Dec. 3, 2009). Such limitations are authorized pursuant to Section 101.402(e) of the Board's procedural rules. 35 Ill. Admin. Code § 101.402(e). Further, subject to the limitations on ABC's participation as discussed below, ABC's participation in this matter should not "unduly delay or materially prejudice the proceeding or otherwise interfere with an orderly or efficient proceeding." 35 Ill. Admin. Code § 101.402(b).

4. Section 40.2(a) of the Illinois Environmental Protection Act ("Act"), 415 ILCS 5/40.2(a), provides:

Subsection (a) of Section 40 does not apply to any permit which is subject to Section 39.5. If the Agency refuses to grant or grants with conditions a CAAPP permit, makes a determination of incompleteness regarding a submitted CAAPP application, or fails to act on an application for a CAAPP permit, permit renewal, or permit revision within the time specified in paragraph 5(j) of Section 39.5 of this Act, 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. However, the 35-day period for petitioning for a hearing may be extended by the applicant for an

additional period of time not to exceed 90 days by written notice provided to the Board from the applicant and the Agency within the initial appeal period. If another person with standing to appeal wishes to obtain an extension, there must be a written notice provided to the Board by that person, the Agency, and the applicant, within the initial appeal period. Notwithstanding the preceding requirements, petitions for a hearing before the Board under this subsection may be filed after the 35-day period, only if such petitions are based solely on grounds arising after the 35-day period expires. Such petitions shall be filed within 35 days after the new grounds for review arise. If the final permit action being challenged is the Agency's failure to take final action, a petition for a hearing before the Board shall be filed before the Agency denies or issues the final permit.

415 ILCS 5/40.2(a). (Emphasis added.)

5. Pursuant to Section 40.2(a), any appeal of the Permit by the applicant or persons that participated in the public comment period should have been filed by April 8, 2013, thirty-five days after the issuance of the final Permit. ABC participated in the U.S. Steel permitting process by submitting public comments on the draft revised CAAPP permit issued by Illinois EPA in February 2013. Motion at ¶ 10. ABC thus had the right to file an appeal of the Permit within thirty-five days after final permit action. 415 ILCS 5/40.2(a).

6. ABC has demonstrated that it is familiar with statutory and regulatory deadlines and has timely filed public comments and appeals in cases involving U.S. Steel's CAAPP permit. Motion at ¶¶ 5-10. However, in this case, ABC failed to timely file an appeal of the Permit as provided for in Section 40.2(a) of the Act.

7. Since ABC waived its statutory right to appeal by failing to file a petition for review of the Permit by April 8, 2013, ABC should be precluded from fully participating in this appeal as an intervenor having all rights of an original party.

8. Section 101.402(e) of the Board's procedural rules provides:

An intervenor will have all rights of an original party to the adjudicatory proceeding, except that the Board may limit the rights of the intervenor as justice may require. The limits may include providing that: the intervenor is bound by Board and hearing officer orders already issued or by evidence already admitted; that the intervenor does not control any decision deadline; and that the intervenor cannot raise issues that were raised or might more properly have been raised at an earlier stage of the proceeding.

35 Ill. Admin. Code § 101.402(e). (Emphasis added.)

9. In this case, U.S. Steel does not oppose the intervention of ABC subject to certain limitations. Because ABC waived its right to appeal in this matter by failing to file a timely petition pursuant to Section 40.2(a) of the Act, ABC's participation should be limited as it did not avail itself of the statutory right to appeal. Accordingly, U.S. Steel requests that, should the Board grant ABC's Motion, it limit ABC's participation in this matter to the same extent that the Board limited ABC's participation as an intervenor in U.S. Steel's previous CAAPP permit appeal in PCB No. 10-23, as follows:

- ABC is bound by all hearing officer and Board orders, including those issued to date;
- ABC does not control the statutory deadline by which the Board must decide this case; and
- ABC cannot raise any issues that are outside the scope of the matters set forth in U.S. Steel's petition for review.

See 35 Ill. Admin. Code § 101.402(e); Board Opinion and Order at 9, PCB No. 10-23 (Ill.Pol.Control.Bd. Dec. 3, 2009); Board Order at 2 (stating that the hearing "will be based exclusively on the record before the Agency at the time the Agency issued its permit decision" and "information developed after the Agency's decision typically is not

admitted at hearing or considered by the Board”); *XCTC Limited Partnership v. Illinois EPA, Georgia-Pacific Tissue, LLC v. Illinois EPA*, PCB Nos. 01-46, 01-51 (consolidated), slip op. at 1-2 (Ill.Pol.Control.Bd. Feb. 5, 2004) (holding that an amended petition filed three years after the issuance of the CAAPP permit, which sought review of a condition not previously cited, was “prohibited by the express language of section 40.2 of the Act”).

10. ABC concedes that it will not be prejudiced by the above limitations. *See* Motion at ¶ 16 (“ABC understands 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.”).

11. Further, as noted above, limited participation by ABC in this matter should not “unduly delay or materially prejudice the proceeding or otherwise interfere with an orderly or efficient proceeding.” 35 Ill. Admin. Code § 101.402(b). To that end, U.S. Steel asserts that ABC mischaracterizes the status of the current proceeding and underestimates the amount of progress already achieved by U.S. Steel and Illinois EPA. *See* Motion at ¶ 15. The meeting that already occurred between U.S. Steel and Illinois EPA was not a mere “preliminary meeting” in which “[n]o . . . significant developments . . . occurred,” but instead was a working meeting during which U.S. Steel and Illinois EPA conducted substantive settlement discussions on technical issues and reached agreement upon the path forward to resolution in this proceeding. *See* Hearing Officer Order, PCB No. 13-53 (Ill.Pol.Control.Bd. Sept. 30, 2013). Moreover, U.S. Steel and Illinois EPA have begun the implementation of the agreed path, in which the initial phase involves the agreed plan for “how to gather emissions data.” *Id.* Accordingly, U.S. Steel

additionally requests that, should the Board grant ABC's Motion, it further order that ABC's intervention in this matter shall not alter in any way the working meeting agreements between U.S. Steel and Illinois EPA on the path for moving forward in this proceeding. *See* 35 Ill. Admin. Code § 101.402(b).

12. Pursuant to the Board's authority to limit the rights of an intervenor, U.S. Steel requests that, should the Board grant ABC's Motion, it limit ABC's participation in this matter in the manner and with the limitations set forth above. However, if the Board is inclined to allow ABC's intervention in this matter without the limitations discussed above, U.S. Steel respectfully requests that the Board schedule additional briefing on this issue.

WHEREFORE, Petitioner, UNITED STATES STEEL CORPORATION requests the Board to limit participation of the American Bottom Conservancy as an intervenor in this matter should the Board grant the Motion to Intervene.

Respectfully submitted,

UNITED STATES STEEL
CORPORATION,
Petitioner,

Dated: November 4, 2013

By: /s/ Katherine D. Hodge
One of Its Attorneys

Katherine D. Hodge
Joshua J. Houser
HODGE DWYER & DRIVER
3150 Roland Avenue
Post Office Box 5776
Springfield, Illinois 62705-5776
(217) 523-4900

USSC:008/Fil/Response to ABC's Motion to Intervene – 11.4.13

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

UNITED STATES STEEL)	
CORPORATION, a Delaware corporation,)	
)	
Petitioner,)	
)	
v.)	PCB No. 13-53
)	(CAAPP Permit Appeal - Air)
ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Respondent.)	

ENTRY OF APPEARANCE OF JOSHUA J. HOUSER

NOW COMES Joshua J. Houser, of the law firm of HODGE DWYER & DRIVER, and hereby enters his appearance on behalf of UNITED STATES STEEL CORPORATION, in the above-captioned matter.

Respectfully submitted,

UNITED STATES STEEL CORPORATION,
Petitioner,

Dated: November 4, 2013

By: /s/Joshua J. Houser
Joshua J. Houser

Katherine D. Hodge
Joshua J. Houser
HODGE DWYER & DRIVER
3150 Roland Avenue
Post Office Box 5776
Springfield, Illinois 62705-5776
(217) 523-4900