

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

CHICAGO COKE CO., INC., an Illinois corporation,	)	
	)	
	)	
Petitioner,	)	
	)	PCB 10-75
v.	)	(Permit Appeal--Air)
	)	
THE ILLINOIS ENVIROMENTAL PROTECTION AGENCY,	)	
	)	
	)	
Respondent.	)	
	)	
NATURAL RESOURCES DEFENSE COUNCIL, and SIERRA CLUB,	)	
	)	
	)	
Intervenors.	)	

**NOTICE OF FILING**

To: Counsel of Record  
(See attached Service List.)

PLEASE TAKE NOTICE that on this 14<sup>th</sup> day of December 2011, the following was filed electronically with the Illinois Pollution Control Board: **Chicago Coke Co., Inc.'s Motion to Compel**, which is attached and herewith served upon you.

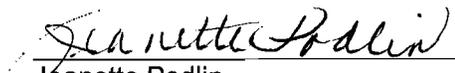
CHICAGO COKE CO., INC.

By: s/Elizabeth S. Harvey  
One of its attorneys

Michael J. Maher  
Elizabeth Harvey  
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**CERTIFICATE OF SERVICE**

I, the undersigned non-attorney, state that I served a copy of the foregoing document to counsel of record via U.S. Mail at 330 North Wabash, Chicago, IL 60611, at or before 5:00 p.m. on December 14, 2011.

  
\_\_\_\_\_  
Jeanette Podlin

Under penalties as provided by law pursuant to 735 ILCS 5/1-109, I certify that the statements set forth herein are true and correct.

7012-002

**SERVICE LIST**

**Chicago Coke Co., Inc. v. Illinois Environmental Protection Agency**

**PCB 10-75**

**(Permit Appeal -- Air)**

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	)	
	)	
Intervenors.	)	

**MOTION TO COMPEL**

Petitioner CHICAGO COKE CO., INC. ("Chicago Coke"), by its attorneys Swanson, Martin & Bell, LLP, moves the hearing officer to compel respondent the ILLINOIS ENVIRONMENTAL PROTECTION AGENCY ("IEPA") to provide complete discovery responses to Chicago's Coke's interrogatories, document requests, and requests to admit. This motion is brought pursuant to Sections 101.610, 101.614, 101.616, and 105.100(b) of the Board's procedural rules. (35 Ill.Adm.Code 101.610, 101.614, 101.616, and 105.100(b).)

**INTRODUCTION**

On July 18, 2011, Chicago Coke served interrogatories, document requests, and requests to admit on IEPA. On September 7, 2011, IEPA served its responses to Chicago Coke's discovery. (See Exhibit 1, responses to interrogatories; Exhibit 2, responses to document requests; and Exhibit 3, responses to requests to admit.)

IEPA has refused to respond to a number of discovery requests to which Chicago Coke is entitled to a response. On November 8, 2011 and on November 28, 2011, counsel for Chicago Coke and for IEPA consulted, via telephone, on their disagreements. Following their good faith efforts, the parties were able to resolve a few but not all of their disputes. Therefore, Chicago Coke moves to compel IEPA to provide full responses to the following discovery requests. Chicago Coke asks that IEPA be ordered to provide the responses within 21 days of the date of the hearing officer's order.

The Board's rules specifically provide that "[a]ll relevant information and information calculated to lead to relevant information is discoverable." 35 Ill. Adm. Code 101.616(a). Thus, discovery should be liberally allowed. IEPA's refusal to provide full responses to Chicago Coke's discovery requests and requests to admit denies Chicago Coke its right to full and fair discovery. As the petitioner, Chicago Coke bears the burden of proof in this appeal, making it particularly important that Chicago Coke receive full substantive responses to discovery. (35 Ill. Adm. Code 105.112.)

IEPA determined, in the February 22, 2010 decision at issue in this case, that:

[IEPA] does not find that the ERCs claimed are available as offsets, since it is our position that the Chicago Coke facility is permanently shutdown. Pursuant to applicable federal guidance, the ERCs are thus not available for use as you described.

(IEPA's February 22, 2010 decision, attached as Exhibit 4.)

Based upon this decision, Chicago Coke seeks three categories of information in its discovery requests and requests to admit. First, is the Chicago Coke facility "permanently shutdown"? Second, are emission reduction credits ("ERCs") from facilities which are "permanently shutdown" unavailable for use, based upon "federal

guidance”? Third, has IEPA consistently applied the alleged “federal guidance” regarding the use of ERCs from “permanently shutdown” facilities?

Initially, Chicago Coke notes that many of IEPA’s objections to Chicago Coke’s discovery requests make claims of privilege of one or more types: deliberative process and invading attorney’s mental processes and impressions, for example. Chicago Coke does not seek any information which is legitimately privileged. However, if IEPA has information responsive to a discovery request, which it believes is privileged, the proper procedure is to provide a privilege log, identifying the document and the claimed privilege—not simply refuse to respond. Further, as discussed below, some of IEPA’s claims of privilege are inapplicable to the information requested by Chicago Coke.

### INTERROGATORIES

IEPA provided very little substantive information in response to Chicago Coke’s interrogatories, leaving Chicago Coke to pursue substantive responses through this motion to compel. The interrogatories in dispute fall into two categories: 1) interrogatories seeking information about IEPA’s decision on Chicago Coke’s use of its ERCs—interrogatories 6-8, and 10-12; and 2) interrogatories seeking information about IEPA’s decision on request, other than that by Chicago Coke, to use ERCs—interrogatories 4 and 14-17.

#### Interrogatories 6-8 and 10-12

- Interrogatory 6 asks IEPA to identify, with specificity, all facts supporting IEPA’s decision that “the Chicago Coke facility is permanently shutdown.” IEPA objects to Interrogatory 6, among other objections, as seeking to invade an attorney’s mental impressions, and responds only by making a general reference to IEPA’s administrative record in this matter. This response is insufficient. Identifying the facts used by IEPA in reaching its conclusion that the Chicago Coke facility is “permanently shutdown” is simply a request for basic facts upon which IEPA based its decision. The administrative record is filled with all kinds of

"facts," which may or may not support IEPA's position: a mere reference to the 2338-page record does not identify the facts supporting the decision.

Identification of facts in support is particularly important in this case because IEPA previously found, in 2005, that the Chicago Coke facility was not permanently shutdown. (See IEPA Record, page 0305, attached for convenience as Exhibit 5.) To be clear, Chicago Coke does not, at this time, raise whether IEPA can change its determination regarding whether the Chicago Coke facility is permanently shutdown. Chicago merely asks for the facts supporting IEPA's February 2010 decision. Those facts are all the more important because of IEPA's prior finding the facility is not permanently shutdown.

Interrogatory 6 does not seek to invade an attorney's mental impressions: it asks only for identification of facts, not an explanation of how IEPA's attorneys applied those facts. Even assuming—which Chicago Coke does not admit—that the privilege applies, any facts identified by or used by a non-attorney are obviously not protected by a privilege applicable to attorneys. Chicago Coke believes that some of the IEPA employees identified in response to Interrogatory 2 (regarding who provided information regarding IEPA's February 2010 decision) are not attorneys.

Presumably IEPA will reveal the facts supporting its decision at some point in this case, perhaps in a dispositive motion or at hearing. The facts supporting IEPA's decision are an appropriate subject for discovery, and IEPA should not be allowed to delay informing Chicago Coke of those facts. The Board's rules are clear that all relevant information and information calculated to lead to relevant information is discoverable. (35 Ill.Adm.Code 101.616.) IEPA should be directed to provide a full substantive response to Interrogatory 6.

- Interrogatories 7 and 8 ask IEPA to identify all federal and state statutes, regulations, and guidance supporting IEPA's conclusion that the Chicago Coke facility is permanently shutdown. IEPA asserts these interrogatories seek to invade an attorney's mental impressions, and requires the drawing of legal conclusions. On the contrary, Chicago Coke seeks only to learn the bases of IEPA's decision. Chicago Coke does not seek a full explanation of how IEPA's attorneys applied the federal or state law or guidance: there is no attempt to invade an attorney's mental processes. Surely, however, IEPA's decision is based on some federal or state statute, regulation or guidance—none of which is identified in IEPA's decision. Chicago Coke is entitled to know the bases of IEPA's decision, and IEPA's refusal to answer prejudices Chicago Coke. IEPA should be compelled to provide full substantive responses to Interrogatories 7 and 8.
- Interrogatory 10 asks IEPA to specifically identify all "applicable federal guidance" referred to in IEPA's February 2010 decision. IEPA claims the

interrogatory seeks to invade an attorney's mental impressions, and requires the drawing of legal conclusions. On the contrary, Chicago Coke simply seeks an identification of the specific federal guidance IEPA itself refers to in its February 2010 decision. IEPA stated "[p]ursuant to applicable federal guidance, the ERCs are thus not available for use." (Exhibit 4.) Surely IEPA knows the "applicable federal guidance" to which it referred, in its own decision. As with Interrogatories 7 and 8, asking for an identification of that "applicable federal guidance" does not invade an attorney's mental processes—Chicago Coke does not seek an explanation of how IEPA applied the "applicable federal guidance" to the facts in this case. Chicago Coke is entitled to know the "applicable federal guidance" to which IEPA refers in its own decision. A broad reference to the administrative record and a disconcerting statement that "additional federal guidance may have been consulted by various [IEPA] employees" do not fully and fairly respond to Interrogatory 10. IEPA should be compelled to provide a full response to Interrogatory 10.

- Interrogatories 11 and 12 ask IEPA to identify all federal and state statutes, regulations, and guidance supporting IEPA's conclusion that, because the Chicago Coke facility is permanently shutdown, its ERCs are not available for use. (Interrogatories 7 and 8 asked for the statutes and regulations supporting the conclusion the Chicago Coke facility is shutdown. In contrast, Interrogatories 11 and 12 seek identification of the statutes and regulations supporting the conclusion that ERCs from a "permanently shutdown" facility cannot be used.) Again, IEPA asserts the interrogatories seek to invade attorney's mental impressions, and require the drawing of legal conclusions. On the contrary, Chicago Coke merely asks IEPA to identify the source of IEPA's own statement that "pursuant to applicable federal guidance, the ERCs are thus not available for use." (See Exhibit 4.) Surely IEPA knows what it meant when it wrote that sentence in its own decision letter. Chicago Coke is not asking for an explanation of the legal analysis in which IEPA may have engaged: Chicago Coke is only asking that IEPA be required to identify which "applicable federal guidance" it was referring to in its own decision. Identifying that "applicable federal guidance" and any related statutes or regulations, which IEPA itself states is the basis for its decision, neither invades an attorney's mental processes nor requires the drawing of a legal conclusion. IEPA has already drawn the "legal conclusion" when it reached its February 2010 decision. Chicago Coke is entitled to a response identifying that federal guidance, statute or regulation.

Interrogatory 12 seeks the same information for any state statute, regulation or guidance supporting IEPA's decision that the ERCs are not available for use because the Chicago Coke facility is allegedly permanently shutdown. If IEPA did not rely on any such state law or guidance, it need only so state. If, however, IEPA did rely on state law or guidance, Chicago Coke is entitled to an identification of that state law or guidance. IEPA should be compelled to provide full responses to Interrogatories 11 and 12.

Interrogatories 4 and 14-17

- Interrogatory 4 asks IEPA to identify any person who was involved in the Chicago Coke decision, and who was also involved in any other IEPA decision (other than the Chicago Coke decision) regarding the use, sale or transfer of ERCs. The interrogatory also seeks information regarding any such “other” decisions. IEPA contends Interrogatory 4 is not relevant, and objects on several other grounds, including the predecisional deliberative process privilege.

First, the requested information is relevant. As part of this appeal, Chicago Coke has alleged that IEPA—contrary to its decision on the use of Chicago Coke’s ERCs—has allowed other facilities which were found to be “permanently shutdown” to use or transfer their ERCs. Chicago Coke’s petition for review by the Board incorporated Chicago Coke’s complaint for writ of certiorari and declaratory judgment, filed with the Circuit Court of Cook County. As part of its circuit court complaint, Chicago Coke alleged that, contrary to its denial of the use of Chicago Coke’s ERCs, IEPA has allowed the use of ERCs from at least five permanently shutdown facilities. (See Chicago Coke’s Petition, Exhibit E, par. 12, which is attached to this motion as Exhibit 6.) IEPA moved to dismiss Chicago Coke’s circuit court petition, alleging *inter alia* that Chicago Coke had not exhausted its administrative remedies. The circuit court granted IEPA’s motion to dismiss Chicago Coke’s circuit court petition, agreeing with IEPA that Chicago Coke had not exhausted its administrative remedies. (See Exhibit 7.) A finding that the issue of other ERC decisions is irrelevant in this appeal before the Board would allow IEPA to avoid review of its decisionmaking, and deny Chicago Coke its right to a full review of IEPA’s decision on Chicago Coke’s ERCs. IEPA should not be allowed to evade review of its decisions by arguing that Chicago Coke must exhaust administrative remedies, and then contending that the same issue raised in the circuit court action is irrelevant to the appeal before the Board.

Second, Interrogatory 4 does not invade the alleged “predecisional deliberative process.” Chicago Coke seeks identification of persons who were involved in both the Chicago Coke decision and other IEPA decisions on the use of ERCs. Interrogatory 4 does not request an explanation of the thought processes of any such persons. Allowing IEPA to avoid answering Interrogatory 4 on the ground of “predecisional deliberative process” would be akin to allowing a local decisionmaker in a pollution control facility local siting proceeding to avoid identifying the county board members who participated in a local decision. IEPA should be compelled to respond to Interrogatory 4.

- Interrogatories 14-17 seek information on any other proceeding or permit application, other than Chicago Coke’s request, in which IEPA found ERCs unavailable because of a “permanent shutdown” or any proceeding in which IEPA allowed the use of ERCs from a facility found to be shutdown for more than two years. IEPA objects, largely on relevancy grounds. As demonstrated in

connection with Interrogatory 4, these issues are indeed relevant to Chicago Coke's appeal, or may lead to relevant information. IEPA also objected that the interrogatories are not limited in time and scope. Chicago Coke offered to narrow the scope of Interrogatories 14-17 to the period from January 1, 2000 to present, but IEPA still refuses to provide answers. Because the information requested by Interrogatories 1-17 is relevant to the matter, Chicago Coke asks the hearing officer to compel responses to Interrogatories 14-17, for the period from January 1, 2000 to the present.

### DOCUMENT REQUESTS

Chicago Coke also made document requests to IEPA. With the exception of a single page that had been inadvertently omitted from IEPA's administrative record, IEPA has not produced any documents in response to Chicago Coke's requests.

#### Requests 6-7, 9-10, and 12-15

Requests 6-7, 9-10, and 12-15 seek documents that are related to the interrogatories that IEPA has refused to answer. The document requests at issue are:

- Request 6 (connected to Interrogatory 4)
- Request 7 (connected to Interrogatory 5)
- Request 9 (connected to Interrogatory 7)
- Request 10 (connected to Interrogatory 8)
- Request 12 (connected to Interrogatory 10)
- Request 13 (connected to Interrogatory 12)
- Request 14 (connected to Interrogatories 14 and 15)
- Request 15 (connected to Interrogatories 16 and 17)

If, as argued above, the hearing officer orders IEPA to respond to the interrogatories, IEPA should also be directed to produce documents connected to the disputed interrogatories.

#### Request 21

Request 21 seeks documents relating to permits issued by IEPA for specified facilities. Those facilities were specified in a chart attached to Chicago Coke's petition for review (and attached to the document requests). All involved the use of ERCs,

some from facilities that had been permanently shutdown. (For convenience, the chart is attached to this motion as Exhibit 8.) IEPA refuses to respond based upon claims of “predecisional deliberative process” privilege, overly broad and not reasonably limited in time and scope, and relevancy. As demonstrated in connection with Interrogatory 4, the requested documents are relevant, and production would not inherently violate “predecisional deliberative process.” If there are specific documents which would otherwise be responsive to Request 21 which genuinely reflect only “predecisional deliberative process,” IEPA can provide a privilege log for those documents. For the reasons demonstrated regarding Interrogatory 4, IEPA should be compelled to respond to Request 21.

#### REQUESTS TO ADMIT

IEPA objected to all of Chicago Coke’s requests to admit (“RTAs”), contending the RTAs seeking admission of legal conclusions, and that they invade attorneys’ mental impressions. On the contrary, the RTAs merely seek admission of facts. For example, RTA 1 through 4 asks IEPA to admit that there is no IPCB regulation that defines the terms “permanent shutdown” or “permanently shutdown” in the context of ERCs; no IPCB regulation that imposes a time limitation on the useful life of ERCs; no IPCB regulation that provides that ERCs expire at any established time; and the only IPCB regulations relating to ERCs are in 35 Ill.Adm.Code Part 203. RTA 5 through 7 ask the same admissions as they relate to any IEPA regulation, while RTA 8 through 13 request the same admissions as to federal and Illinois statutes. Similarly, RTA 22 through 25 seek admissions that the Clean Air Act, federal regulation, and Illinois statute and regulations do not contain any provision prohibiting the use of ERCs from a

facility determined to be “permanently shutdown.” Whether, for example, there is an IPCB regulation which defines “permanent shutdown” is not a legal conclusion—it is a factual question. A regulation either does or does not contain such a definition. Chicago Coke is not seeking IEPA's attorneys' legal analysis of the applicable regulations and statutes: it seeks merely a factual admission that the regulations and statutes do not contain the specific content identified in each RTA.

RTA 14 through 21 seek admissions relating to permits issued to other facilities, allowing the use of ERCs. As demonstrated in connection with Interrogatory 4, allowing other permanently shutdown facilities to use ERCs is indeed relevant to this matter.

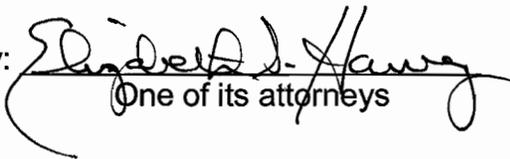
IEPA should not be allowed to evade making substantive responses to Chicago Coke's requests to admit. The requests to admit seek admission of facts. IEPA should be compelled to respond to RTA 1 through 25.

#### CONCLUSION

IEPA seeks to avoid answering legitimate and appropriate interrogatories, document requests, and requests to admit, which are specifically related to IEPA's February 2010 decision—the decision at issue in this case. Discovery is to be allowed liberally. Chicago Coke asks the hearing officer to order IEPA to fully respond to the enumerated discovery requests and requests to admit. Chicago Coke seeks responses within 21 days of the date of the hearing officer's order, to allow this case to proceed.

WHEREFORE, Chicago Coke moves the hearing officer for an order directing IEPA to provide complete discovery responses to Interrogatories 4, 6-8, 10-12, and 14-17; Document Requests 6-7, 9-10, 12-15, and 21; and Requests to Admit 1-25, within 21 days of the date of the hearing officer's order, and for such other relief as the hearing officer deems appropriate.

CHICAGO COKE CO., INC.

By:   
One of its attorneys

Dated: December 14, 2011

Michael J. Maher  
Elizabeth S. Harvey  
SWANSON, MARTIN & BELL, LLP  
330 North Wabash, Suite 3300  
Chicago, Illinois 60611  
Telephone: (312) 321-9100

**Exhibit 1**

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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an Illinois corporation, )  
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Petitioner, )  
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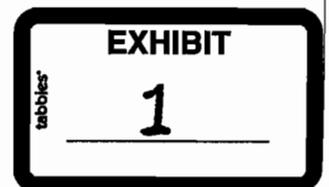
**RESPONDENT'S RESPONSES TO  
PETITIONER'S INTERROGATORIES TO RESPONDENT**

Respondent, THE ILLINOIS ENVIRONMENTAL PROTECTION AGENCY, by and through its attorney, LISA MADIGAN, Attorney General of the State of Illinois, hereby responds to the Interrogatories propounded by Petitioner, CHICAGO COKE CO., INC., as follows:

**GENERAL OBJECTIONS TO INTERROGATORIES**

Respondent states these general objections and hereby incorporates them as objections to each and every one of the Interrogatories propounded by Petitioner.

1. Respondent has not completed its investigation and discovery in this proceeding, nor its preparation for a hearing. Accordingly, all responses below are based only upon such information and documents that are presently available and specifically known to Respondent. As discovery progresses, Respondent reserves the right to supplement its responses to Petitioner's Interrogatories to Respondent ("Interrogatories").



2. Respondent objects to the Interrogatories to the extent that Petitioner seeks information that is not relevant to the subject matter involved in the pending proceeding. Respondent does not concede the relevancy of any information sought or discovered in responding to the Interrogatories.

3. Respondent objects to the Interrogatories to the extent that they are oppressive, vague, ambiguous, unduly broad and burdensome, or seek information not in the possession, custody, or control of Respondent, and expressly notes that several of the following responses may be based on incomplete information.

4. Respondent objects to the Interrogatories to the extent that they require the drawing of legal conclusions or the acceptance of factual premises.

5. Respondent objects to the Interrogatories to the extent that they are not reasonably limited in time and scope and not reasonably calculated to lead to relevant information.

6. Respondent objects to the Interrogatories to the extent that they purport to impose upon Respondent any obligations greater than those required by the Illinois Rules of Civil Procedure and/or other applicable law.

7. Respondent objects to the Interrogatories to the extent that they call for disclosure or production of information or material protected from disclosure by the attorney-client privilege, attorney work-product doctrine, the deliberative due process privilege, or any other privilege, immunity, or grounds that protect information from disclosure. Any inadvertent disclosure of any such information or material is not to be deemed a waiver of any such privilege or protection.

\* \* \*

Subject to these General Objections, Respondent further responds as follows:

**INTERROGATORIES**

**Interrogatory No. 1:**

Identify all persons who answered or assisted in answering these interrogatories. Include the person's name, home address, work address, home phone number, work phone number, and relationship to you.

**ANSWER:**

Respondent specifically objects to providing the home address and home telephone number of persons who answered or assisted in answering these Interrogatories on the basis that such information is irrelevant and not reasonably calculated to lead to relevant information. Notwithstanding the general and specific objections to this Interrogatory herein, and without waiving them, Respondent answers that the following persons answered or assisted in answering these Interrogatories:

Laurel Kroack  
Bureau Chief  
Illinois EPA Bureau of Air  
1021 North Grand Avenue East  
Springfield, Illinois 62794-9276  
(217) 785-4140

Chris Romaine  
Manager  
Illinois EPA Bureau of Air  
Construction Unit, Permit Section  
1021 North Grand Avenue East  
Springfield, Illinois 62794-9276  
(217) 782-2113

Bob Smet  
Permit Engineer  
Illinois EPA Bureau of Air  
Construction Unit, Permit Section  
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Rob Kaleel  
Manager  
Illinois EPA Bureau of Air  
Division of Air Pollution Control  
Air Quality Planning Section

1021 North Grand Avenue East  
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(217) 524-4343

David ("Buzz") Asselmeier  
Manager  
Illinois EPA Bureau of Air  
Inventory and Data Support Unit  
Air Quality Planning Section  
1021 North Grand Avenue East  
Springfield, Illinois 62794-9276  
(217) 782-0825

**Interrogatory No. 2:**

Identify all persons who analyzed, discussed, provided information, or in any way assisted in making IEPA's decision. Include the person's name, title, work address, work phone number, home address, home phone number, and a description of the person's job responsibilities.

**ANSWER:**

In addition to the general objections to this Interrogatory herein, Respondent specifically objects to this Interrogatory in its entirety, on the grounds that it calls for the disclosure or production of information or material protected from disclosure by the predecisional deliberative process privilege. In addition, Respondent objects to this Interrogatory as being overly broad, as calling for information that is not relevant to the subject matter involved in the pending proceeding, and as not reasonably calculated to lead to relevant information. Respondent also specifically objects to providing the home address and home telephone number of Respondent's employees, as such information is irrelevant and not reasonably calculated to lead to relevant information. Notwithstanding the general and specific objections to this Interrogatory herein, and without waiving them, Respondent states that the members of Illinois EPA management who provided information relating to the February 22, 2010 letter from John J. Kim to Katherine D. Hodge included Laurel Kroack, Rob Kaleel, and Chris Romaine.

**Interrogatory No. 3**

For each person identified in response to Interrogatory No. 2, explain in detail the person's role in making IEPA's decision.

**ANSWER:**

In addition to the general objections to this Interrogatory herein, Respondent specifically objects to this Interrogatory in its entirety, on the grounds that it calls for the disclosure or production of information or material protected from disclosure by the predecisional deliberative process privilege. In addition, Respondent objects to this Interrogatory as being vague, as calling

for information that is not relevant to the subject matter involved in the pending proceeding, and as being not reasonably calculated to lead to the production of relevant information.

**Interrogatory No. 4**

For each person identified in response to Interrogatory No. 2, state whether that person has analyzed, discussed, provided information, or in any way been involved in any other IEPA action, in addition to the IEPA decision regarding Chicago Coke, involving the use, application, transfer, sale, or denial of use, transfer, or sale of ERCs. Identify each such matter the person was involved in, including the name and address of the entity claiming the ERCs, the name and address of the entity (if any) to which the ERCs were transferred, the facility identification number, any application number, and the date of IEPA's action involving the ERCs.

**ANSWER:**

In addition to the general objections to this Interrogatory herein, Respondent specifically objects to this Interrogatory in its entirety, on the grounds that it calls for the disclosure or production of information or material protected from disclosure by the predecisional deliberative process privilege. In addition, Respondent objects to this Interrogatory as calling for information that is not relevant to the subject matter involved in the pending proceeding, as being oppressive and unduly broad and burdensome, as being not reasonably limited in time and scope, and as being not reasonably calculated to lead to relevant information.

**Interrogatory No. 5**

For each person identified in response to Interrogatory No. 4, explain in detail the person's role in each IEPA action identified in response to Interrogatory No. 4.

**ANSWER:**

In addition to the general objections to this Interrogatory herein, Respondent specifically objects to this Interrogatory in its entirety, on the grounds that it calls for the disclosure or production of information or material protected from disclosure by the predecisional deliberative process privilege. In addition, Respondent objects to this Interrogatory as being vague, calling for information that is not relevant to the subject matter involved in the pending proceeding, as being oppressive and unduly broad and burdensome, as being not reasonably limited in time and scope, and as being not reasonably calculated to lead to relevant information. Respondent additionally notes that it has not identified any person in response to Petitioner's Interrogatory No. 4.

**Interrogatory No. 6**

Identify with specificity all facts supporting your position, as stated in IEPA's decision, that "the Chicago Coke facility is permanently shut down."

**ANSWER**

In addition to the general objections to this Interrogatory herein, Respondent specifically objects to this Interrogatory in its entirety, on the grounds that it is vague, ambiguous, unduly broad and burdensome, and seeks to invade attorneys' mental impressions. Notwithstanding the general and specific objections to this Interrogatory herein, and without waiving them, Respondent directs Petitioner to the Administrative Record filed in this matter.

**Interrogatory No. 7**

Identify all federal statutes, regulations, or guidance supporting your position that "the Chicago Coke facility is permanently shut down." Provide the citation or other identifying number, the date, the author, or any other information needed to locate the statute, regulation, or guidance.

**ANSWER**

In addition to the general objections to this Interrogatory herein, Respondent specifically objects to this Interrogatory in its entirety, on the grounds that it is vague, unduly broad and burdensome, requires the drawing of legal conclusions, and seeks to invade attorneys' mental impressions.

**Interrogatory No. 8**

Identify all state statutes, regulations, or guidance supporting your position that "the Chicago Coke facility is permanently shut down." Provide the citation or other identifying number, the date, the author, and any other information needed to locate the statute, regulation, or guidance.

**ANSWER**

In addition to the general objections to this Interrogatory herein, Respondent specifically objects to this Interrogatory in its entirety, on the grounds that it is vague, unduly broad and burdensome, requires the drawing of legal conclusions, and seeks to invade attorneys' mental impressions. Respondent further objects to this Interrogatory to the extent that it calls for the disclosure or production of information or material protected from the disclosure by the attorney work-product doctrine.

**Interrogatory No. 9**

Identify all documents reflecting or supporting your analysis and decision that “the Chicago Coke facility is permanently shut down.” This interrogatory includes documents generated or created by IEPA, as well as any documents generated or created by any other entity.

**ANSWER**

In addition to the general objections to this Interrogatory herein, Respondent specifically objects to this Interrogatory in its entirety, on the grounds that it is vague, unduly broad and burdensome, requires the drawing of legal conclusions, and seeks to invade attorneys’ mental impressions. Respondent further objects to this Interrogatory to the extent that it calls for the disclosure or production of information or material protected from the disclosure by the attorney-client privilege and the attorney work-product doctrine. Notwithstanding the general and specific objections to this Interrogatory herein, and without waiving them, Respondent directs Petitioner to the Administrative Record filed in this matter.

**Interrogatory No. 10**

Identify with specificity all “applicable federal guidance” referred to in your statement in the IEPA decision that “[p]ursuant to applicable federal guidance, the ERCs are thus not available for use as you described.” Provide the name of the guidance, the date, the author of the guidance, any identifying number or citation, and any other information needed to locate the “applicable federal guidance.”

**ANSWER**

In addition to the general objections to this Interrogatory herein, Respondent specifically objects to this Interrogatory in its entirety, on the grounds that it requires the drawing of legal conclusions and seeks to invade attorneys’ mental impressions. Notwithstanding the general and specific objections to this Interrogatory herein, and without waiving them, to the extent that Petitioner seeks federal guidance documents referred to by the February 22, 2010 letter from John J. Kim to Katherine D. Hodge, Respondent directs Petitioner to the administrative record filed in this proceeding. Additional federal guidance may have been consulted by various Illinois EPA employees. All federal environmental guidance is equally available to Petitioner off of the United States Environmental Protection Agency’s website.

**Interrogatory No. 11**

Identify all federal statutes or regulations supporting your position that, because the Chicago Coke facility is "permanently shut down," its ERCs are not available for use. Provide the citation or other identifying number, the date, the author, and any other information needed to locate the statute, regulation, or guidance.

**ANSWER**

In addition to the general objections to this Interrogatory herein, Respondent specifically objects to this Interrogatory in its entirety, on the grounds that it is vague, unduly broad and burdensome, requires the drawing of legal conclusions, seeks to invade attorneys' mental impressions, and argumentatively mischaracterizes Respondent's "position."

**Interrogatory No. 12**

Identify all state statutes, regulations, or guidance supporting your position that, because the Chicago Coke facility is "permanently shut down," its ERCs are not available for use. Provide the citation or other identifying number, the date, the author, and any other information needed to locate the statute, regulation, or guidance.

**ANSWER**

In addition to the general objections to this Interrogatory herein, Respondent specifically objects to this Interrogatory in its entirety, on the grounds that it is vague, unduly broad and burdensome, requires the drawing of legal conclusions, seeks to invade attorneys' mental impressions, and argumentatively mischaracterizes Respondent's "position." Respondent further objects to this Interrogatory to the extent that it calls for the disclosure or production of information or material protected from the disclosure by the attorney work-product doctrine.

**Interrogatory No. 13**

Identify the date on which you believe the Chicago Coke facility was "permanently shutdown."

**ANSWER**

In addition to the general objections to this Interrogatory, Respondent specifically objects to this Interrogatory as requiring the drawing of legal conclusions. Notwithstanding the general and specific objections to this Interrogatory herein, and without waiving them, Respondent states that the date of "permanent shutdown" is a fact-based determination based on the totality of circumstances applicable to the source at issue. The factual circumstances that currently exist for Petitioner support a finding that its facility was permanently shut down no later than the date on which it went into cold idle in February 2002.

**Interrogatory No. 14**

Identify any other proceeding, request, or permit application, other than Chicago Coke's request, in which you determined that ERCs were unavailable because the facility owning the ERCs was "permanently shut down." Provide the name and address of the entity owning the ERCs, the name and address of the entity (if any) to which the ERCs were sought to be transferred, the facility identification number, any application number, and the date of IEPA's action involving the ERCs.

**ANSWER**

In addition to the general objections to this Interrogatory herein, Respondent specifically objects to this Interrogatory in its entirety, on the grounds that it is impermissibly oppressive, broad, and burdensome; is not reasonably limited in time and scope; does not call for information that is relevant to the subject matter involved in the pending proceeding; and is not reasonably calculated to lead to relevant information. In addition, Respondent objects to this Interrogatory as argumentatively mischaracterizing Respondent's "determin[ation]" as to Chicago Coke's "request."

**Interrogatory No. 15**

For each proceeding, request, or permit application identified in response to Interrogatory No. 14, state the date on which you believe the facility owning the ERCs was "permanently shut down."

**ANSWER**

In addition to the general objections to this Interrogatory herein, Respondent specifically objects to this Interrogatory in its entirety, on the grounds that it is impermissibly oppressive, broad, and burdensome; is not reasonably limited in time and scope; does not call for information that is relevant to the subject matter involved in the pending proceeding; and is not reasonably calculated to lead to relevant information. In addition, Respondent objects to this Interrogatory as requiring the drawing of legal conclusions. Respondent additionally notes that it has not identified any proceeding, request, or permit application in response to Petitioner's Interrogatory No. 14.

**Interrogatory No. 16**

Have you ever allowed the use of ERCs from a facility you found to be shut down for more than two years? If the answer is anything other than an unqualified "no," provide the name and address of the entity owning the ERCs, the name and address of the entity (if any) to which the ERCs were sought to be transferred, the facility identification number, any application number, and the date of IEPA's action involving the ERCs.

**ANSWER**

In addition to the general objections to this Interrogatory herein, Respondent specifically objects to this Interrogatory in its entirety, on the grounds that it is impermissibly oppressive, broad, and burdensome; is not reasonably limited in time and scope; does not call for information that is relevant to the subject matter involved in the pending proceeding; and is not reasonably calculated to lead to relevant information. In addition, Respondent objects to this Interrogatory as being vague

**Interrogatory No. 17**

For any facility or entity identified in response to Interrogatory No. 16, state the date on which you believe the facility was shut down.

**ANSWER**

In addition to the general objections to this Interrogatory herein, Respondent specifically objects to this Interrogatory in its entirety, on the grounds that it is impermissibly oppressive, broad, and burdensome; does not call for information that is relevant to the subject matter involved in the pending proceeding; is not reasonably limited in time and scope; and is not reasonably calculated to lead to the production of relevant information. In addition, Respondent objects to this Interrogatory as being vague and as requiring the drawing of legal conclusions. Respondent additionally notes that it has not identified any facility or entity in response to Petitioner's Interrogatory No. 17.

**Interrogatory No. 18**

Identify the date or dates of the discussion referred to in the IEPA decision: "Based on a discussion I had with Laurel Kroack, Bureau Chief for the Illinois EPA's Bureau of Air, I can confirm with you that the [IEPA's] decision remains the same . . . ." Identify all persons in attendance at that discussion, and state whether the discussion was held in person, via telephone, or via any other means such as electronic mail.

**ANSWER**

In addition to the general objections to this Interrogatory herein, Respondent specifically objects to this Interrogatory in its entirety, on the grounds that it calls for the disclosure or production of information or material protected from disclosure by the predecisional deliberative

process privilege. In addition, Respondent objects to this Interrogatory as calling for information that is not relevant to the subject matter involved in the pending proceeding and as being not reasonably calculated to lead to relevant information. Notwithstanding the general and specific objections to this Interrogatory herein, and without waiving them, Respondent states that discussions were held between John Kim and Laurel Kroack in person in the months prior to the issuance of the February 22, 2010 letter. Respondent does not recall the exact dates, and does not recall who else was present, if anyone, during such discussions.

**Interrogatory No. 19**

Identify each and every fact witness you intend to call at hearing. State the address and phone number of each witness, the subject matter of the witness's testimony, and state each opinion or conclusion the witness will testify to.

**ANSWER**

Respondent specifically objects to this Interrogatory as being premature and reiterates that it has not yet completed its preparation for a hearing. Notwithstanding the general and specific objections to this Interrogatory herein, and without waiving them, Respondent states that it has not identified any fact witnesses at this time, but would intend to call rebuttal witnesses at a hearing as necessary. Respondent specifically notes that it reserves the right to supplement its response to this Interrogatory as additional information becomes available.

**Interrogatory No. 20**

Identify each and every expert witness you intend to call at hearing. State the address and phone number of each witness, the subject matter of the witness's testimony, and state each opinion or conclusion the witness will testify to. Provide a copy of the expert's C.V. and qualifications, and any written report prepared by the expert in conjunction with this case.

**ANSWER**

Respondent specifically objects to this Interrogatory as being premature and reiterates that it has not yet completed its preparation for a hearing. Notwithstanding the general and specific objections to this Interrogatory herein, and without waiving them, Respondent states that it has not identified any expert witnesses at this time, but would intend to call rebuttal witnesses at a hearing as necessary. Respondent specifically notes that it reserves the right to supplement its response to this Interrogatory as additional information becomes available.

Interrogatory No. 21

Give a detailed list of each and every exhibit (demonstrative and otherwise) that you intend to use at hearing. Please produce a copy of each.

ANSWER

Respondent specifically objects to this Interrogatory as being premature and reiterates that it has not yet completed its preparation for a hearing. Notwithstanding the general and specific objections to this Interrogatory herein, and without waiving them, Respondent states that it has not identified any specific exhibits at this time, but generally directs Petitioner to the administrative record filed in this proceeding. Respondent specifically notes that it reserves the right to supplement its response to this Interrogatory as additional information becomes available.

Respectfully submitted,

THE ILLINOIS ENVIRONMENTAL  
PROTECTION AGENCY, by

LISA MADIGAN,  
Attorney General of the  
State of Illinois

MATTHEW J. DUNN, Chief  
Environmental Enforcement/Asbestos  
Litigation Division

ROSEMARIE CAZEAU, Chief  
Environmental Bureau

BY:



ANDREW B. ARMSTRONG  
Assistant Attorney General  
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69 West Washington Street, 18th Floor  
Chicago, Illinois 60602  
Tel: (312) 814-0660

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

CHICAGO COKE CO., INC.,	)	
an Illinois corporation,	)	
	)	
Petitioner,	)	
	)	
v.	)	
	)	PCB 10-75
THE ILLINOIS ENVIRONMENTAL	)	(Permit Appeal)
PROTECTION AGENCY,	)	
	)	
Respondent,	)	
	)	
NATURAL RESOURCES DEFENSE	)	
COUNCIL and SIERRA CLUB,	)	
	)	
Intervenors.	)	

**AFFIDAVIT**

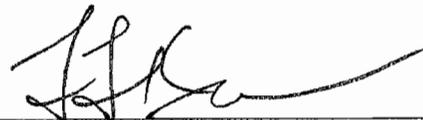
In accordance with Supreme Court Rule 213, which requires a party to provide a sworn answer or objection to interrogatories, I, Laurel Kroack, being first duly sworn upon oath, depose and state as follows:

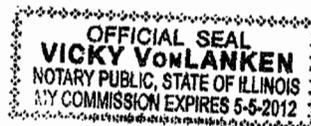
1. I am employed by the Illinois Environmental Protection Agency ("Illinois EPA") as Bureau Chief of the Bureau of Air.
2. To the best of my knowledge, the attached answers to Chicago Coke's Interrogatories to the Illinois Environmental Protection Agency are true and accurate.

FURTHER AFFIANT SAYETH NOT.

Subscribed and Sworn to before me  
this 2nd day of September, 2011.

  
\_\_\_\_\_  
Notary Public

  
\_\_\_\_\_  
LAUREL KROACK



## **Exhibit 2**

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

CHICAGO COKE CO., INC., )  
an Illinois corporation, )  
 )  
Petitioner, )  
 )  
v. )  
 )  
THE ILLINOIS ENVIRONMENTAL )  
PROTECTION AGENCY, )  
 )  
Respondent, )  
 )  
NATURAL RESOURCES DEFENSE )  
COUNCIL, INC., and SIERRA CLUB, )  
 )  
Intervenors. )

PCB 10-75  
(Permit Appeal)

**RESPONDENT'S RESPONSES TO  
PETITIONER'S DOCUMENT REQUESTS TO RESPONDENT**

Respondent, THE ILLINOIS ENVIRONMENTAL PROTECTION AGENCY, by and through its attorney, LISA MADIGAN, Attorney General of the State of Illinois, hereby responds to the Document Requests propounded by Petitioner, CHICAGO COKE CO., INC., an Illinois corporation, as follows:

**GENERAL OBJECTIONS**

Respondent states these general objections and hereby incorporates them as objections to each and every one of the Requests propounded by Petitioner.

1. Respondent has not completed its investigation and discovery in this proceeding, nor its preparation for a hearing. Accordingly, all responses below are based only upon such information and documents that are presently available and specifically known to Respondent. As discovery progresses, Respondent reserves the right to supplement its responses to Petitioner's Document Requests to Respondent ("Requests").



~~2. Respondent objects to the Requests to the extent that Petitioner seeks information~~  
that is not relevant to the subject matter involved in the pending proceeding. Respondent does not concede the relevancy of any information sought or discovered in responding to the Requests.

3. Respondent objects to the Requests to the extent that they are oppressive, vague, ambiguous, unduly broad and burdensome, or seek information not in the possession, custody, or control of Respondent, and expressly notes that several of the following responses may be based on incomplete information.

4. Respondent objects to the Requests to the extent that they require the drawing of legal conclusions or the acceptance of factual premises.

5. Respondent objects to the Requests to the extent that they are not reasonably limited in time and scope and not reasonably calculated to lead to relevant information.

6. Respondent objects to the Requests to the extent that they purport to impose upon Respondent any obligations greater than those required the Illinois Rules of Civil Procedure, Illinois Pollution Control Board regulations, and/or other applicable law.

7. Respondent objects to the Requests to the extent that they call for disclosure or production of information or material protected from disclosure by the attorney-client privilege, attorney work-product doctrine, the deliberative due process privilege, or any other privilege, immunity, or grounds that protect information from disclosure. Any inadvertent disclosure of any such information or material is not to be deemed a waiver of any such privilege or protection.

\* \* \*

Subject to these General Objections, Respondent further responds as follows:

**REQUESTS FOR PRODUCTION**

**Request 1:**

All correspondence or recorded communications between Chicago Coke and IEPA, relating to Chicago Coke's request to use its ERCs.

**ANSWER:**

Notwithstanding the general objections to this Request, Respondent directs Petitioner to the administrative record filed in this proceeding.

**Request 2:**

All documents referred to in responding to the interrogatories propounded contemporaneously with these document requests.

**ANSWER:**

In addition to the general objections to this Request herein, Respondent specifically objects to this Request as being vague, ambiguous, and unduly broad and burdensome. Respondent also objects to this Request to the extent that it requests information or material protected from disclosure or production by the attorney-client privilege and/or attorney-work product doctrine. Notwithstanding the general and specific objections to this Request, and without waiving them, Respondent directs Petitioner to the administrative record filed in this proceeding.

**Request 3:**

All documents identified in your responses to the interrogatories propounded contemporaneously with these document requests.

**ANSWER:**

In addition to the general objections to this Request herein, Respondent specifically objects to this Request as being vague, ambiguous, and unduly broad and burdensome.

Notwithstanding the general and specific objections to this Request, and without waiving them,

Respondent directs Petitioner to the administrative record filed in this proceeding.

**Request 4:**

All documents reflecting, referring, or relating to IEPA's decision.

**ANSWER:**

In addition to the general objections to this Request herein, Respondent specifically objects to this Request as being vague, ambiguous, and unduly broad and burdensome.

Notwithstanding the general and specific objections to this Request, and without waiving them,

Respondent directs Petitioner to the administrative record filed in this proceeding.

**Request 5:**

all [sic] documents reflecting, referring or relating to your answer to Interrogatory No. 3, regarding any person's role in making IEPA's decision.

**ANSWER:**

In addition to the general objections to this Request herein, Respondent specifically objects to this Request as being vague, ambiguous, and unduly broad and burdensome.

Respondent additionally incorporates its objection to Petitioner's Interrogatory No. 3:

In addition to the general objections to this Interrogatory herein, Respondent specifically objects to this Interrogatory in its entirety, on the grounds that it calls for the disclosure or production of information or material protected from disclosure by the predecisional deliberative process privilege. In addition, Respondent objects to this Interrogatory as being vague, as calling for information that is not relevant to the subject matter involved in the pending proceeding, and as being not reasonably calculated to lead to the production of relevant information.

**Request 6:**

All documents reflecting, referring or relating to your answer to Interrogatory No. 4.

**ANSWER:**

In addition to the general objections to this Request herein, Respondent specifically objects to this Request as being vague, ambiguous, and unduly broad and burdensome.

Respondent additionally incorporates its objection to Petitioner's Interrogatory No. 4:

In addition to the general objections to this Interrogatory herein, Respondent specifically objects to this Interrogatory in its entirety, on the grounds that it calls for the disclosure or production of information or material protected from disclosure by the predecisional deliberative process privilege. In addition, Respondent objects to this Interrogatory as calling for information that is not relevant to the subject matter involved in the pending proceeding, as being oppressive and unduly broad and burdensome, as being not reasonably limited in time and scope, and as being not reasonably calculated to lead to relevant information.

**Request 7:**

All documents supporting your position that the Chicago Coke facility is "permanently shut down," including but not limited to those related to your responses to Interrogatories Nos. 6 and 13.

**ANSWER:**

In addition to the general objections to this Request herein, Respondent specifically objects to this Request in its entirety, on the grounds that it is vague, ambiguous, unduly broad and burdensome, requires the drawing of legal conclusions, and seeks to invade attorneys' mental impressions. Respondent also objects to this Request to the extent that it requests information or material protected from disclosure or production by the attorney-client privilege and/or the attorney work-product doctrine.

**Request 8:**

All documents used in making your determination that the Chicago Coke facility is "permanently shut down."

**ANSWER:**

In addition to the general objections to this Request herein, Respondent specifically objects to this Request to the extent that it calls for the disclosure or production of information or material protected by the attorney-client privilege and/or attorney work-product doctrine, and on the grounds that it is vague, ambiguous, and unduly broad and burdensome. Notwithstanding the general and specific objections to this Request herein, and without waiving them, Respondent directs Petitioner to the administrative record filed in this proceeding.

**Request 9:**

All federal guidance documents supporting your position that the Chicago Coke facility is "permanently shut down," as identified in your response to Interrogatory No. 7.

**ANSWER:**

In addition to the general objections to this Request herein, Respondent specifically objects to this Request in its entirety, on the grounds that it is vague, ambiguous, unduly broad and burdensome, requires the drawing of legal conclusions, and seeks to invade attorneys' mental impressions. Respondent additionally notes that it has not identified any documents in response to Petitioner's Interrogatory No. 7.

**Request 10:**

All state guidance documents supporting your position that the Chicago Coke facility is "permanently shut down," as identified in your response to Interrogatory No. 8.

**ANSWER:**

In addition to the general objections to this Request herein, Respondent specifically objects to this Request in its entirety, on the grounds that it is vague, ambiguous, unduly broad

and burdensome, requires the drawing of legal conclusions, and seeks to invade attorneys' mental impressions. Respondent also objects to this Request to the extent that it requests information or material protected from disclosure or production by the attorney-client privilege and/or the attorney work-product doctrine. Respondent additionally notes that it has not identified any documents in response to Petitioner's Interrogatory No. 8.

**Request 11:**

All documents reflecting or supporting your analysis and decision that the Chicago Coke facility is "permanently shut down," as identified in your response to Interrogatory No. 9.

**ANSWER:**

In addition to the general objections to this Request herein, Respondent specifically objects to this Request in its entirety, on the grounds that it is vague, ambiguous, unduly broad and burdensome, requires the drawing of legal conclusions, and seeks to invade attorneys' mental impressions. Respondent also objects to this Request to the extent that it requests information or material protected from disclosure or production by the attorney-client privilege and/or the attorney work-product doctrine. Respondent additionally notes that it has not identified any documents in response to Petitioner's Interrogatory No. 9.

**Request 12:**

All federal guidance documents supporting your decision that Chicago Coke's ERCs are not available for use as identified in your response to Interrogatory No. 10.

**ANSWER:**

In addition to the general objections to this Request herein, Respondent specifically objects to this Request in its entirety, on the grounds that it is vague, ambiguous, unduly broad and burdensome, requires the drawing of legal conclusions, and seeks to invade attorneys'

mental impressions. Respondent additionally notes that it has not identified any documents in response to Petitioner's Interrogatory No. 10.

**Request 13:**

All state guidance documents supporting your position that Chicago Coke's ERCs are not available for use, as identified in your response to Interrogatory No. 12.

**ANSWER:**

In addition to the general objections to this Request herein, Respondent specifically objects to this Request in its entirety, on the grounds that it is vague, ambiguous, unduly broad and burdensome, requires the drawing of legal conclusions, and seeks to invade attorneys' mental impressions. Respondent also objects to this Request to the extent that it requests information or material protected from disclosure or production by the attorney-client privilege and/or the attorney work-product doctrine. Respondent additionally notes that it has not identified any documents in response to Petitioner's Interrogatory No. 12.

**Request 14:**

All documents reflecting, referring, or relating to any other proceeding in which you determined that ERCs were unavailable because the facility owning the ERCs was "permanently shut down," as identified in your responses to Interrogatories Nos. 14 and 15.

**ANSWER:**

In addition to the general objections to this Request herein, Respondent specifically objects to this Request in its entirety, on the grounds that it calls for the disclosure or production of information or material protected from disclosure by the predecisional deliberative process privilege; is impermissibly oppressive, broad, and burdensome; is not reasonably limited in time and scope; does not call for information that is relevant to the subject matter involved in the pending proceeding; and is not reasonably calculated to lead to relevant information. In addition, Respondent objects to this Request as being vague and ambiguous, and as argumentatively

mischaracterizing Respondent's "determin[ation]" as to Chicago Coke's facility. Respondent additionally notes that it has not identified any documents or proceedings in response to Petitioner's Interrogatories Nos. 14 and 15.

**Request 15:**

All documents reflecting, referring, or relating to any proceeding identified in your responses to Interrogatories Nos. 16 and 17.

**ANSWER:**

In addition to the general objections to this Request herein, Respondent specifically objects to this Request in its entirety, on the grounds that it calls for the disclosure or production of information or material protected from disclosure by the predecisional deliberative process privilege; is impermissibly oppressive, broad, and burdensome; is not reasonably limited in time and scope; does not call for information that is relevant to the subject matter involved in the pending proceeding; and is not reasonably calculated to relevant information. In addition, Respondent objects to this Request as being vague and ambiguous. Respondent additionally notes that it has not identified any proceedings in response to Petitioner's Interrogatories Nos. 16 and 17.

**Request 16:**

All documents reflecting, referring, or relating to the discussions identified in your response to Interrogatory No. 18.

**ANSWER:**

In addition to the general objections to this Request herein, Respondent specifically objects to this Request in its entirety, on the grounds that it calls for the disclosure or production of information or material protected from disclosure by the predecisional deliberative process privilege, attorney-client privilege, and attorney-work product doctrine. In addition, Respondent

objects to this Request as being vague and overly broad, as calling for information that is not relevant to the subject matter involved in the pending proceeding, and as being not reasonably calculated to lead to relevant information. Respondent additionally notes that it has not identified any discussions in response to Petitioner's Interrogatory No. 18.

**Request 17:**

Page 29 of the April 5, 2009 IEPA "Maintenance Plan for the Illinois Portion of the Chicago Ozone Nonattainment Area" [document numbers 2286-2338].

**ANSWER:**

Notwithstanding the general objections to this Request herein, Respondent has produced this document, which was inadvertently omitted from the administrative record filed in this proceeding.

**Request 18:**

All documents reflecting, referring, or relating to "the letter [you] sent to Jim Harrington (who represented Acme Steel)", as referred to in document number 1530.

**ANSWER:**

In addition to the general objections to this Request herein, Respondent specifically objects to this Request in its entirety, on the grounds that it calls for the disclosure or production of information or material protected from disclosure by the predecisional deliberative process privilege, is impermissibly broad, does not call for information that is relevant to the subject matter involved in the pending proceeding, and is not reasonably calculated to lead to relevant information. In addition, Respondent objects to this Request as being vague and ambiguous.

**Request 19:**

All documents reflecting, referring, or relating to documents sent to you, seeking quantification of ERCs, by Acme Steel, as referred to in document number 1530.

**ANSWER:**

In addition to the general objections to this Request herein, Respondent specifically objects to this Request in its entirety, on the grounds that it calls for the disclosure or production of information or material protected from disclosure by the predecisional deliberative process privilege, is impermissibly broad, does not call for information that is relevant to the subject matter involved in the pending proceeding, and is not reasonably calculated to lead to relevant information. In addition, Respondent objects to this Request as being vague and ambiguous.

**Request 20:**

All correspondence, email, or other documents responding to or following up on the July 19, 2006 email from Laurel Kroack to Chris Romaine and other recipients [document number 1530].

**ANSWER:**

In addition to the general objections to this Request herein, Respondent specifically objects to this Request in its entirety, on the grounds that it is impermissibly broad and burdensome, is not reasonably limited in time and scope, does not call for information that is relevant to the subject matter involved in the pending proceeding, and is not reasonably calculated to lead to relevant information. In addition, Respondent objects to this Request as being vague and ambiguous.

**Request 21:**

All documents reflecting, referring, or relating to the permits issued by you to the facilities listed on the chart attached as Exhibit E to Chicago Coke's March 29, 2010 petition for review. For your convenience, the chart is also attached as Exhibit 1 to these document requests.

**ANSWER:**

In addition to the general objections to this Request herein, Respondent specifically objects to this Request in its entirety, on the grounds that it calls for the disclosure or production of information or material protected from disclosure by the predecisional deliberative process privilege; is impermissibly oppressive, broad, and burdensome; is not reasonably limited in time and scope; does not call for information that is relevant to the subject matter involved in the pending proceeding; and is not reasonably calculated to lead to relevant information. In addition, Respondent objects to this Request as being vague and ambiguous.

**Request 22:**

All documents, not otherwise provided, which support any claim or defense you assert in this matter.

**ANSWER:**

In addition to the general objections to this Request herein, Respondent specifically objects to this Request in its entirety, on the grounds that it is vague, ambiguous, unduly broad, requires the drawing of legal conclusions, and seeks to invade attorneys' mental impressions. Respondent also objects to this Request to the extent that it requests information or material protected from disclosure or production by the attorney-client privilege and/or the attorney work-product doctrine. Respondent additionally notes that, as the Respondent to a Petition purportedly for the review of a "permit" decision, Respondent is not asserting any "claims" or "defenses," in the legal sense of those terms.

**Request 23:**

All documents reflecting, referring, or relating to fact witnesses you intend to call at hearing, as identified in your response to Interrogatory No. 19.

**ANSWER:**

Respondent specifically objects to this Request as being premature and reiterates that it has not yet completed its preparation for a hearing. Respondent also objects to this Request as being vague and overly broad. Notwithstanding the general and specific objections to this Request herein, Respondent states that it has not identified any fact witnesses at this time. Respondent specifically notes that it reserves the right to supplement its response to this Request as additional information becomes available.

**Request 24:**

All documents reflecting, referring, or relating to expert witnesses you intend to call at hearing, as identified in your response to Interrogatory No. 20

**ANSWER:**

Respondent specifically objects to this Request as being premature and reiterates that it has not yet completed its preparation for a hearing. Respondent also objects to this Request as being vague and overly broad. Notwithstanding the general and specific objections to this Request herein, Respondent states that it has not identified any expert witnesses at this time. Respondent specifically notes that it reserves the right to supplement its response to this Request as additional information becomes available.

**Request 25:**

All exhibits (demonstrative or otherwise) you intend to use at hearing, as identified in your response to Interrogatory No. 21.

**ANSWER:**

Respondent specifically objects to this Request as being premature and reiterates that it has not yet completed its preparation for a hearing. Notwithstanding the general and specific objections to this Request herein, Respondent states that it has not identified any specific exhibits at this time, but generally directs Petitioner to the administrative record filed in this proceeding. Respondent specifically notes that it reserves the right to supplement its response to this Request as additional information becomes available.

**Request 26:**

Any other non-privileged document you may use at hearing.

**ANSWER:**

Respondent specifically objects to this Request as being premature and reiterates that it has not yet completed its preparation for a hearing. Notwithstanding the general and specific objections to this Request herein, Respondent states that it has not identified any specific documents it may use at a hearing at this time, but generally directs Petitioner to the administrative record filed in this proceeding. Respondent specifically notes that it reserves the right to supplement its response to this Request as additional information becomes available.

Respectfully submitted,

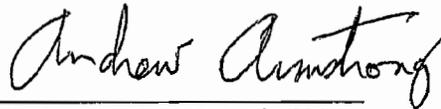
THE ILLINOIS ENVIRONMENTAL  
PROTECTION AGENCY, by

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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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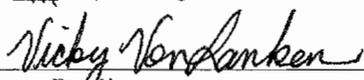
**AFFIDAVIT**

In accordance with Illinois Supreme Court Rule 214, I, Laurel Kroack, being first duly sworn upon oath, depose and state as follows:

1. I am employed by the Illinois Environmental Protection Agency ("Illinois EPA") as Bureau Chief of the Bureau of Air.
2. To the best of my knowledge, the documents produced in response to Chicago Coke's Document Requests to the Illinois Environmental Protection Agency comprise a complete response.

FURTHER AFFIANT SAYETH NOT.

Subscribed and Sworn to before me this 2nd day of September, 2011.

  
 \_\_\_\_\_  
 Notary Public

  
 \_\_\_\_\_  
 LAUREL KROACK



# **Exhibit 3**

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

CHICAGO COKE CO., INC.,	)	
an Illinois corporation,	)	
	)	
Petitioner,	)	
	)	
v.	)	
	)	PCB 10-75
THE ILLINOIS ENVIRONMENTAL	)	(Permit Appeal)
PROTECTION AGENCY,	)	
	)	
Respondent,	)	
	)	
NATURAL RESOURCES DEFENSE	)	
COUNCIL, INC., and SIERRA CLUB,	)	
	)	
Intervenors.	)	

**RESPONDENT'S RESPONSES TO  
PETITIONER'S REQUESTS TO ADMIT TO RESPONDENT**

Respondent, THE ILLINOIS ENVIRONMENTAL PROTECTION AGENCY, by and through its attorney, LISA MADIGAN, Attorney General of the State of Illinois, hereby responds to the Requests to Admit propounded by Petitioner, CHICAGO COKE CO., INC., as follows:

**GENERAL OBJECTIONS**

Respondent states these general objections and hereby incorporates them as objections to each and every one of the Requests to Admit propounded by Petitioner.

1. Respondent has not completed its investigation and discovery in this proceeding, nor its preparation for a hearing. Accordingly, all responses below are based only upon such information and documents that are presently available and specifically known to Respondent. As discovery progresses, Respondent reserves the right to supplement its responses to Petitioner's Request to Admit ("Requests"), as appropriate.



2. Respondent objects to the Requests to the extent that Petitioner seeks information that is not relevant to the subject matter involved in the pending proceeding. Respondent does not concede the relevancy of any information sought or discovered in responding to the Requests.

3. Respondent objects to the Requests to the extent that they are oppressive, vague, ambiguous, unduly broad and burdensome, or seek information not in the possession, custody, or control of Respondent, and expressly notes that several of the following responses may be based on incomplete information.

4. Respondent objects to the Requests to the extent that they require the drawing of legal conclusions or the acceptance of factual premises.

5. Respondent objects to the Requests to the extent that they are not reasonably limited in time and scope and not reasonably calculated to lead to relevant information.

6. Respondent objects to the Requests to the extent that they purport to impose upon Respondent any obligations greater than those required the Illinois Rules of Civil Procedure and/or other applicable law.

7. Respondent objects to the Requests to the extent that they call for disclosure or production of information or material protected from disclosure by the attorney-client privilege, attorney work-product doctrine, the deliberative due process privilege, or any other privilege, immunity, or grounds that protect information from disclosure. Any inadvertent disclosure of any such information or material is not to be deemed a waiver of any such privilege or protection.

\* \* \*

Subject to these General Objections, Respondent further responds as follows:

**REQUESTS TO ADMIT**

**Request 1:**

Admit that no regulation promulgated by the Illinois Pollution Control Board ("IPCB") defines the terms "permanent shutdown" or "permanently shutdown," in the context of the use or availability of emission reduction credits ("ERCs").

**ANSWER:**

In addition to the general objections to this Request, Respondent specifically objects to this request as calling for Respondent to admit a legal conclusion and seeking to invade attorneys' mental impressions regarding the laws and regulations applicable to emission reductions. As such, this Request is improper and not answerable in its present form. Further, the Illinois Pollution Control Board's regulations are equally available to Petitioner; the contents of such regulations, and/or Respondent's legal interpretation of such regulations, are not appropriate subject matter for a Request to Admit.

**Request 2:**

Admit that no regulation promulgated by the IPCB sets a time limitation, in terms of years, month [sic], or days, on the useful life of ERCs.

**ANSWER:**

In addition to the general objections to this Request, Respondent specifically objects to this request as calling for Respondent to admit a legal conclusion and seeking to invade attorneys' mental impressions regarding the laws and regulations applicable to emission reductions. As such, this Request is improper and not answerable in its present form. Further, the Illinois Pollution Control Board's regulations are equally available to Petitioner; the contents of such regulations, and/or Respondent's legal interpretation of such regulations, are not appropriate subject matter for a Request to Admit.

**Request 3:**

Admit that no regulation promulgated by the IPCB provides that ERCs expire at any set or established time.

**ANSWER:**

In addition to the general objections to this Request, Respondent specifically objects to this request as calling for Respondent to admit a legal conclusion and seeking to invade attorneys' mental impressions regarding the laws and regulations applicable to emission reductions. As such, this Request is improper and not answerable in its present form. Further, the Illinois Pollution Control Board's regulations are equally available to Petitioner; the contents of such regulations, and/or Respondent's legal interpretation of such regulations, are not appropriate subject matter for a Request to Admit.

**Request 4:**

Admit that the only regulations promulgated by the IPCB relating to or referencing ERCs are contained in 35 Ill. Adm. Code Part 203.

**ANSWER:**

In addition to the general objections to this Request, Respondent specifically objects to this request as calling for Respondent to admit a legal conclusion and seeking to invade attorneys' mental impressions regarding the laws and regulations applicable to emission reductions. As such, this Request is improper and not answerable in its present form. Further, the Illinois Pollution Control Board's regulations are equally available to Petitioner; the contents of such regulations, and/or Respondent's legal interpretation of such regulations, are not appropriate subject matter for a Request to Admit.

**Request 5:**

Admit that no regulation promulgated by IEPA defines the terms “permanent shutdown” or “permanently shutdown”, in the context of the use or availability of ERCs.

**ANSWER:**

In addition to the general objections to this Request, Respondent specifically objects to this request as calling for Respondent to admit a legal conclusion and seeking to invade attorneys’ mental impressions regarding the laws and regulations applicable to emission reductions. As such, this Request is improper and not answerable in its present form. Further, regulations promulgated by Respondent are equally available to Petitioner; the contents of such regulations, and/or Respondent’s legal interpretation of such regulations, are not appropriate subject matter for a Request to Admit.

**Request 6:**

Admit that no regulation promulgated by IEPA sets a time limitation, in terms of years, month [sic], or days, on the useful life of ERCs.

**ANSWER:**

In addition to the general objections to this Request, Respondent specifically objects to this request as calling for Respondent to admit a legal conclusion and seeking to invade attorneys’ mental impressions regarding the laws and regulations applicable to emission reductions. As such, this Request is improper and not answerable in its present form. Further, regulations promulgated by Respondent are equally available to Petitioner; the contents of such regulations, and/or Respondent’s legal interpretation of such regulations, are not appropriate subject matter for a Request to Admit.

**Request 7:**

Admit that no regulation promulgated by IEPA provides that ERCs expire, at any set or established time.

**ANSWER:**

In addition to the general objections to this Request, Respondent specifically objects to this request as calling for Respondent to admit a legal conclusion and seeking to invade attorneys' mental impressions regarding the laws and regulations applicable to emission reductions. As such, this Request is improper and not answerable in its present form. Further, regulations promulgated by Respondent are equally available to Petitioner; the contents of such regulations, and/or Respondent's legal interpretation of such regulations, are not appropriate subject matter for a Request to Admit.

**Request 8:**

Admit that no federal statute defines the terms "permanent shutdown" or "permanently shutdown", in the context of the use or availability of ERCs.

**ANSWER:**

In addition to the general objections to this Request, Respondent specifically objects to this request on the grounds that it calls for Respondent to admit a legal conclusion, is overly broad, and seeks to invade attorneys' mental impressions regarding the laws and regulations applicable to emission reductions. As such, this Request is improper and not answerable in its present form. Further, "federal statute[s]" are equally available to Petitioner; the contents of such statutes, and/or Respondent's legal interpretation of such statutes, are not appropriate subject matter for a Request to Admit.

**Request 9:**

Admit that no federal statute sets a time limitation, in terms of years, month [sic], or days, on the useful life of ERCs.

**ANSWER:**

In addition to the general objections to this Request, Respondent specifically objects to this request on the grounds that it calls for Respondent to admit a legal conclusion, is overly broad, and seeks to invade attorneys' mental impressions regarding the laws and regulations applicable to emission reductions. As such, this Request is improper and not answerable in its present form. Further, "federal statute[s]" are equally available to Petitioner; the contents of such statutes, and/or Respondent's legal interpretation of such statutes, are not appropriate subject matter for a Request to Admit.

**Request 10:**

Admit that no federal statute provides that ERCs expire at any set or established time.

**ANSWER:**

In addition to the general objections to this Request, Respondent specifically objects to this request on the grounds that it calls for Respondent to admit a legal conclusion, is overly broad, and seeks to invade attorneys' mental impressions regarding the laws and regulations applicable to emission reductions. As such, this Request is improper and not answerable in its present form. Further, "federal statute[s]" are equally available to Petitioner; the contents of such statutes, and/or Respondent's legal interpretation of such statutes, are not appropriate subject matter for a Request to Admit.

**Request 11:**

Admit that no Illinois statute defines the terms “permanent shutdown” or “permanently shutdown”, in the context of the use or availability of ERCs.

**ANSWER:**

In addition to the general objections to this Request, Respondent specifically objects to this request on the grounds that it calls for Respondent to admit a legal conclusion, is overly broad, and seeks to invade attorneys’ mental impressions regarding the laws and regulations applicable to emission reductions. As such, this Request is improper and not answerable in its present form. Further, “Illinois statute[s]” are equally available to Petitioner; the contents of such statutes, and/or Respondent’s legal interpretation of such statutes, are not appropriate subject matter for a Request to Admit.

**Request 12:**

Admit that no Illinois statute sets a time limitation, in terms of years, month [sic], or days, on the useful life of ERCs.

**ANSWER:**

In addition to the general objections to this Request, Respondent specifically objects to this request on the grounds that it calls for Respondent to admit a legal conclusion, is overly broad, and seeks to invade attorneys’ mental impressions regarding the laws and regulations applicable to emission reductions. As such, this Request is improper and not answerable in its present form. Further, “Illinois statute[s]” are equally available to Petitioner; the contents of such statutes, and/or Respondent’s legal interpretation of such statutes, are not appropriate subject matter for a Request to Admit.

**Request 13:**

Admit that no Illinois statute provides that ERCs expire at any set or established time.

**ANSWER:**

In addition to the general objections to this Request, Respondent specifically objects to this request on the grounds that it calls for Respondent to admit a legal conclusion, is overly broad, and seeks to invade attorneys' mental impressions regarding the laws and regulations applicable to emission reductions. As such, this Request is improper and not answerable in its present form. Further, "Illinois statute[s]" are equally available to Petitioner; the contents of such statutes, and/or Respondent's legal interpretation of such statutes, are not appropriate subject matter for a Request to Admit.

**Request 14:**

Admit that the permit issued to Air Products & Chemicals, Inc. (application 05020063) on August 24, 2005, revised July 24, 2007, used ERCs from Viskase. (See attached Exhibit 1.)

**ANSWER:**

In addition to the general objections to this Request, Respondent specifically objects to this Request as seeking information that is not relevant to the subject matter involved in the pending proceeding, and as not reasonably calculated to lead to relevant information.

**Request 15:**

Admit that the ERCs referred to in Request to Admit No. 18, from Viskase, came from a permanent shutdown that occurred in September 1998.

**ANSWER:**

In addition to the general objections to this Request, Respondent specifically objects to this request as calling for Respondent to admit a legal conclusion. As such, this Request is improper and not answerable in its present form. In addition, Respondent specifically objects to this Request as seeking information that is not relevant to the subject matter involved in the pending proceeding, and as not reasonably calculated to lead to relevant information.

**Request 16:**

Admit that the permit issued to ExxonMobil Oil Corporation (application 0311060), issued August 24, 2005, used ERCs from Viskase. (See attached Exhibit 1.)

**ANSWER:**

In addition to the general objections to this Request, Respondent specifically objects to this Request as seeking information that is not relevant to the subject matter involved in the pending proceeding, and as not reasonably calculated to lead to relevant information.

**Request 17:**

Admit that the ERCs referred to in Request to Admit No. 20, from Viskase, came from a permanent shutdown that occurred in September 1998.

**ANSWER:**

In addition to the general objections to this Request, Respondent specifically objects to this request as calling for Respondent to admit a legal conclusion. As such, this Request is improper and not answerable in its present form. In addition, Respondent specifically objects to

----- this Request as seeking information that is not relevant to the subject matter involved in the -----  
pending proceeding, as not reasonably calculated to lead to relevant information, and as  
unanswerably vague and ambiguous, as there is no reference made to "ERCs" "from Viskase" in  
Petitioner's Request to Admit No. 20.

**Request 18:**

Admit that the permit issued to SCA Issue North America (application 02020043), issued August 4, 2004, used ERCs from Viskase. (See attached Exhibit 1.)

**ANSWER:**

In addition to the general objections to this Request, Respondent specifically objects to this Request as seeking information that is not relevant to the subject matter involved in the pending proceeding, and as not reasonably calculated to lead to relevant information.

**Request 19:**

Admit that the ERCs referred to in Request to Admit No. 22, from Viskase, came from a permanent shutdown that occurred in September 1998.

**ANSWER:**

In addition to the general objections to this Request, Respondent specifically objects to this request as calling for Respondent to admit a legal conclusion. As such, this Request is improper and not answerable in its present form. In addition, Respondent specifically objects to this Request as seeking information that is not relevant to the subject matter involved in the pending proceeding, as not reasonably calculated to lead to relevant information, and as unanswerably vague and ambiguous, as there is no reference made to "ERCs" "from Viskase" in Petitioner's Request to Admit No. 22.

**Request 20:**

Admit that the permit issued to ExxonMobil Oil Corporation (application 03050050), issued August 19, 2003, used ERCs from Sara Lee. (See attached Exhibit 1.)

**ANSWER:**

In addition to the general objections to this Request, Respondent specifically objects to this Request as seeking information that is not relevant to the subject matter involved in the pending proceeding, and as not reasonably calculated to lead to relevant information.

**Request 21:**

Admit that the ERCs referred to in Request to Admit No. 24, from Sara Lee, came from a permanent shutdown that occurred in 1996.

**ANSWER:**

In addition to the general objections to this Request, Respondent specifically objects to this request as calling for Respondent to admit a legal conclusion. As such, this Request is improper and not answerable in its present form. In addition, Respondent specifically objects to this Request as seeking information that is not relevant to the subject matter involved in the pending proceeding, as not reasonably calculated to lead to relevant information, and as unanswerably vague and ambiguous, as there is no reference made to "ERCs" "from Sara Lee" in Petitioner's Request to Admit No. 24.

**Request 22:**

Admit that the Clean Air Act (42 U.S.C. 7401 *et seq.*) does not contain a provision prohibiting the use of ERCs from a facility determined to be “permanently shutdown.”

**ANSWER:**

In addition to the general objections to this Request, Respondent specifically objects to this request on the grounds that it calls for Respondent to admit a legal conclusion and seeks to invade attorneys’ mental impressions regarding the laws and regulations applicable to emission reductions. As such, this Request is improper and not answerable in its present form. Further, the Clean Air Act is equally available to Petitioner; the contents of such statute, and/or Respondent’s legal interpretation of such statute, are not appropriate subject matter for a Request to Admit.

**Request 23:**

Admit that no federal regulation contains a provision prohibiting the use of ERCs from a facility to be determined to be “permanently shutdown”.

**ANSWER:**

In addition to the general objections to this Request, Respondent specifically objects to this request on the grounds that it calls for Respondent to admit a legal conclusion, is overly broad, and seeks to invade attorneys’ mental impressions regarding the laws and regulations applicable to emission reductions. As such, this Request is improper and not answerable in its present form. Further, “federal regulation[s]” are equally available to Petitioner; the contents of such regulations, and/or Respondent’s legal interpretation of such regulations, are not appropriate subject matter for a Request to Admit.

**Request 24:**

Admit that no Illinois statute contains a provision prohibiting the use of ERCs from a facility determined to be “permanently shutdown”.

**ANSWER:**

In addition to the general objections to this Request, Respondent specifically objects to this request on the grounds that it calls for Respondent to admit a legal conclusion, is overly broad, and seeks to invade attorneys’ mental impressions regarding the laws and regulations applicable to emission reductions. As such, this Request is improper and not answerable in its present form. Further, “Illinois statute[s]” are equally available to Petitioner; the contents of such statutes, and/or Respondent’s legal interpretation of such statutes, are not appropriate subject matter for a Request to Admit.

**Request 25:**

Admit that no Illinois regulation contains a provision prohibiting the use of ERCs from a facility determined to be “permanently shutdown”.

**ANSWER:**

In addition to the general objections to this Request, Respondent specifically objects to this request on the grounds that it calls for Respondent to admit a legal conclusion, is overly broad, and seeks to invade attorneys’ mental impressions regarding the laws and regulations applicable to emission reductions. As such, this Request is improper and not answerable in its present form. Further, “Illinois regulation[s]” are equally available to Petitioner; the contents of such regulations, and/or Respondent’s legal interpretation of such regulations, are not appropriate subject matter for a Request to Admit.

Respectfully submitted,

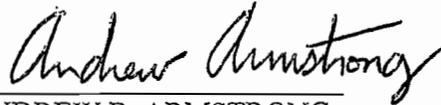
THE ILLINOIS ENVIRONMENTAL  
PROTECTION AGENCY, by

LISA MADIGAN,  
Attorney General of the  
State of Illinois

MATTHEW J. DUNN, Chief  
Environmental Enforcement/Asbestos  
Litigation Division

ROSEMARIE CAZEAU, Chief  
Environmental Bureau

BY:



ANDREW B. ARMSTRONG  
Assistant Attorney General  
Environmental Bureau  
69 West Washington Street, 18th Floor  
Chicago, Illinois 60602  
Tel: (312) 814-0660

**Exhibit 4**



## ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

1021 North Grand Avenue East, P.O. Box 19276, Springfield, Illinois 62794-9276 • (217) 782-2629  
James R. Thompson Center, 101 West Randolph, Suite 11-300, Chicago, IL 60661 • (312) 814-6026

PAT QUINN, GOVERNOR

DOUGLAS P. SCOTT, DIRECTOR

(217) 782-5544  
(217) 782-9143 (TDD)

February 22, 2010

Katherine D. Hodge  
Hodge Dwyer & Driver  
3150 Roland Avenue  
P.O. Box 5776  
Springfield, Illinois 62705

Re: Chicago Coke Co., Inc.  
Emission Reduction Credits

Dear Kathy:

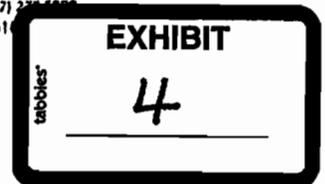
Thank you for your letter dated January 15, 2010. You asked that the Illinois Environmental Protection Agency ("Illinois EPA") respond as to our final decision on whether certain Emission Reduction Credits ("ERCs") claimed by Chicago Coke Co., Inc. ("Chicago Coke"), are available for use as emission offsets for the permitting of major new sources and/or major modifications in the Chicago area.

Based on a discussion I had with Laurel Kroack, Bureau Chief for the Illinois EPA's Bureau of Air, I can confirm for you that the Illinois EPA's final decision on this issue remains the same as was previously conveyed to you. That is, the Illinois EPA does not find that the ERCs claimed are available as offsets, since it is our position that the Chicago Coke facility is permanently shutdown. Pursuant to applicable federal guidance, the ERCs are thus not available for use as you described.

I hope this makes clear the Illinois EPA's position on this issue. If not, or if you have any further questions, please do not hesitate to contact me. Thank you.

Sincerely,

John J. Kim  
Chief Legal Counsel



## **Exhibit 5**

The Illinois EPA cannot in this instance articulate what would constitute BACT for this recovery coke plant. This is because the applicant was not obligated to submit a BACT analysis as the project is neither a major modification nor a new major source. The Illinois EPA does not perform unilateral BACT analyses, particularly where there is no regulatory basis for such BACT analysis.

62. **Would this proposal be considered BACT (if the project were major)? Are there other technologies that would have less emissions? Could there be a better technology?**

There are two types of coke plants. There are recovery coke plants and nonrecovery coke plants. The type of plant at issue, is a recovery-type coke plant. At this juncture, the Illinois EPA believes there can be incremental improvements in how it is operated and maintained, but it is fundamentally constrained by the fact it is a recovery-type coke plant. However, many of the requirements in the permit exceed MACT or are BACT-like.

63. **If this plant were treated as a major new source, an entirely different kind of permitting would take place that would be much more protective. This plant would have to meet the standards for its emissions equivalent to the best performing plant anywhere in this country. In addition, if this project were determined to be a major new source by the Illinois EPA, Chicago Coke would have to acquire emission offsets from existing sources, so that there would actually be cleaner air with the restart of the plant.**

This source is not considered a new major source because the source was not permanently shut down. In particular, the source made considerable efforts when operations were temporarily discontinued to ensure the minimum effort and cost of resuming operations at the facility. These efforts included, but were not limited to, operating the coke oven battery in a hot idle mode for a period of time, maintaining and not dismantling or demolishing equipment, and preserving the operating permit. These efforts support the intent of the Permittee and its predecessors to resume operations at this facility.

64. **If it was determined that the plant was major, then we could take it to an independent board to decide which is best available control technology for this plant.**

The comment correctly points out that construction permits issued under the PSD program (new major sources or major modifications of existing major sources for PSD pollutants) are appealable to the Environmental Appeals Board.

65. **This project is in an area that USEPA recently designated as nonattainment for the PM2.5 air quality standards. This alters how the net change in PM2.5 emissions should be calculated for the project, compared to the emissions of the former LTV plant. According to 35 IAC 203.208(a), for the past emissions of the plant to be available for the netting exercise, the emissions must be contemporaneous and "...must also occur after either April 24, 1979, or the date the area is designated by the**



# **Exhibit 6**

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS  
COUNTY DEPARTMENT, CHANCERY DIVISION

Chicago Coke Co., Inc., an Illinois corporation, )

Plaintiff, )

v. )

DOUGLES P. SCOTT, Director of the Illinois )  
Environmental Protection Agency, and THE )  
ILLINOIS ENVIROMENTAL PROTECTION )  
AGENCY, an Agency of the State of Illinois, )

Defendants. )

No.

10CH12662

**VERIFIED COMPLAINT FOR PETITION FOR  
COMMON LAW WRIT OF CERTIORARI AND DECLARATORY JUDGMENT**

NOW COMES Plaintiff, CHICAGO COKE CO., INC. ("Chicago Coke"), an Illinois corporation, by its attorneys, SWANSON, MARTIN & BELL, LLP, and for its Verified Complaint for Petition for Common Law Writ of Certiorari and Declaratory Judgment against Defendants, DOUGLAS P. SCOTT, Director of the Illinois Environmental Protection Agency, and THE ILLINOIS ENVIRONMENTAL PROTECTION AGENCY, an Agency of the State of Illinois, states as follows:

FILED  
MAR 26 2010  
DOROTHY BROWN  
CLERK OF THE CIRCUIT COURT  
OF COOK COUNTY, IL

**PARTIES**

1. Plaintiff, Chicago Coke Co., Inc., is an Illinois corporation. Chicago Coke operates its principal place of business at 11400 South Burley Avenue, Chicago, Illinois ("the Facility").

2. Defendant, Illinois Environmental Protection Agency ("Illinois EPA"), is an Agency of the State of Illinois, created pursuant to Section 4 of the Illinois Environmental Protection Act. See 415 ILCS 5/4. Defendant, Douglas P. Scott, is the Director of the Illinois EPA.

EXHIBIT  
tabbles  
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EXHIBIT  
tabbles  
6

**COUNT I - DECLARATORY JUDGMENT**

3. The Illinois Pollution Control Board adopted regulations for major sources of air pollution located in areas that do not meet national air standards set by the Clean Air Act. These areas are known as "non-attainment areas." See 42 U.S.C. § 7407(d)(1)(A)(i); see also 35 Ill. Admin. Code § 203.301, *et seq.* Before any new or modified major source of pollution can be constructed in a non-attainment area, the new or modified major source must obtain "emission offsets" for the amount of pollution it is expected to generate.
4. Illinois regulations recognize that emission offsets can be sold between companies in non-attainment areas. See 35 Ill. Admin. Code § 203.303(a).
5. Illinois EPA evaluates and approves emission offsets. 35 Ill. Admin. Code §§ 203.302 and 203.303.
6. Chicago Coke's Facility is located within a non-attainment area.
7. Chicago Coke sought to sell its emission reduction credits ("ERCs") to a buyer located in the same non-attainment area.
8. Chicago Coke's ERCs constitute a property right for purposes of this action.
9. Chicago Coke submitted three formal, written requests asking Illinois EPA to recognize Chicago Coke's ERCs as emissions offsets under Illinois Administrative Code § 203.303. See Chicago Coke Co., Inc.'s letter dated August 3, 2007, attached as Exhibit A; Chicago Coke Co., Inc.'s letter dated July 18, 2008, attached as Exhibit B; and Chicago Coke Co., Inc.'s letter dated January 15, 2010, attached as Exhibit C.
10. In response, Illinois EPA invented a fictitious "regulation" which it used as a basis to deny Chicago Coke's ERCs.

11. Under Illinois EPA's fictitious "regulation," a facility that is permanently shut down cannot use ERCs as emission offsets for new sources and/or major modifications. See Final Agency Action dated February 22, 2010, attached hereto as Exhibit D.

12. Contrary to Illinois EPA's application of the fictitious "regulation" to Plaintiff, Illinois EPA has issued permits based on ERCs from at least five permanently shut down facilities. See Offsets Chart, attached as Exhibit E.

13. Illinois EPA is enforcing a fictitious regulation against Chicago Coke.

14. Illinois EPA's purported "regulation" was never promulgated pursuant to the Illinois Administrative Procedure Act. 5 ILCS 100/5-5 *et seq.*

15. An actual controversy exists between Plaintiff and the Defendants. Pursuant to Section 2-701 of the Illinois Code of Civil Procedure (735 ILCS 5/2-701), this Court is vested with the power and responsibility to make a binding declaration of rights regarding Plaintiff's ERCs as offsets, and to award Plaintiff such other and further relief as it may deem just and equitable.

WHEREFORE, for the above and foregoing reasons, Plaintiff, CHICAGO COKE CO., INC., moves this Court to enter an order declaring that Illinois EPA has exceeded its statutory authority by attempting to enforce a fictitious regulation that was never promulgated pursuant to the Administrative Procedure Act.

**COUNT II - PETITION FOR COMMON LAW WRIT OF CERTIORARI**

1-15. Plaintiff re-alleges and incorporates herein by reference paragraphs 1-15 of Count I as paragraphs 1-15 of this Count II.

16. Plaintiff is unaware of any method of review or remedy for Illinois EPA's denying plaintiff's ERC credits as offsets by applying a fictitious and unpromulgated regulation, except via issuance of a writ by this Court.

WHEREFORE, Plaintiff, CHICAGO COKE, INC., prays for issuance of a writ of certiorari directed to Defendants to certify and to produce in this Court the record of Illinois EPA's determination that the Chicago Coke Facility is permanently shut down, and that Chicago Coke's ERCs cannot be utilized as emission offsets, and that upon review thereof, Illinois EPA's determination be vacated, annulled, and reversed.

**COUNT III - DECLARATORY JUDGMENT THAT ILLINOIS EPA  
HAS EXCEEDED ITS STATUTORY AUTHORITY**

1-16. Plaintiff re-alleges and incorporates herein by reference paragraphs 1-16 of Counts I and II as paragraphs 1-16 of this Count III.

17. The Illinois Administrative Procedure Act provides that when a party has an administrative rule invalidated by a court for any reason, including when the agency exceeds its statutory authority, the court shall award the party bringing the action the reasonable expenses of litigation, including reasonable attorney's fees. 5 ILCS 100/10-55(c).

18. Under the Illinois Administrative Procedure Act, "rule" means an agency statement of general applicability that implements, applies, interprets, or prescribes law or policy. 5 ILCS 100/1-70.

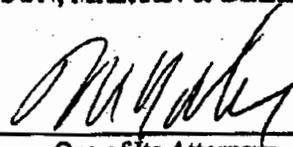
19. An actual controversy exists between Plaintiff and the Defendants, and pursuant to Section 2-701 of the Illinois Code of Civil Procedure (735 ILCS 5/2-701), this Court is vested with the power and responsibility to make a binding declaration of right, and to award Plaintiff such other and further relief as it may deem just and equitable.

WHEREFORE, for the above and foregoing reasons, Plaintiff, CHICAGO COKE CO., INC., moves this Court to enter an order declaring that:

- a. Illinois EPA's purported administrative rule that "permanent shut-down" of a facility defeats ERCs for use as emission offsets is not authorized by federal or state law or regulation, and is unreasonably inconsistent with the actions of Illinois EPA in other matters involving recognition of emission reduction credits.
- b. That, pursuant to Section 10-55 of the Illinois Administrative Procedure Act (5 ILCS 100/10-55), the Court award to Chicago Coke Co., Inc. the reasonable expenses of this litigation, including reasonable attorney's fees, incurred in bringing the present action for declaratory judgment, together with reasonable prejudgment and post-judgment interest on all sums due.

Respectfully submitted,

**SWANSON, MARTIN & BELL, LLP**

By: 

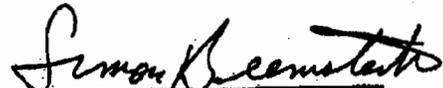
One of Its Attorneys

Dated: March 26, 2010

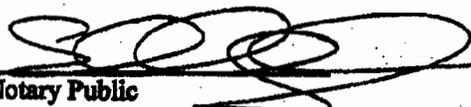
Michael J. Maher  
Erin E. Wright  
**SWANSON, MARTIN & BELL, LLP**  
330 North Wabash Avenue  
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Firm I.D. No. 29558

**VERIFICATION**

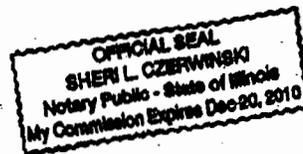
I, Simon Beemsterboer, have reviewed Plaintiff Chicago Coke Co., Inc.'s Verified Complaint for Declaratory Judgment and Petition for Common Law Writ of Certiorari, and state that such allegations are true and correct based on information presently available to me. Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the statements in this Verification are true and accurate.

  
Simon Beemsterboer

Subscribed and Sworn to before me  
this 24 day of March, 2010

  
Notary Public

My commission expires: Dec 20, 2010



**Exhibit 7**

Order

(2/24/05) CCG N002

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

Chicago Coke Co., Inc.

v.

Scott, et al.

No. 10 CH 12662

ORDER

THIS CAUSE BEFORE THE COURT on ~~Plaintiff's~~ <sup>Defendants'</sup> Section 2-619.1 Combined Motion to Dismiss Complaint Pursuant to Sections 2-615 and 2-619,

IT IS HEREBY ORDERED THAT:

① Defendants' motion is granted, and Plaintiff's Complaint is dismissed for failure to exhaust administrative remedies.

Atty. No.: 99000

Name: AAG Andrew Armstrong

Atty. for: Plaintiff

Address: 69 W Washington, 18th Floor

City/State/Zip: Chicago, IL 60602

Telephone: 312-814-0660

ENTERED:

Dated:

Judge

ENTERED  
JUDGE CAROLYN QUINN-1880  
JAN - 7 2011  
DOROTHY BROWN  
CLERK OF THE CIRCUIT COURT  
OF COOK COUNTY, IL  
DEPUTY CLERK

Judge's No.

DOROTHY BROWN, CLERK OF THE CIRCUIT COURT OF COOK COUNTY

EXHIBIT

7

tabbles

# **Exhibit 8**

**Permits Issued by the Illinois Environmental Protection Agency  
that Contain Requirements for Emissions Offsets**

Permittee	Application No.	Facility ID No.	Permit Issuance Date	Offsets TPY	VOM or PM	Offsets from	ID No.	Basis for Offsets	Date of Shutdown
A. Finkl & Sons Co.	07060075	031600GUC	05/23/08	347.00	NOx	Finkl plant (74.8) ADM (74.0) Corn Products (198.2)	031600ATR	shutdown/existing Finkl plant shutdown of ADM Boiler 10 Project at Corn Products (shutdown of boilers 1, 2, 3, 4 & 5)	
Air Products & Chemicals, Inc.	05020063	197800ACA	08/24/05 <sup>1</sup>	23.00	VOM	Viskase or ASF Keystone	031012ABQ	permanent shutdown of facility	09/1998
Brown Printing Company	97080012	111095ABU	12/23/02	75.40	VOM	Burrell-Leder Beltech  Handy Button  Hargro	031288AGR  031186AFR  031600CPO	permanent shutdown of facility process change (22.9 tpy) process change (32.0 tpy) shutdown of printing (20.5 tpy)	01/2002   IEPA reports no file
ConocoPhillips Company	06110049	119050AAN	07/19/07	440.10	VOM	JW Aluminum	St. Louis, MO	reduction in VOM emissions	
ConocoPhillips Company	06050052	119050AAN	07/19/07	440.10	VOM	JW Aluminum	St. Louis, MO	reduction in VOM emissions	
ExxonMobil Oil Corporation	03050050	197800AAA	08/19/03	5.00	VOM	Sara Lee	089005AEX	permanent shutdown of facility	1996
ExxonMobil Oil Corporation	03110060	197800AAA	08/24/05	23.00	VOM	Viskase or ASF Keystone	031012ABQ  Hammond, IN	permanent shutdown of facility permanent shutdown of facility	09/1998  01/2002
ExxonMobil Oil Corporation	05030076	197800AAA	10/06/05 <sup>2</sup>	753.00 106.00	NOx PM10	Midwest Generation	063806AAF	permanent shutdown of facility permanent shutdown of facility	2004
Indeck-Elwood LLC	02030060	1970035AAJ	10/10/03	140.40	VOM	Minnesota Mining & Manufacturing (3M)	031012AAR	shutdown of coating line 6H	1998, 1999, or 2000 <sup>3</sup>
Quebecor World - Chicago Division	0090023	031440AAB	03/14/01	42.77	VOM	Bradley Printing  Rock-Tenn Company	031063ABH  031600CMQ	shutdown of source owned by World Color Press (36.03 tpy) voluntary reductions (7.0 tpy)	03/1996  2000
Robbins Community Power LLC	07060081	031270AAB	06/23/08	278.00	NOx	Corn Products International	031012ABI	Boiler 10 Project at Corn Products (shutdown of boilers 1, 2, 3, 4 & 5)	
SCA Tissue North America	02020043	031003ADF	08/04/04	75.00	VOM	Viskase	031012ABQ	permanent shutdown of facility	09/1998
Wheatland Tube Company - Chicago Division	02050066	031600FDI	10/09/02	93.60	VOM	ASF Keystone East	Chicago, IN 089-13946-00302	permanent shutdown of steel foundry	2001

<sup>1</sup> Air Products & Chemicals, Inc. - revised permit dated 07-24-07

<sup>2</sup> ExxonMobil Oil Corporation - revised permits dated 02-26-08 and 06-26-08

<sup>3</sup> AERs for these years not yet provided

