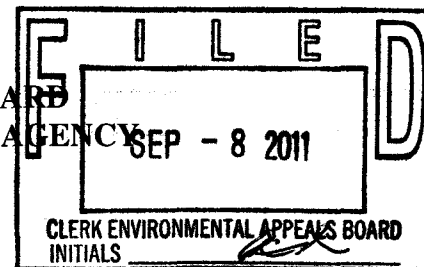


BEFORE THE ENVIRONMENTAL APPEALS BOARD  
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C.



\_\_\_\_\_  
In re: )  
)  
ArcelorMittal )  
Cleveland, Inc. ) NPDES Appeal No. 11-01  
)  
Permit No. OH0000957 )  
\_\_\_\_\_ )

**ORDER FOR ADDITIONAL BRIEFING**

On August 26, 2011, ArcelorMittal Cleveland, Inc. (“ArcelorMittal”) filed an informal appeal under 40 C.F.R. § 124.5(b). The Appeal concerns the U.S. Environmental Protection Agency Region 5’s (“Region”) denial of ArcelorMittal’s April 13, 2010 application to modify its National Pollutant Discharge Elimination System (“NPDES”) permit to incorporate proposed revisions to its Clean Water Act Section 301(g) variance effluent limitation for ammonia-nitrogen.<sup>1</sup> Letter from Dale E. Papajcik, Squire, Sanders & Dempsey (US) LLP, to the Environmental Appeals Board, at 1 (Aug. 26, 2011) (“Informal Appeal”).

The Region denied ArcelorMittal’s modification request as untimely. *See* Letter from Susan Hedman, Regional Administrator, U.S. EPA Region 5, to Scott J. Nally, Director, Ohio

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<sup>1</sup> Section 124.5(b) provides that the denial of a permit modification request “may be informally appealed to the Environmental Appeals Board by letter briefly setting forth the relevant facts.” This section states further that “[t]he appeal shall be considered denied if the Environmental Appeals Board takes no action on the letter within 60 days after receiving it.” 40 C.F.R. § 124.5(b). This Order for Additional Briefing constitutes sufficient “action” necessary to keep this matter alive beyond the sixtieth day. *See In re Waste Technologies Industries*, 5 E.A.D. 646, 655 n.13 (EAB 1995) (order for supplemental briefing is sufficient to keep appeal alive beyond 60-day period specified in section 124.5(b)).

Environmental Protection Agency (June 23, 2011) (Exhibit 3 to Informal Appeal); Letter from Tinka G. Hyde, Director, Water Division, U.S EPA Region 5, to Stan Rihtar, Environmental Manager, ArcelorMittal (Aug. 18, 2011) (Exhibit 7 to Informal Appeal). The Region apparently treated the application for a permit modification as a request for a variance under section 301(g) of the Clean Water Act ("CWA"), 33 U.S.C. § 1311(g), and denied the request as failing to meet the deadlines specified in CWA section 301(j)(1)(B), 33 U.S.C. § 1311(j)(1)(B).

The Board has determined that additional briefing is required in order to determine if review is appropriate in this matter. Accordingly, the Region is hereby ordered to file a substantive response to the informal appeal no later than September 30, 2011.<sup>2</sup> The Region's response must include relevant portions of the administrative record. ArcelorMittal will then have until October 14, 2011 to file a reply.<sup>3</sup>

So ordered.

Dated: September 8, 2011

ENVIRONMENTAL APPEALS BOARD

By: Kathie A. Stein

Kathie A. Stein

Environmental Appeals Judge

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<sup>2</sup> The Region's response should reflect consultation with the Office of General Counsel and the Office of Water.

<sup>3</sup> Documents are filed with the Board on the date they are *received*.

## CERTIFICATE OF SERVICE

I hereby certify that copies of the forgoing Order For Additional Briefing in the matter of ArcelorMittal Cleveland, Inc., NPDES Appeal No. 11-01, were sent to the following persons in the manner indicated:

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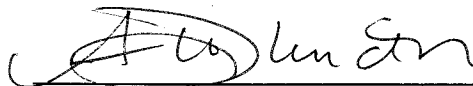
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SEP - 8 2010



Annette Duncan  
Secretary