ILLINOIS POLLUTION CONTROL BOARD

CHICAGO COKE COMPANY, Petitioner, v. ILLINOIS ENVIRONMENTAL PROTECTION AGENCY, Respondents. and NATURAL RESOURCES DEFENSE COUNCIL, INC., and SIERRA CLUB Intervenor-Defendants.	)	PCB 10-75 (Permit Appeal - Air)

To:

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Persons on the attached service list

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Please take notice that today I filed with the office of the Clerk of the Pollution Control Board my **Motion for Summary Judgment** on behalf of the Natural Resources Defense Council, a copy of which is hereby served on you.

By: _____
Meleah Geertsma, Natural Resources Defense Council

Dated: August 17, 2012

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CERTIFICATE OF SERVICE

I, Meleah Geertsma, the undersigned attorney, hereby certify that I have served the attached **Motion for Summary Judgment** on the service list of all parties of record listed below, by electronic mail pursuant to agreement of all the parties, before the hour of 5:00 p.m., on this 17th day of August, 2012.

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INTERVENOR-DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

Defendant-Intervenors Natural Resources Defense Council ("NRDC") and Sierra Club, Inc. ("Sierra Club"), by their attorneys, move the Illinois Pollution Control Board ("Board") for summary judgment on the claims set forth in the Petition for Review filed by Petitioner Chicago Coke Co., Inc. ("Chicago Coke"). This motion is brought pursuant to Section 101.516 of the Board's procedural rules (35 Ill.Admin.Code 101.516).

Introduction

Petitioner Chicago Coke pressed Respondent Illinois Environmental Protection Agency ("IEPA") for many years for permission to sell emission reduction credits ("ERCs") from a facility it bought in 2002 ("Facility") but never operated. After three years of discussions, IEPA issued a final decision that the ERCs were not available for sale.

IEPA's determination was correct as a matter of law, since at the time it was made the Facility had not actually produced coke in nearly a decade. Based on its evaluation of overwhelming evidence in the record, IEPA determined that the 2002 shutdown of the Facility was permanent and hence that the ERCs had expired and were no longer available for use. United States Environmental Protection Agency ("USEPA") guidance concerning ERCs supports this determination. The guidance makes clear that the presence or absence of the emissions in the state's inventory is a critical factor in determining whether permanent shutdown has occurred. Here, the emissions in the Illinois inventory since 2002 have ranged from trivial to non-existent.

However, regardless of the date on which shutdown occurred, the law is clear that the credits are not available for use at a new project. Illinois State Implementation Plan ("SIP") regulations provide that ERCs are *never* available from shutdowns that occurred prior to a non-attainment designation; even where a shutdown occurred after a nonattainment designation, the credits may only be used for a replacement of an existing source (which is not what is proposed here).

All in all, what Chicago Coke is attempting flies in the face of the express purpose of emissions offsets under the CAA: to ensure that new sources do not increase the area's pollution and impede reasonable further progress toward attainment. Where, as here, states have not factored the shutdown emissions into their planning for reaching air quality attainment, adding those emissions back in, by using them to offset new emissions, throws the planning off and threatens progress towards attainment. The Board should uphold as a matter of law IEPA's sensible decision not to allow this to happen.

In granting intervention, the Board expressly ordered that Defendant-Intervenors may raise only those issues that were raised by Petitioner on appeal. *Chicago Coke Co. v. IEPA*, PCB 10-75 (April 21, 2011) at 10-11. Accordingly, Defendant-Intervenors' arguments herein in favor of summary judgment concern only matters addressed in the Petition and supporting documentation (which consists of letters Petitioner sent to IEPA explaining its position that the ERCs are valid, and IEPA's response).[1]

Background

I. Regulatory Background

Under the CAA Part D New Source Review ("NSR") program, new sources proposed to be constructed in a nonattainment area ("NAA") must offset their emissions of the nonattainment pollutant by acquiring credits from the shutdown of sources of such emissions within the NAA. 42 U.S.C. § 7503(a)(1)(A). The need for offsets derives from the CAA mandate that state NAA planning must require "reasonable further progress" toward attainment. 42 U.S.C. § 7502(c). In furtherance of that objective, Section 7502(c) also requires that states maintain "a comprehensive, accurate, current inventory of actual emissions from all sources of the relevant pollutant or pollutants in such area." *Id.*

The Illinois SIP contains a regulation governing the use of ERCs from sources that have been shut down. This regulation, which became effective in April, 1993, provides in part as follows:

b) The emission offsets provided:

[1] Defendant-Intervenors further note that IEPA, which joined initially in the request that Defendant-Intervenors be limited to addressing issues raised by Petitioner on appeal, has effectively acknowledged that the subject matter of our Motion for Summary Judgment, insofar as it relies upon issues concerning the state's emissions inventories and attainment planning process, are relevant and within the scope of the appeal since IEPA responded to discovery on those issues without objection. *See* Respondent's Responses to Intervenors' Requests to Admit to Respondent ("IEPA RTA Response"), attached as Ex. 2.

***

> 3) Must, in the case of a past shutdown of a source or permanent curtailment of production or operating hours, have occurred since April 24, 1979, *or the date the area is designated a nonattainment area for the pollutant, whichever is more recent*, and, until the United States Environmental Protection Agency (USEPA) has approved the attainment demonstration and state trading or marketing rules for the relevant pollutant, *the proposed new or modified source must be a replacement for the shutdown or curtailment;*

35 Ill.Admin.Code 203.303 (emphasis added).

Additionally, in July 1993, USEPA issued guidance concerning interpretation of rules governing use of ERCs prior to an attainment designation. July 21, 1993 Memorandum from John S. Seitz, Director, Office of Air Quality Planning and Standards (MD-10) Regarding the Use of Shutdown Credits for Offsets ("Seitz Memo") (attached as Ex. 1). This guidance was necessary because the CAA Amendments of 1990 created new schedules for submitting attainment demonstrations.

In its final rule implementing the 8-hour ozone standard, promulgated in 2005, USEPA expressly referenced the Seitz Memo and incorporated its principles (although not its specific terms, as discussed in Point II. *infra*) into the federal regulations setting forth requirements for states' SIPs. 70 Fed.Reg. 71612, 71673 (November 29, 2005). *See* Advance Notice of Proposed Rulemaking ("ANPR"), 61 Fed.Reg. at 38249, 38313 (July 23, 1996) (USEPA proposing with changes to the ERC requirements "to adopt the policies reflected in the July 21, 1993 policy statement as regulatory changes.") Specifically with respect to use of ERCs, the federal regulations were amended to read in part as follows:

> (C)(1) Emissions reductions achieved by shutting down an existing emission unit or curtailing production or operating hours may be generally credited for offsets if they meet the requirements in paragraphs (a)(3)(ii)(C)(1)(i) through (ii) of this section.
>
> (i) Such reductions are surplus, permanent, quantifiable, and federally enforceable.

> (ii) The shutdown or curtailment occurred *after the last day of the base year for the SIP planning process.* For purposes of this paragraph, a reviewing authority may choose to consider a prior shutdown or curtailment to have occurred after the last day of the base year *if the projected emissions inventory used to develop the attainment demonstration explicitly includes the emissions* from such previously shutdown or curtailed emission units.

40 C.F.R. § 51.165 (a)(3)(ii)(C)(1) (emphasis added). This change achieved goal of the Seitz Memo, which was to allow use of shutdown credits in some instances prior to an attainment redesignation, without sacrificing the important principle it articulated that the shutdown emissions must be included in the attainment planning process.

II. Statement of Facts and Procedural History

Chicago Coke purchased the Facility in November, 2002. Petition for Review Ex. A at 1. The Facility had been placed in hot idle mode shortly prior to that, in December, 2001. Letter to Donald E. Sutton, IEPA from Donald Beemsterboer, Chicago Coke, at 3, Administrative Record ("AR") at 1600 ("Beemsterboer Letter"). Thereafter, on February 5, 2002, the facility was placed into cold idle mode. *Id*. By Chicago Coke's admission in this proceeding, it has never produced coke at the Facility, and the Facility has not been in a condition to produce coke, since the date of purchase. Chicago Coke's Responses to IEPA's First Requests for Admission of Facts to Petitioner ("Chicago Coke RTA Responses to IEPA") at 3.

Chicago Coke initially requested that IEPA rule on the status of the ERCs because it sought to sell the property on which the Facility is located to Chicago Clean Energy ("CCE") for redevelopment as a coal gasification plant ("Proposed Project"). Petition Ex. A at 1, Ex. B at 1, and Ex. C at 1. Since the CAA requires that a party seeking to build a new major source in a NAA for a specific pollutant offset emissions of that pollutant and its precursors, the transaction was also to include a transfer to CCE of ERCs for VOM, NO_x, and particulate matter of less than 10 micrometers ("PM_{10}"). Petition Ex. A at 2-8. Chicago Coke appeared to assume that the

PM_{10} ERCs would be used to offset emissions of particulate matter of less than 2.5 micrometers ("$PM_{2.5}$"), since the Lake Calumet Area in which the Facility is located was redesignated in attainment for PM_{10} effective November 21, 2005. 70 Fed.Reg. 55545. *See* Petition Ex. A at 2-4; Ex. B at 1.

In order to proceed with this proposed transfer of ERCs, Chicago Coke requested in June of 2007 that IEPA formally recognize the ERCs as available emission offsets. Petition Ex. B at 1. After meeting with IEPA, Chicago Coke sent a follow-up letter to IEPA on August 8, 2007, setting forth its legal and factual arguments addressing the Agency's concerns. Petition Ex. A ("August 8 Letter"). In the August 8 letter, Chicago Coke did not specify a particular date on which it contended the Facility had been permanently shut down. However, it argued that the shutdown did not occur when the Facility was put in cold idle in February, 2002, because IEPA had subsequently issued Chicago Coke a construction permit for a "pad-up rebuild" of the Facility on April 28, 2005. August 8 Letter at 3, 6. Chicago Coke therefore argued that the Facility "could not have been shut down before April 25 [sic], 2005." *Id.* at 6. Chicago Coke acknowledged that this permit expired in October, 2006 without being used. *Id*. at 3.

Chicago Coke framed its claim of a post-2002 shutdown date as part of an argument that the applicable Illinois SIP provision governing ERCs, 35 Ill.Admin.Code § 203.303, did not automatically invalidate the ERCs. Concerning the first requirement in this provision, that the shutdown must have occurred after a nonattainment designation, the Chicago Area was designated as being in nonattainment for ozone (for which NO_x and VOM are precursors) in April, 2004, 69 Fed.Reg. 23585 (April 30, 2004), and was designated as being in nonattainment for $PM_{2.5}$ in April, 2005, 70 Fed.Reg. 19844 (April 15, 2005). According to Chicago Coke in the August 8 Letter, the Facility is not disqualified as a source of $PM_{2.5}$ emission credits since "it

did not 'shut down' prior to April 28, 2005." *Id*. at 3. Concerning the second requirement, that the ERCs be used only for "replacement" sources prior to an attainment redesignation, Chicago Coke acknowledged that the area was still nonattainment for NO_x and $PM_{2.5}$ at the time of the decision.[2] It did not attempt to claim that the facility proposing to purchase the ERCs was a replacement for the Chicago Coke facility (which it was clearly not, as it is a coal gasification facility not a coke production facility), but rather argued that this "replacement only" requirement in § 203.303 should be disregarded for NO_x and VOC ERCs based on the Seitz Memo. *Id.* at 5-7. However, while the August 8 Letter referenced the incorporation of the Seitz Memo principles into the 1996 ANPR, it did not cite or reference the final rule promulgated in 2005, which expressly disqualifies ERCs from any shutdown that occurred prior to the last day of the base year of the SIP planning process unless those emissions are explicitly included in the inventory used to develop the attainment designation.[3]

Chicago Coke asserted in subsequent correspondence that IEPA had said it "has always had a policy that ERCs may only be generated from shutdowns that occurred within the past five years." Letter to John J. Kim from Katherine D. Hodge dated July 18, 2008 at 1 (Petition Ex. B) ("July 18 Letter"). Chicago Coke disputed application of this purported policy based on its April 28, 2005 pad-up rebuilt permitting date, and on asserted inconsistencies in application of such policy.

The discussion between IEPA and Chicago Coke of the status of the ERCs continued until February of 2010, when IEPA issued a final decision on the matter at Chicago Coke's request. By letter dated February 22, 2010 (Petition Ex. D), IEPA Chief Legal Counsel John Kim informed Chicago Coke,

[2] USEPA recently approved the State's request for ozone redesignation. 77 Fed. Reg. 48062 (August 13, 2012).
[3] Chicago Coke presented a separate argument for disregarding the "replacement" requirement as it applied to $PM_{2.5}$. For reasons discussed in section A.2, this argument is demonstrably wrong.

> [T]he 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.

After receiving this letter, Chicago Coke initiated the instant action before the Board. The Petition asserts that "[t]he Agency's basis for denial was never promulgated or adopted by this Board."[4] On April 21, 2011, the Board granted NRDC and Sierra Club's Motion to Intervene.

The parties exchanged discovery requests and responses. In the course of discovery, the following facts were admitted and therefore are not in dispute:

1. *Concerning use of the Facility*: Chicago Coke admitted that as of February 22, 2010 (the date of IEPA's final decision), it had never produced coke at the Facility, and that the Facility has not been in a condition to and capable of producing coke since Chicago Coke purchased it in November, 2002. It additionally admitted that it had never operated the coke oven battery, coke oven by-products plant, or boilers of the Facility; and that it never completed a pad-up rebuild of the Facility. *See* Petitioners' Responses to RTAs at 5-6.
2. *Concerning emissions from the Facility*: Chicago Coke admitted that for the years 2003, 2006, 2007, and 2008, it emitted no regulated pollutants. It further admitted that the negligible pollutants emitted from the Facility in 2004 and 2005 resulted from transloading operations unrelated to the operation of the Facility. *Id*. at 4-5.
3. *Concerning Facility emissions in the emission inventory*: IEPA admitted that a chart attached to Defendant-Intervenors' Requests to Admit as Exs. 2 and 3 represented

[4] Chicago Coke also filed suit in Cook County Circuit Court on March 26, 2010 (*Chicago Coke Co., Inc. v. Scott*, No. 10-CH-12662. The Circuit Court matter was dismissed on January 7, 2011 for failure to exhaust administrative remedies before the Board.

emissions included in the Illinois Emissions Inventory in 2002 and 2005, respectively. Respondent's Responses to Intervenors' Requests to Admit to Respondent ("IEPA RTA Response"), attached as Ex. 2, at 3; *see* Defendant-Intervenor's Requests to Admit to Respondent (Ex. 3). The charts show essentially negligible emissions from the facility (consistent with Chicago Coke's admissions concerning Facility emissions during that period), where they exist expressed in pounds or fractions of a ton. IEPA further admitted that a chart attached to Defendant-Intervenors Requests to Admit as Ex. 4 reflects the last date on which any emissions from the Facility were included in the Illinois emissions inventory. The Ex. 4 chart shows no emissions included in the inventory from the Facility after 2007.

4. *Concerning the SIP planning process*: IEPA admitted that 2002 is the base year for the $PM_{2.5}$ SIP planning process, and that 2002 and 2005 are the base years for the 8-hour ozone SIP planning process. IEPA RTA Response at 4. It further admitted that IEPA has not included emissions from the Facility of PM, PM_{10}, $PM_{2.5}$, NO_x, or VOM in its projected emissions inventory used to develop an attainment demonstration for the Chicago Nonattainment Area. IEPA RTA Response at 4.
5. *Payment of CAAPP fees*. Chicago Coke admitted that it has not paid Clean Air Act Permitting Program ("CAAPP") permitting fees to IEPA since 2007. Chicago Coke RTA Response to IEPA at 7.

Standard of Review

Under the Illinois Environmental Protection Act and the Board's rules, the burden is on the Petitioner to show that the Agency's denial of its application (or in this context, denial of the request for validation of the ERCs) was contrary to law, *i.e.*, that the applicant was entitled to the

permit and the Agency's reasons for denying it were unlawful. 5 ILCS § 42.2; 35 Ill.Admin.Code § 105.112. *See In Matter of: Emissions Reduction Market System Adoption of 35 Ill. Adm. Code 205 and Amendments to 35 Ill. Adm. Code 106*, PCB R97-13 (July 10, 1997), *citing ESG Watts Inc. v. IEPA*, PCB 94-243 (March 21, 1996) (In an appeal of a CAAPP permit, "the Board reviews the information which the Agency relied on in making its decision," and [t]hereafter, the Board places the burden on the petitioner to prove that it is entitled to a permit and that the Agency's reasons for denial are either insufficient or improper"). Although Chicago Coke's request for a determination concerning the ERCs does not in most respects constitute a permit application, with all attendant substantive requirements, the Board has indicated that it will treat it as a permit appeal for purposes of establishing appropriate participation and procedures on appeal. *See Chicago Coke Co. v. IEPA*, PCB 10-75 (April 21, 2011) at 8-9 (noting that "the Agency is arguing that the decision at issue is not a denial of a permit application," but that since "this appeal is ERCs, which are a part of the Clean Air Act regulatory and permitting scheme," and third party appeals or CAA permits are allowed, the citizens may intervene given that they could potentially challenge use of the ERCs had IEPA allowed it).

On motions for summary judgment, if the record (including pleadings and admissions on file) shows that there is no genuine issue of material fact, and that the moving party is entitled to judgment as a matter of law, the Board will enter summary judgment. 35 Ill.Admin.Code § 105.516(b). *Dowd & Dowd, Ltd. v. Gleason, 181 Ill. 2d 460, 483, 693 N.E.2d 358, 370 (1998)*. A party opposing a motion for summary judgment may not rest on its pleadings, but must "present a factual basis which would arguably entitle [it] to a judgment." *Gauthier v. Westfall, 266 Ill. App. 3d 213, 219, 639 N.E.2d 994, 999 (2d Dist. 1994)*.

Here, Defendant-Intervenors' motion for summary judgment is based on facts expressly admitted by the Petitioner or set forth in its pleadings and accompanying attachments in the AR. Accordingly, there are no genuine issues of material fact. For reasons discussed below, the undisputed facts show that Defendant-Intervenors are entitled to summary judgment. Those facts demonstrate that a grant of Petitioner's request would have been contrary to law, and IEPA's reasons for denying it were lawful, sufficient, and proper.

Argument

IEPA'S DETERMINATION THAT THE ERCS WERE NOT AVAILABLE IS SUPPORTED BY THE RECORD, THE ILLINOIS SIP, AND CAA LAW AND POLICY

IEPA's determination that Chicago Coke's ERCs are invalid is fully supported under the applicable Illinois SIP provision, 35 Ill.Admin.Code 203.303, regardless of the actual date of shutdown – which IEPA correctly identified as February, 2002. Moreover, this decision was necessitated by the very purpose of ERCs under the federal CAA, which is to ensure that construction of new sources does not impede progress toward attainment of air quality standards; and is consistent with federal CAA rules governing ERCs. Additionally, any presumption that IEPA may have applied that ERCs expire after five years is fully supported by federal CAA policy.

A. IEPA's Determination that the ERCs Were Invalid is Supported by the Record and the Illinois SIP

Multiple undisputed facts in the record support IEPA's conclusion that the Facility, which has not operated or been capable of operating since Chicago Coke bought it, was permanently shut down in 2002. However, under 35 Ill.Admin.Code § 203.303, regardless of when it was permanently shut down, credits from the shutdown cannot be used as ERCs because

the Chicago area remains in nonattainment, and the Proposed Project is not a replacement for the Facility.

1. IEPA's Finding that the Facility was Permanently Shut Down In February 2002 is Fully Supported by Undisputed Facts in the Record

IEPA's February, 2010 determination that the Facility was shut down in February, 2002 is fully supported as a matter of law based on undisputed facts in the record. Thus, under § 203.303, the ERCs resulting from the shutdown were invalid for any purpose, as they occurred prior to the nonattainment designations for ozone and $PM_{2.5}$ in 2004 and 2005, respectively.

As noted above, the Facility's emissions were effectively gone from the Illinois emissions inventory and the attainment planning process by 2002. IEPA confirmed in the RTA Response that both the 2002 and 2005 emission inventories include only *de minimis* emissions from the Facility, consistent with unrelated transloading operations at the site. IEPA RTA Response at 3; Chicago Coke RTA Response to IEPA at 3-5. IEPA further specifically confirmed that emissions from the Facility of PM, PM_{10}, $PM_{2.5}$, NO_x, or VOM were not included in its projected emissions inventory used to develop an attainment demonstration for the Chicago Nonattainment Area. IEPA RTA Response at 4.[5]

Additionally, the facility has been in cold idle mode since February, 2002. *See* Beemsterboer Letter at 3 (AR at 1600); IEPA Second Supplemental Response to Petitioner's Interrogatories (Ex. 5) at 9. The Facility has not produced coke, or been capable of doing so, since Chicago Coke bought it in 2002. Petitioners' Responses to RTAs at 5-6. Chicago Coke never performed the pad-up rebuild of the Facility for which it received a permit in April, 2005,

[5] In the August 8 Letter, Chicago Coke referenced a guidance document in which a USEPA staffer implied in passing that the fact that the VOM emissions in question had been removed from the inventory did not rule out their use as ERCs. However, in that case, the shutdown had occurred only a few months before the request for guidance was made – after the area was designated non-attainment, and after the 2002 base year for SIP planning. In that context, the absence of the emissions from the inventory would not necessarily skew the calculation of progress toward attainment. *See* August 8 Letter at 8, *citing* February 14, 2006 letter to Paul Dubenetzsky, Indiana Department of Environmental Management, from Steve Rothblatt, USEPA, attached as Ex. 6.

and the permit is now expired. *Id.* Chicago Coke has paid no CAAPP fees for the Facility since 2007. *Id.*

Chicago Coke emphasized in its August 8 Letter that the application for the pad-up rebuild permit reflected an intention at that time to re-start the facility, which IEPA adopted at face value. August 8 Letter at 3. However, the USEPA Environmental Appeals Board has made clear in the related context of PSD permitting that, in determining whether a shutdown was permanent (so as to trigger new source permitting requirements), the question of permanence must be resolved not merely based the facility owner's professed intent at the time of shutdown, but rather whether the owner "has demonstrated a *continuous* intent to reopen." *In the Matter of Monroe Electric Generating Plant Entergy Louisiana, Inc. Proposed Operating Permit*, Petition No. 6-99-2, Order Responding to Petitioner's Request that the Administrator Object to Issuance of a State Operating Permit (AR 0039-65, at 0047) (Ex. 7). Chicago Coke cannot declare its shutdown of the Facility to have been temporary after 2002 because of an intention to re-open at that time, when the Facility never in fact operated after that, and the shutdown that occurred in 2002 turned out to be permanent. Such a rule would in principle allow any facility to escape a permanent shutdown designation by merely filing some paperwork with the permitting authority stating an intent to re-open.

2. Even If Permanent Shutdown Occurred after 2002, the ERCs Would Only be Valid for Offsetting a Replacement Source, Not the Proposed Project

Even ignoring the overwhelming record to the contrary and assuming that the Facility did not shut down until April 28, 2005, as claimed by Chicago Coke with its sole reliance on the pad-up rebuild, that conclusion would not have helped Chicago Coke here or rendered its requested action lawful under the CAA. For that matter, it would not have helped Chicago Coke

if IEPA had placed the shutdown date in 2007, the last time any (*de minimis*) emissions from the Facility were found in the state emissions inventory. *See* IEPA RTA Response at 3 (responding to Defendant-Intervenors' RTAs at 7); AR 2285 (Ex. 8) (document indicating that the Facility was removed from the state's emissions inventory in 2008). As discussed above, under 35 Ill.Admin.Code § 202.303, even where shutdowns occurred after the date of a nonattainment designation, until such time as the area is redesignated as in attainment (which occurred only this past week for the Chicago ozone NAA, well after IEPA's decision), the credits from such shutdowns can only be applied to a "replacement" source.

Chicago Coke has never posited that the new facility for which it proposes to sell its credits is a "replacement" facility for the shut down coke plant, and it cannot. The Proposed Project is an entirely different type of facility – a coal gasification plant – and so not a replacement by any stretch. August 8 Letter at 2. *Cf.* Memorandum dated February 27, 1979 to Carl V. Blomgren, Director, Region VII Air and Hazardous Materials Division, from Director, USEPA Division of Stationary Source Enforcement (AR 0003-4) (Ex. 9) (new source was not a replacement where it is to be constructed by a different company well after the old source closed down). Instead, Chicago Coke relied on pronouncements by USEPA that purportedly would have allowed IEPA to disregard the plain language of its SIP provision. The referenced statements by USEPA, however, allow no such thing.

With respect to the credits pertaining to ozone nonattainment (NO_x and VOM), Chicago Coke relied on the 1993 Seitz Memo to support the company's view that IEPA should have disregarded the § 203.303 provision limiting use of credits to "replacement" sources prior to attainment. However, this conclusion is not supported by USEPA's subsequent disposition of the Memo. The Seitz Memo addressed the problem that following the CAA Amendments of

1990, the new schedules for attainment created by those amendments could limit states' ability to establish a viable offset banking program for several years, since states were restricted under the federal rule operative at that time (as in the Illinois SIP at § 203.303, crafted to be consistent with it) in their use of credits from shutdowns prior to attainment. August 8 Letter at 5, *citing* Seitz Memo at 2. It accordingly advised loosening that restriction, and suggested that states could more freely allow use of pre-attainment shutdown credits. Chicago Coke additionally cites the ANPR, which proffered a proposal to memorialize the Seitz Memo guidance by allowing shutdown credits to be used as offsets prior to an attainment designation. 61 Fed.Reg at 38313. However, what Chicago Coke failed to note was that in the ANPR, USEPA additionally proffered an alternative means of addressing the concerns expressed in the Seitz Memo without actually memorializing it. USEPA ultimately adopted that alternative in its 8-hour ozone implementation rulemaking, rejecting the option of memorializing the Seitz Memo. 70 Fed. Reg. at 71673. Under this adopted alternative, states are required in their SIPs to provide that ERCs may be credited only for shutdowns that occurred after the last day of the base year of the ozone SIP planning process (2002 and 2005), unless the emissions are included in the projected emissions inventory used to develop the attainment demonstration.[6] 40 C.F.R. 51.165(a)(3)(ii)(C)(1). As discussed in the next section, Chicago Coke's ERCs would be invalid under the federal rule as well.

With respect to $PM_{2.5}$, Chicago Coke erroneously attempts to rely upon USEPA's PM_{10} attainment designation to avoid nonattainment requirements for PM2.5 altogether. USEPA stated as follows in its PM10 attainment designation:

> The requirements of the Part D--New Source Review (NSR) permit program will be replaced by the Part C--Prevention of Significant Deterioration (PSD) program

[6] IEPA has not yet promulgated SIP regulations consistent with the current version of 40 C.F.R. 51.165(a)(3)(ii)(C)(1)..

> for major new sources of PM- 10 once the area has been redesignated. Because the PSD program was delegated to the State of Illinois on February 28, 1980, and amended on November 17, 1981, it will become fully effective immediately upon redesignation. *However, because this area is included within the Chicago $PM_{2.5}$ nonattainment area, the requirements of the Part D NSR permit program will also continue to apply to new or modified sources of particulate matter. with the exception that $PM_{2.5}$ will now be the indicator for particulate matter rather than PM_{l0}.*

August 8 Letter at 4, *citing* 70 Fed.Reg. 55545, 55547 (September 22, 2005) (emphasis added). On its face, this designation takes the CAA Part D non-attainment program that had been applicable to PM_{10} when the area was nonattainment for that pollutant, and makes it applicable to $PM_{2.5}$, for which the area remained in nonattainment, instead. However, Chicago Coke somehow surmised that the designation meant that permits to emit $PM_{2.5}$ "will be legally issued pursuant to federal directive and guidance under Illinois' approved attainment demonstration for PM_{10}." August 8 Letter at 5. This interpretation – that making former PM_{10} nonattainment Part D program applicable to $PM_{2.5}$ should be read to mean that $PM_{2.5}$ must be treated as a Part C attainment pollutant – finds no support in the cited language or in logic.

B. IEPA's Determination Was Required by the CAA Because Chicago Coke's Emissions Were Not in the Inventory or Attainment Planning Process

The absence of Chicago Coke's shutdown emissions from the Illinois emissions inventory and attainment planning process not only supports IEPA's factual conclusion of a 2002 shutdown, but supports its decision as a matter of federal CAA law. As discussed above, the purpose of ERCs is to aid compliance with the CAA requirement that sources obtain offsets for new emissions in a NAA in order to ensure reasonable further progress toward attainment. 42 U.S.C. § 7503. For this reason, it is critical that shutdown emissions used as offsets be present in the inventory and used in the state's SIP

planning process. If such is not the case, the attainment planning process will be skewed. The determination that attainment can be reached by a particular milestone date would be made on the assumption that the shutdown emissions have been entirely eliminated. Resurrecting them as credits applied to allow new emissions contravenes that planning assumption and hence interferes with the attainment planning process, and potentially with attainment itself.

Accordingly, USEPA has repeatedly made clear that the presence of emissions in the inventory is critical to their continuing validity as sources of offsets. In the November 19, 1992 letter to William R. Campbell, Executive Director of the Texas Air Control Board from Stanley Meiburg, Director of USEPA Air, Pesticides and Toxics, Division (6T) ("Meiburg Letter") (AR 0025-33, Ex. 10), relied upon by Petitioners in the August 8 Letter at 7, USEPA makes unwaveringly clear that ERC offsets "can continue to exist *as long as they are accounted for in each subsequent emissions inventory*." (emphasis added). In the Seitz Memo, also relied upon in the August 8 Letter, the Agency likewise notes that "emissions from the shutdown or curtailment must be included in the emissions inventory for attainment demonstration and RFP [reasonable further progress] milestone purposes. *Id*. at 2. The Agency one again emphasized the importance of maintaining the emissions in the inventory for attainment demonstration planning purposes in the preamble to the final rule implementing the 8-hour ozone standard. It observed, citing the Seitz Memo:

> The revised CAA emphasizes the emission inventory as the first requirement in planning, includes new provisions keyed to the inventory requirements, and mandates several adverse consequences for States that fail to meet the planning or emissions reductions requirements related to inventories. According to our longstanding policy, we emphasized that sources may use emission reduction credits generated from shutdowns and curtailments as offsets *if the State continues to include the emissions in the emissions inventory for attainment demonstration and RFP milestone purposes.*

70 Fed.Reg. at 71673 (emphasis added).

Thus, since the Facility's emissions have effectively been gone from the emissions inventory since Chicago Coke purchased it, and the Facility was removed entirely from the inventory in 2008, the emissions may not be used as offset credits pursuant to Clean Air Act law and policy regardless of the date of permanent shutdown as determined by other factors.

C. Any Presumption IEPA May Have Applied That a Five-Year Shutdown is Permanent Was Appropriate and Supported by Federal Policy

To the extent IEPA may have applied a presumption that a 5-year shutdown is permanent – which is not reflected in its February 2010 determination, but attributed to it in the August 8 Letter (August 8 Letter at 6) – that presumption is fully supported by federal policy. In the context of PSD determinations, USEPA has for decades applied a presumption that a 2-year shutdown, particularly when coupled with removal of emissions from the state inventory, is permanent. *See* May 27, 1987 Memorandum to David P. Howekamp, Region IX from John S. Seitz, USEPA Office of Air Quality Planning and Standards, AR 0013-15 (Ex. 11) ("Since the ALA plant has been shut down for well over 2 years and has been removed from the Sate's emission inventory, EPA presumes that the shutdown was permanent"); October 9, 1979 Letter to Harvey D. Shell, Shell Engineering and Associates, from William A Spratlin, Jr., USEPA (AR 0001-2) (Ex. 12) (emphasis added) (USEPA "presumes that any source shut down for two years or more has permanently ceased operation," but USEPA allows the owner to rebut the presumption "by demonstrating the shutdown was never intended to be *and, in fact, was not* a permanent shutdown"); September 6, 1978 Memorandum from the Director of the USEPA Division of Stationary Source Enforcement to Stephen A. Dvorkin, Chief of USEPA General

Enforcement Branch, Region II (AR 0007-10) (Ex. 13) ("A shutdown lasting for two years or more, or resulting in removal of the source from the emissions inventory of the State, should be presumed permanent").

Additinally, as Chicago Coke has acknowledged, states are allowed to set an expiration timeframe "to ensure effective management of the offsets." August 8 Letter at 7, *citing* Meiburg Letter at 7 (AR 0031). That is exactly what IEPA has done here.

D. IEPA'S Determination That The ERCs Were Not Available is Consistent with the Federal Clean Air Act Regulations Governing State SIPS

As discussed in the previous section, the federal regulation promulgated in 2005 as part of USEPA's 8-hour ozone implementation established new requirements for state SIPs with respect to ERCs. IEPA has not adopted the new federal rule into its SIP. However, to the extent the Seitz Memo and ANPR should in principle serve as guidance to Illinois in interpretation of its own SIP rule – as Chicago Coke proposed in the August 8 letter – the guidance should be derived from the actual disposition of the Memo and ANPR in the final federal rule. Under the new federal rule, Chicago Coke's ERCs are clearly invalid.

Under 40 C.F.R. 51.165(a)(3)(ii)(C)(1), ERCs are valid only if "the shutdown or curtailment occurred after the last day of the base year for the SIP planning process." The rule further provides that shutdowns will be treated as having occurred within that time frame, even if they actually did not, "if the projected emissions inventory used to develop the attainment demonstration explicitly includes the emissions from such previously shutdown or curtailed emission units."

If permanent shutdown of the Facility occurred in February, 2002, as IEPA correctly found, then it did not occur after the last day of the base year for the SIP planning process for

any relevant pollutant (2002 for $PM_{2.5}$, 2002 and 2005 for ozone). Even if it occurred as of April 28, 2005, as Chicago Coke incorrectly posited, then the shutdown would still not have occurred prior to the end of the ozone 2005 base year. Since no emissions from the Facility were used to develop the attainment demonstration for these pollutants (*see* IEPA RTA Response at 4), the shutdown credits would be invalid under the federal rule.

E. IEPA's Denial of the Validity of the ERCs Was Grounded in Appropriate Legal and Policy Considerations Beyond the Mere Fact of Shutdown

In its February, 2010 letter denying use of the ERCs, IEPA stated that its final decision was the same as that "previously conveyed" to Chicago Coke, i.e., that credits from the permanent shutdown of the Facility could not be used as offsets. Petition Ex. D ("[p]ursuant to applicable federal guidance, the ERCs are . . . not available for use as you described."). Chicago Coke makes much of IEPA's summary reference to the Facility being permanently shut down as a basis for its decision, implying that IEPA improperly presumed a blanket prohibition on use of ERCs from sources that have been permanently shut down. Petition Ex. D; s*ee* Petitioners' Requests to Admit to Defendant-Intervenors, attached as Ex. 14, at 5 (propounding numerous requests to admit that neither federal nor state law contains such a blanket prohibition). However, to argue based on the wording of IEPA's denial letter that the Agency's decision must have been based on the mere fact of a permanent shutdown, and mistaken belief in the existence of a blanket prohibition against use of ERCs from *any* permanently shut down sources, is reductive and absurd. The applicable rule, 35 Ill.Admin.Code § 203.303, on its face sets rules governing ERCs from sources that have been currently shut down, allowing use of such credits in some circumstances but not others. IEPA, which submitted this provision to USEPA for SIP approval (59 Fed.Reg. 48839, 48840), is presumably aware of this. Indeed, in the August 8

Letter, Chicago Coke specifically notes that IEPA had expressed concern with use of the credits as being inconsistent with § 203.303.

From the context, it is clear that IEPA's denial was grounded in issues discussed over the course of the three previous years with Chicago Coke, as well as applicable federal guidance – not merely the fact that the Facility was permanently shut down. IEPA states that the denial is consistent with what was "previously conveyed" to Chicago Coke in earlier discussions. These discussions included the issues addressed in the August 8 letter, as the Letter notes at the outset that it is a response to IEPA's previously expressed concerns. The Agency also expressly references the consistency of its decision with federal guidance.

Conclusion

For the foregoing reasons, Defendant-Intervenors respectfully request that the Board grant summary judgment upholding IEPA's February 22, 2010 determination and dismissing Chicago Coke's appeal.

Respectfully submitted this 17th day of August, 2012 by:

_____

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Attorneys for Proposed Intervenor-Defendants

EXHIBIT 1

Miller Copy
EDMS

Ron
Dino
Carl

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
Office of Air Quality Planning and Standards
Research Triangle Park, North Carolina 27711

JUL 21 1993

MEMORANDUM

SUBJECT: Use of Shutdown Credits for Offsets

FROM: for John S. Seitz, Director
Office of Air Quality Planning and Standards (MD-10)

TO: Addressees

This memorandum and attachment respond to issues involving the Environmental Protection Agency's (EPA's) new source review (NSR) rules and guidance concerning the use of shutdown credits. The attachment provides a full discussion of the issues and this policy. The regulations in 40 CFR 51.165(a)(3)(ii)(C)(2) provide that where a State lacks an approved attainment demonstration, emissions reductions from shutdowns or curtailments cannot be used as new source offsets unless the shutdown or curtailment occurs on or after the date a new source permit application is filed. A concern raised is that because the Clean Air Act Amendments of 1990 (1990 Amendments) have created new schedules for submitting attainment demonstrations,[1] the existing NSR rules restricting the use of so called "prior shutdown credits" may be read as unnecessarily hindering a State's ability to establish a viable offset banking program for several years. Since this situation was not accounted for in EPA's prior policy statement, EPA determined it was appropriate to reconsider its position in light of the 1990 Amendments.

The reconsideration led to the conclusion that States should be able to follow, during the interim period between the present and the date when EPA acts to approve--or--disapprove an attainment demonstration that is due, the shutdown requirements applicable to areas with attainment demonstrations. This interpretation only extends to those otherwise creditable shutdowns and curtailments actually occurring during the time

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[1]For instance, attainment demonstrations are not due until November 15, 1993 for moderate ozone nonattainment areas, and November 15, 1994 for serious and above areas. Attainment demonstrations are not required by the Clean Air Act (Act) for marginal and nonclassified ozone nonattainment areas and for ozone attainment and unclassifiable areas in the ozone transport region (OTR).

period from enactment of the 1990 Amendments (November 15, 1990) through the period until EPA acts to approve--or--disapprove an attainment demonstration that is due. This policy cannot be extended to situations where an attainment demonstration is lacking. In addition, to be sure that the State remains on track for attainment, the lifting of the shutdown restrictions is conditioned on the State meeting other applicable part D planning requirements as discussed in the attachment to this memorandum.

If the State's submittal is delinquent for any of the reasonable further progress (RFP) milestone submissions identified in the attachment or the State's attainment demonstration is disapproved, the restrictions on use of shutdowns will again apply. To be creditable, the shutdowns or curtailments being used as offsets must have occurred on or after November 15, 1990; the emissions from the shutdown or curtailment must be included in the emissions inventory for attainment demonstration and RFP milestone purposes; and the amount of the credit must be the lower of actual or allowable emissions for the source. Pursuant to EPA's existing regulatory framework, the shutdown or curtailment must be permanent, quantifiable, and federally enforceable.

For marginal ozone nonattainment areas and for the attainment and unclassifiable ozone areas in the OTR, EPA's present interpretation is that these areas should be allowed to follow the less-restrictive shutdown policies applicable to areas in compliance with the attainment demonstration requirements. Since these areas are not required by the 1990 Amendments to submit attainment demonstrations, it would be inconsistent with EPA's purposes in adopting the shutdown restrictions to treat these areas as if they had failed to make this demonstration. The RFP will be protected by the mandatory bump-up provisions applicable to marginal ozone areas and by the requirement that ozone nonattainment areas in the OTR continue to meet RFP milestones in order to qualify for this interim policy.

States may interpret their own regulations or, when necessary, make a State implementation plan (SIP) submittal in accordance with this policy. This policy statement is limited to ozone nonattainment areas and ozone attainment and unclassifiable

areas in the OTR. States may wish to seek relaxation of the policy for other pollutants. We will consider these requests on a case-by-case basis. It should be noted that at least some attainment demonstrations are in fact due.[2]

This guidance document does not supersede existing Federal or State regulations or approved SIP's. The policies set out in this memorandum and attachment are intended solely as guidance during the interim period as specified in this memorandum and do not represent final Agency action. This policy statement is not ripe for judicial review. Moreover, it is not intended, nor can it be relied upon, to create any rights enforceable by any party in litigation with the United States. Agency officials may decide to follow the guidance provided in this memorandum, or to act at variance with the guidance, based on an analysis of specific circumstances. The EPA also may change this guidance at any time without public notice. The EPA presently intends to address further the matters discussed in this document in its forthcoming NSR rulemaking regarding regulatory changes mandated by the 1990 Amendments and will take comment on this interpretation of the shutdown provisions in light of the 1990 Amendments as part of that rulemaking.

The Regional Offices should send this memorandum with the attachment to their States. Questions concerning specific issues and cases should be directed to the appropriate EPA Regional Office. Regional Office staff may contact Mr. David Solomon, Chief, New Source Review Section, at (919) 541-5375, if they have any questions.

Attachment

Addressees
Director, Air, Pesticides and Toxics, Regions I, IV and VI
Director, Air and Waste Management, Region II
Director, Air, Radiation and Toxics Division, Region III
Director, Air and Radiation Division, Region V
Director, Air and Toxics Division, Regions VII, VIII, IX and X

cc: Air Branch Chief, Regions I-X

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[2]For instance, attainment demonstrations in moderate carbon monoxide areas were due on November 15, 1992; attainment demonstrations for moderate PM-10 (particles with an aerodynamic diameter of less than or equal to a nominal 10 micrometers) areas were due on November 15, 1991.

Attachment

FULL DISCUSSION ON USE OF PRIOR SHUTDOWNS

In response to concerns regarding use of pre-application shutdowns that have arisen by virtue of the Clean Air Act Amendments of 1990 (1990 Amendments), the Office of Air Quality Planning and Standards has reviewed the policy on the use of prior shutdown credits. This policy, and the regulations in part 51, were revised in 1989 to allow for the use of prior shutdown credits for offset purposes in those areas having approved attainment demonstration plans [see 54 FR 27286 (June 28, 1989)]. The Agency, however, retained a restriction on the use of prior shutdown credits in areas without approved attainment demonstrations. All of these areas had failed to attain the national ambient air quality standards by the statutory deadline.

The 1990 Amendments created new deadlines and new control requirements which have dramatically changed the circumstances that shaped EPA's 1989 decision regarding the use of shutdown credits, such that a literal reading of the 1989 regulation would now be inconsistent with EPA's underlying policy in some circumstances. All nonattainment areas are subject to new attainment deadlines, and all ozone nonattainment areas classified as moderate and above are now required to submit new attainment demonstrations. Indeed, in ozone nonattainment areas, the 1990 Amendments impose a series of planning requirements and milestones to mark progress towards attainment. For instance, the amended Clean Air Act (Act) required States with moderate ozone nonattainment areas to submit revised control measures, revised new source review (NSR) rules, and a 1990 emissions inventory by November 15, 1992, and allows States until November 15, 1993 to submit additional control measures and an attainment demonstration plan that achieves at least a 15 percent reduction in volatile organic compounds (VOC) emissions. Serious and above ozone areas were required to submit numerous new or revised control measures, revised NSR rules, and a 1990 emissions inventory by November 15, 1992; additional control measures and a 15 percent reduction plan by November 15, 1993; and full attainment demonstration plans by November 15, 1994.

In 1983, EPA proposed to lift nearly all restrictions on the use of prior shutdown credits. In making that proposal, the Agency presumed that by the time it took final action on the proposal, areas would either have in place approved attainment demonstrations or be subject to a construction moratorium (see 54 FR 27292). However, by the time EPA took final action--some 6 years later--this proved not to be the case. Many States neither fully demonstrated attainment nor were subject to a

construction moratorium. Thus, in justifying the decision to continue restrictions on the use of prior shutdowns in areas without an attainment demonstration, EPA explained that "the nonattainment areas requiring but lacking attainment demonstrations . . . are at the center of EPA's current concern regarding the shutdown credit issue . . . " (Id.).

Specifically, EPA explained that the unrestricted use of shutdown credits would lead to offset transactions where there was no nexus between the decision to shut down the existing source or unit and the decision to construct new capacity. Instead, shutdowns that would occur regardless of any potential to sell the resulting emissions reduction would not be available for reasonable further progress (RFP), but instead would be used to accommodate additional emissions growth in the nonattainment area. In the face of a State's failure to adopt an attainment plan long past the statutory deadline for submitting an approvable plan, EPA determined that the unrestricted approach was inconsistent with the requirements of RFP. Accordingly, EPA retained its restrictive shutdown policy for such areas in order to guarantee to the extent possible that the new source would secure the offsetting reduction out of the area's existing emissions and thus assure RFP (Id. at 27293). On the other hand, where the State implementation plan (SIP) contained a demonstration of attainment--"and hence an independent assurance of RFP"--EPA would be satisfied with a "more attenuated link" between the shutdown and the new construction (Id.).

Another factor favoring retention of the narrow shutdown policy in areas needing but lacking approvable attainment demonstrations was EPA's intention at the time to impose substantial planning burdens on many States for their failure to meet the December 31, 1987 attainment date for ozone and carbon monoxide. At the time EPA published the 1989 shutdown regulations, it believed that many States would be facing the prospect of adopting severe measures to respond to EPA's finding that their present efforts at achieving RFP and attainment were substantially inadequate. Under those circumstances, EPA believed "that it would be inappropriate even to hold out the possibility that States could obtain approval at this time for expanded use of shutdown offset credits in areas with inadequate plans" (Id. at 27294). At a minimum, States would need an approved inventory so that EPA could verify the proposed use of a prior shutdown credit (Id.).

The 1990 Amendments changed this landscape dramatically. The Act as amended gives States new attainment deadlines and new dates for submitting attainment demonstrations.[1] No State can be said to have missed the overall attainment deadline or the date for submitting attainment demonstrations for ozone as required by the 1990 Amendments. Instead, States are in the process of developing new attainment demonstrations based on the specific planning requirements of the new provisions of the 1990 Amendments. As discussed, these provisions include not only specific emissions reduction strategies that must be implemented, but requirements that areas demonstrate periodically that the reductions are occurring and that specific progress towards attainment has been made. In addition, the "General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990" (General Preamble) [see 57 FR 13498 (April 16, 1992)] includes a specific methodology for reconciling prior shutdowns with the 1990 ozone inventory, and assures that these reductions must be taken into account when submitting the attainment demonstration and when showing compliance with the various RFP milestones (see General Preamble, pp. 13507-13509).[2]

In total, these provisions provide the "independent assurance of RFP" that EPA pointed to before as being necessary to allow generous use of prior shutdown credits. Of course, if a State misses any of the RFP milestones, the rationale for a more restrictive use of shutdown credits returns. For this reason, EPA's position is that use of pre-application shutdown credits as offsets can only be allowed where State submissions have met and continue to meet the statutory planning mandates and air quality improvement milestones. As described below, once a State fails to meet any of the milestones in its SIP or to meet a RFP benchmark, EPA cannot be assured that the safeguards in the Act guaranteeing proper progress towards attainment are sufficient, and the restriction on use of pre-application shutdowns and

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[1]Some areas subject to offset requirements (such as marginal ozone nonattainment areas and attainment areas in the ozone transport region) are not even required to submit attainment demonstrations.

[2]The increased offset ratios for VOC and nitrogen oxides in ozone nonattainment areas [see, e.g., § 182(a) - (e)] and the new requirement that all offsets be based on actual emissions reductions [§ 173(c)] provide further assurances that new source increases will in fact be counterbalanced by real reductions in actual emissions.

curtailments must automatically resume until the delinquent planning provisions are submitted.[3]

In ozone nonattainment areas, this means that the temporary lifting of the restrictions under this policy is subject to the following conditions as they apply and as they come due:

- The State has submitted a completed emissions inventory as required by § 182(a)(1);

- The State has submitted complete revisions to its NSR program as required by § 182(a)(2)(C);

- The State submits the 15 percent VOC reduction plan required by § 182(b)(1)(A) for moderate and above areas; and

- The State submits the attainment demonstration required by § 182(c)(2) for moderate and above areas.

Under this policy, if any of these submissions are delinquent, or if any of these submissions are deemed incomplete or disapproved, emissions reductions from shutdowns or curtailments can no longer be used for NSR offsets unless the criteria laid out in 40 CFR 51.165(a)(3)(ii)(C)(2) are met. Where there is an emissions reduction credit bank in place, banked credits from prior shutdowns or curtailments will be frozen until the State submits the delinquent SIP elements.

Furthermore, the emissions reductions represented by the shutdown or curtailment cannot be otherwise required by the Act, EPA regulations, or rules adopted by the State under the Act. In other words, the State cannot rely on emissions reductions credits in its overall attainment plan and rely on the same credits in the issuance of a NSR permit (i.e., no "double counting"). Consequently, where appropriate, emissions reductions from source shutdowns or curtailments must be discounted to reflect reasonably available control technology

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[3]In the General Savings Clause (§ 193), Congress required EPA to retain all regulations and other requirements in effect at the time of the passage of the Act, "except to the extent otherwise provided under this Act [or] inconsistent with any provisions of this Act." The EPA views the new deadlines for attainment and for the submittal of an attainment demonstration as creating sufficient inconsistencies to justify changing--during the short interim period until the date EPA acts on an attainment demonstration that is due--its pre-enactment position on shutdowns. This is especially true in the few nonattainment areas that are no longer subject to the attainment demonstration requirement and can never qualify for the more relaxed shutdown policy under the existing regulations.

(RACT), new source performance standards, or any other Act requirement applicable to the source or reasonably foreseeable at the time of the use of the emissions reductions as offsets. For example, a State may have already developed RACT rules that would require compliance by a source in 1995. Any reductions at the source that would be necessary to meet the upcoming RACT requirement would need to be excluded in computing the offsets that would be available by a complete shutdown of the source.

It is possible that, during review of a permit application that uses emissions reductions from prior shutdowns or curtailments as offsets as allowed under this policy, a State may become delinquent in meeting the planning provisions outlined above. At such time as a State becomes delinquent, the restrictions for offsets are automatically restored. However, in such cases, States may allow offsets to remain creditable if the permit application was complete (as determined in writing by the reviewing authority) before the State became delinquent. Alternatively, States may use a later point in the permitting process for determining if these offsets are creditable.

EXHIBIT 2

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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

RESPONDENT'S RESPONSES TO INTERVENORS' 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 Intervenors, NATURAL RESOURCES DEFENSE COUNCIL, INC. and SIERRA CLUB, 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 Intervenors.

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 Intervenors' Requests to Admit ("Requests"), as appropriate.

2. Respondent objects to the Requests to the extent that Intervenors seek 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 by 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 TO ADMIT

Request 1:

Admit that the chart attached as Exhibit 1 reflects the emissions from the Facility included in the IEPA 2002 Base Year Inventory for the Chicago Nonattainment area.

ANSWER:

Admit.

Request 2:

Admit that the chart attached as Exhibit 2 reflects emissions from the Facility included in the IEPA 2002 Emission Inventory.

ANSWER:

Admit.

Request 3:

Admit that the chart attached as Exhibit 3 reflects emissions from the Facility included in the IEPA 2005 Emission Inventory.

ANSWER:

Admit.

Request 4:

Admit that the chart attached as Exhibit 4 reflects the last date on which emissions from various emission units at the Facility were included in IEPA's Emission Inventory.

ANSWER:

Admit.

Request 5:

Admit the 2002 and 2005 Base Year Inventories, and the 2002, 2005, and 2008 Emission Inventories, do not contain any accounting for, or listing of, PM2.5 emissions from the Facility (non-surrogate per the definition above).

ANSWER:

Respondent objects to this Request as being ambiguous. Subject to that objection, Respondent admits that the 2002 and 2005 Base Year Inventories, and the 2002, 2005, and 2008 Emission Inventories do not contain any accounting for, or listing of, surrogate PM2.5 emissions from the Facility.

Request 6:

Admit that IEPA has not included emissions of PM, PM10, PM2.5, VOM, or NO_x from the Facility in its projected Emissions Inventory used to develop an Attainment Demonstration for the Chicago Nonattainment Area.

ANSWER:

Admit.

Request 7:

Admit that 2002 is the base year for the PM2.5 attainment planning process, and that 2002 and 2005 are the base years for the 8-hour ozone attainment planning process.

ANSWER:

Admit.

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
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Chicago, Illinois 60602
Tel: (312) 814-0660

EXHIBIT 3

ILLINOIS POLLUTION CONTROL BOARD

CHICAGO COKE COMPANY, Petitioner, v. ILLINOIS ENVIRONMENTAL PROTECTION AGENCY, Respondents. and NATURAL RESOURCES DEFENSE COUNCIL, INC., and SIERRA CLUB Intervenor-Defendants.	)	PCB 10-75 (Permit Appeal - Air)

INTERVENOR-DEFENDANTS' INTERROGATORIES, REQUESTS FOR PRODUCTION AND REQUESTS TO ADMIT TO ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

Come the Intervenor-Defendants, Natural Resources Defense Council, Inc. and Sierra Club, by and through counsel, and propound the following Interrogatories and Requests to Admit upon the Illinois Environmental Protection Agency.

Respondent shall answer the following Interrogatories and Request for Production of Documents in writing, under oath, on or before August 31, 2011. These Requests to Admit, Interrogatories and Request for Production of Documents are continuing in nature so as to require supplementary responses if the Respondent obtains further or different information prior to trial. The documents shall be produced at the offices of Natural Resources Defense Council, 2 North Riverside Plaza, Suite 2250, Chicago, IL 60606.

DEFINITIONS AND INSTRUCTIONS

1. The term "Facility" means the coke production facility located at 11400 South Burley Avenue, Chicago, Illinois, owned by Petitioner and identified in ¶ 1 of the Petition.

2. The term "PM" means particulate matter.

3. The term "PM10" means particulate matter of less than or equal to 10 micrometers in diameter

4. The term "PM2.5" means particulate matter of less than or equal to 2.5 micrometers in diameter; but the term shall not be interpreted to refer to PM10 emissions used as a surrogate for PM2.5 emissions.

5. The term "NO_x" means nitrogen oxides.

6. The term "VOM" means volatile organic materials.

7. The "Chicago Nonattainment Area" means the area encompassing, *inter alia*, Chicago that is currently designated by the United States Environmental Protection Agency as being in non-attainment under the Clean Air Act for the applicable 8-hour ozone standard and the PM2.5 standard; but the term shall not be interpreted to refer to any other non-attainment designations concerning other pollutants.

8. The term "Attainment Demonstration" shall mean the showing required for a revised designation pursuant to Clean Air Act § 107(d)(3), 42 U.S.C. § 7407(d)(3).

9. The term "Emission Inventory" means the listing of information on the location, type of source, type and quantity of pollutants emitted by sources in Illinois maintained by IEPA and used in connection with, *inter alia,* Clean Air Act SIP planning and attainment demonstrations.

10. The term “Base Year Inventory” means the Emissions Inventory for the base year of the State Implementation Plan (“SIP”) planning process in connection with the Chicago Nonattainment Area designation.

11. “You” and “IEPA” refer to the Illinois Environmental Protection Agency and all of its agents, employees, officers and contractors.

12. In order to bring within the scope of these interrogatories all conceivably relevant information which might otherwise be construed to be outside their scope: (a) the singular of each word shall be construed to include its plural and vice versa; (b) "and" as well as “or” shall be construed both conjunctively as well as disjunctively; (c) “each” shall be construed to include “every” and vice versa; (d) “any” shall be construed to include “all” and vice versa; (e) the present tense shall be construed to include the past tense and vice versa; and (f) the masculine shall be construed to include the feminine and vice versa.

13. When an Interrogatory asks for the description or identification of a document, it is intended that the answer shall state the following information with respect to each such document:

(a) Title;

(b) Date;

(c) Author(s);

(d) Addressee(s);

(e) Recipient(s) of original or copy;

(f) File Number of other identifying mark or code;

(g) Nature and subject matter of the document;

(h) Number of pages;

(i) Identification of attachments; and

(j) Location by room, building, and address, or if lost or no longer in existence, the last known location and custodian and the circumstances of the loss or destruction.

14. Wherever the response to an Interrogatory consists of a statement that the requested information is available to the Petitioners in the administrative record, the response shall include a detailed citation to the administrative record document where the information can be found. This citation shall include the title of the document, relevant page number(s), and to the extent possible paragraph number(s) and/or chart/table/figure number(s).

15. Whenever a document is produced in response to an Interrogatory or Request for Production of Documents, it shall be identified or labeled with the Interrogatory number or Request for Production of Documents number to which it is a response.

16. If any document is withheld under a claim of privilege, please furnish a list which identifies each document for which the privilege is claimed, including the following information:

(a) The date of the document;

(b) The sender(s);

(c) The recipient(s);

(d) The person(s) to whom copies were furnished, along with their job title or position;

(e) The subject matter of the document;

(f) The basis on which the privilege is claimed; and

(g) The Interrogatory or Request for Production of Documents to which said document responds.

17. These discovery requests shall be deemed continuing in nature.

18. The term “document” as used herein shall be used in its broadest sense and shall mean and include all handwritten, printed, typed, recorded, computer-generated and/or graphic matter of every kind and description, and includes all copies, drafts, proofs, both originals and copies either (1) in the possession, custody or control of Respondents regardless of where located, or (2) produced or generated by, known to or seen by Respondents, but not now in their possession, custody or control, regardless of where located whether or not still in existence.

Such “documents” shall include, but are not limited to, applications, permits, monitoring reports, computer printouts, contracts, leases, agreements, papers, photographs, tape recordings, transcripts, letters or other forms of correspondence, folders or similar containers, programs, telex, TWX and other teletype communications, memoranda, reports, studies, summaries, minutes, minute books, circulars, notes (whether typewritten, handwritten or otherwise), agenda, bulletins, notices, announcements, instructions, charts, tables, manuals, brochures, magazines, pamphlets, lists, logs, telegrams, drawings, sketches, plans, specifications, diagrams, drafts, books and records, formal records, notebooks, diaries, registers, analyses, projections, email correspondence or communications and other data compilations from which information can be obtained (including matter used in data processing) or translated, and any other printed, written, recorded, stenographic, computer-generated, computer-stored, or electronically stored matter, however and by whomever produced, prepared, reproduced, disseminated or made.

Without limitation, the term “control” as used in the preceding paragraph means that a document is deemed to be in your control if you have the right to secure the document or a copy thereof from another person or public or private entity having actual possession thereof. If a document is responsive to a request, but is not in your possession or custody, identify the person

with possession or custody. If any document was in your possession or subject to your control, and is no longer, state what disposition was made of it, by whom, the date on which such disposition was made, and why such disposition was made.

In the interest of efficiency during discovery and the hearing process, all documents produced shall be bates stamped by the Respondent.

For purposes of the production of "documents," the term shall include copies of all documents being produced, to the extent the copies are not identical to the original, thus requiring the production of copies that contain any markings, additions or deletions that make them different in any way from the original.

19. In the event any document referred to in any Interrogatory or Request for Production of Documents is not in your possession, custody or control, specify what disposition was made of said document and identify the person currently having possession, custody or control of the document.

20. In the event that any document referred to in response to any Interrogatory or Request for Production of Documents has been destroyed, specify the date and the manner of such destruction, the reason for such destruction, the person authorizing the destruction and the custodian of the document at the time of its destruction.

Requests to Admit

1. Admit that the chart attached as Exhibit 1 reflects the emissions from the Facility included in the IEPA 2002 Base Year Inventory for the Chicago Nonattainment area.

2. Admit that the chart attached as Exhibit 2 reflects emissions from the Facility included in the IEPA 2002 Emission Inventory.

3. Admit that the chart attached as Exhibit 3 reflects emissions from the Facility included in the IEPA 2005 Emission Inventory.

4. Admit that the chart attached as Exhibit 4 reflects the last date on which emissions from various emission units at the Facility were included in IEPA's Emission Inventory.

5. Admit that the 2002 and 2005 Base Year Inventories, and the 2002, 2005, and 2008 Emission Inventories, do not contain any accounting for, or listing of, PM2.5 emissions from the Facility (non-surrogate per the definition above).

6. Admit that IEPA has not included emissions of PM, PM10, PM2.5, VOM, or NO_x from the Facility in its projected Emissions Inventory used to develop an Attainment Demonstration for the Chicago Nonattainment Area.

7. Admit that 2002 is the base year for the PM2.5 attainment planning process, and that 2002 and 2005 are the base years for the 8-hour ozone attainment planning process.

Interrogatories

1. To the extent the response to any Request to Admit set forth above is other than an unqualified admission, state in detail the basis for such response, and produce all documents that support such response.

2. To the extent the response to Request to Admit No. 1 above is other than an unqualified admission, set forth the emissions from the Facility of PM, PM10, PM2.5, VOM, and NO_x contained in the IEPA 2002 Base Year Inventory.

3. To the extent the response to Request to Admit No.2 above is other than an unqualified admission, set forth the emissions from the Facility of PM, PM10, PM2.5, VOM, and NO_x contained in the IEPA 2002 Emission Inventory.

4. To the extent the response to Request to Admit No. 3 above is other than an unqualified admission, set forth the emissions of PM, PM10, PM2.5, VOM, and NO_x from the Facility contained in the IEPA 2005 Emission Inventory.

5. To the extent the response to Request to Admit No. 4 above is other than an unqualified admission, set forth the last date on which emissions of PM, PM10, PM2.5, VOM, and NO_x from the Facility were included in IEPA's Emission Inventory.

6. To the extent the response to Request to Admit No. 5 above is other than an unqualified admission, identify the precise location within the Base Year Inventory and/or Emission Inventory that contain any accounting for, or listing of, PM2.5 emissions from the Facility.

7. To the extent the response to Request to Admit No. 6 above is other than an unqualified admission, identify each document reflecting inclusion of the specified emissions in the projected Emissions Inventory used to develop an Attainment Demonstration for the Chicago Nonattainment Area, and identify the precise location in each such document reflecting such inclusion.

8. To the extent the response to Request to Admit No. 7 above is other than an unqualified admission, specify the base year(s) for the PM2.5 attainment planning process and the 8-hour ozone attainment planning process.

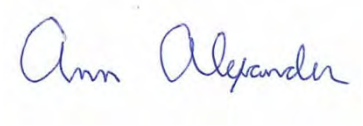
9. Specify the emissions from the Facility of PM, PM10, PM2.5, VOM, and NO_x, if any, that were included in the IEPA 2005 Base Year Inventory, and identify all documents reflecting such emissions.

Request for Production

1. Produce all documents identified in response to Interrogatory No. 1 above.

2. Produce all documents identified in response to Interrogatory No. 7 above.

3. Produce all documents identified in response to Interrogatory No. 9 above



By:

_____

Ann Alexander, Natural Resources Defense Council

Dated: July 18, 2011

Ann Alexander
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Natural Resources Defense Council
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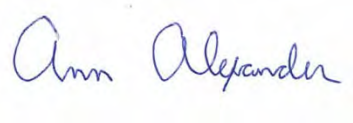
312-234-9633 (fax)

COUNSEL TO INTERVENOR-DEFENDANTS NRDC AND SIERRA CLUB

CERTIFICATE OF SERVICE

I, Ann Alexander, the undersigned attorney, hereby certify that I have served the attached **Intervenor-Defendants' Interrogatories, Requests for Production and Requests to Admit to Illinois Environmental Protection Agency** on all parties of record (Service List attached), by depositing said documents in the United States Mail, postage prepaid, from 227 W. Monroe, Chicago, IL 60606, before the hour of 5:00 p.m., on this 18th Day of July, 2011.



_____

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EXHIBIT 1

tblPointEM 7/7/2011

Recor	StateCo	State Facility Ide	Emission	Proce	Pollutant Cc	Emission Relea	Start Date	End Date	Emission Numeric Value	Emission Unit N
EM	17031	031600AMC	0090	01	CO	0070	20020101	20021231	6.02	TON
EM	17031	031600AMC	0090	01	NH3	0070	20020101	20021231	0.39	TON
EM	17031	031600AMC	0090	01	NOX	0070	20020101	20021231	20.09	TON
EM	17031	031600AMC	0090	01	NOX	0070	20020601	20020831	0	TON
EM	17031	031600AMC	0090	01	PM10-PRI	0070	20020101	20021231	0.54	TON
EM	17031	031600AMC	0090	01	PM25-PRI	0070	20020101	20021231	0.54	TON
EM	17031	031600AMC	0090	01	SO2	0070	20020101	20021231	0.04	TON
EM	17031	031600AMC	0090	02	NOX	0070	20020101	20021231	0.00667	TON
EM	17031	031600AMC	0090	02	NOX	0070	20020601	20020831	2	TON
EM	17031	031600AMC	0090	02	PM10-PRI	0070	20020101	20021231	0.00055	TON
EM	17031	031600AMC	0090	02	SO2	0070	20020101	20021231	0.00341	TON
EM	17031	031600AMC	0091	01	NOX	0071	20020101	20021231	8.82	TON
EM	17031	031600AMC	0091	01	NOX	0071	20020601	20020831	0	TON
EM	17031	031600AMC	0091	02	CO	0071	20020101	20021231	31.42	TON
EM	17031	031600AMC	0091	02	CO	0071	20020601	20020831	0.086	TON
EM	17031	031600AMC	0091	02	NOX	0071	20020101	20021231	119.36	TON
EM	17031	031600AMC	0091	02	NOX	0071	20020601	20020831	5.24	TON
EM	17031	031600AMC	0091	02	PM10-PRI	0071	20020101	20021231	9.25	TON
EM	17031	031600AMC	0091	02	SO2	0071	20020101	20021231	61.91	TON
EM	17031	031600AMC	0091	02	VOC	0071	20020101	20021231	1.79	TON
EM	17031	031600AMC	0091	02	VOC	0071	20020601	20020831	0.00211	TON
EM	17031	031600AMC	0094	01	CO	0074	20020101	20021231	0.0038	TON
EM	17031	031600AMC	0094	01	NH3	0074	20020101	20021231	0.00576	TON
EM	17031	031600AMC	0094	01	NOX	0074	20020101	20021231	0.00173	TON
EM	17031	031600AMC	0094	01	NOX	0074	20020601	20020831	0.51	TON
EM	17031	031600AMC	0094	01	PM10-PRI	0074	20020101	20021231	28.68	TON
EM	17031	031600AMC	0094	01	SO2	0074	20020101	20021231	61.91	TON
EM	17031	031600AMC	0094	01	VOC	0074	20020101	20021231	9.55	TON
EM	17031	031600AMC	0094	01	VOC	0074	20020601	20020831	0.00889	TON
EM	17031	031600AMC	0095	01	NOX	0075	20020101	20021231	0.03	TON

tblPointEM 7/7/2011

Recor	StateCo	State Facility Ide	Emission	Proce	Pollutant Cc	Emission Relea	Start Date	End Date	Emission Numeric Value	Emission Unit N
EM	17031	031600AMC	0095	01	NOX	0075	20020601	20020831	10.39	TON
EM	17031	031600AMC	0095	01	PM10-PRI	0075	20020101	20021231	21.33	TON
EM	17031	031600AMC	0095	01	VOC	0075	20020101	20021231	0.00109	TON
EM	17031	031600AMC	0095	01	VOC	0075	20020601	20020831	0.00878	TON
EM	17031	031600AMC	0096	01	CO	0076	20020101	20021231	0.00163	TON
EM	17031	031600AMC	0096	01	NH3	0076	20020101	20021231	0.00346	TON
EM	17031	031600AMC	0096	01	NOX	0076	20020101	20021231	0.00058	TON
EM	17031	031600AMC	0096	01	NOX	0076	20020601	20020831	0.17	TON
EM	17031	031600AMC	0096	01	PM10-PRI	0076	20020101	20021231	0.00152	TON
EM	17031	031600AMC	0096	01	VOC	0076	20020101	20021231	0.00432	TON
EM	17031	031600AMC	0096	01	VOC	0076	20020601	20020831	0.03	TON
EM	17031	031600AMC	0097	01	CO	0077	20020101	20021231	1149.62	TON
EM	17031	031600AMC	0097	01	CO	0077	20020601	20020831	3.16	TON
EM	17031	031600AMC	0097	01	NOX	0077	20020101	20021231	758.35	TON
EM	17031	031600AMC	0097	01	NOX	0077	20020601	20020831	2.08	TON
EM	17031	031600AMC	0097	01	PM10-PRI	0077	20020101	20021231	19.36	TON
EM	17031	031600AMC	0097	01	SO2	0077	20020101	20021231	74.02	TON
EM	17031	031600AMC	0097	01	VOC	0077	20020101	20021231	15.72	TON
EM	17031	031600AMC	0097	01	VOC	0077	20020601	20020831	0.043	TON
EM	17031	031600AMC	0099	01	PM10-PRI	0078	20020101	20021231	0.92	TON
EM	17031	031600AMC	0116	01	CO	0070	20020101	20021231	0.00005	TON
EM	17031	031600AMC	0116	01	NH3	0070	20020101	20021231	0.00002	TON
EM	17031	031600AMC	0116	01	NOX	0070	20020101	20021231	0.00066	TON
EM	17031	031600AMC	0116	01	NOX	0070	20020601	20020831	0.26	TON
EM	17031	031600AMC	0116	01	PM10-PRI	0070	20020101	20021231	0	TON
EM	17031	031600AMC	0116	01	PM25-PRI	0070	20020101	20021231	0	TON
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EM	17031	031600AMC	0116	01	VOC	0070	20020101	20021231	0	TON
EM	17031	031600AMC	0116	01	VOC	0070	20020601	20020831	0.00002	TON
EM	17031	031600AMC	0116	02	CO	0070	20020101	20021231	0.00131	TON

tblPointEM 7/7/2011

Recor	StateCo	State Facility Ide	Emission	Proce	Pollutant Cc	Emission Relea	Start Date	End Date	Emission Numeric Value	Emission Unit N
EM	17031	031600AMC	0116	02	NOX	0070	20020101	20021231	0.00569	TON
EM	17031	031600AMC	0116	02	NOX	0070	20020601	20020831	2.32	TON
EM	17031	031600AMC	0116	02	PM10-PRI	0070	20020101	20021231	1.43	TON
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EM	17031	031600AMC	0116	02	VOC	0070	20020101	20021231	0.00009	TON
EM	17031	031600AMC	0116	02	VOC	0070	20020601	20020831	0.00093	TON
EM	17031	031600AMC	0117	01	CO	0070	20020101	20021231	0.00005	TON
EM	17031	031600AMC	0117	01	NH3	0070	20020101	20021231	0.00002	TON
EM	17031	031600AMC	0117	01	NOX	0070	20020101	20021231	0.00062	TON
EM	17031	031600AMC	0117	01	NOX	0070	20020601	20020831	0.11	TON
EM	17031	031600AMC	0117	01	PM10-PRI	0070	20020101	20021231	0.27	TON
EM	17031	031600AMC	0117	01	PM25-PRI	0070	20020101	20021231	0	TON
EM	17031	031600AMC	0117	01	SO2	0070	20020101	20021231	0	TON
EM	17031	031600AMC	0117	01	VOC	0070	20020101	20021231	0	TON
EM	17031	031600AMC	0117	01	VOC	0070	20020601	20020831	0.00001	TON
EM	17031	031600AMC	0117	02	CO	0070	20020101	20021231	0.00114	TON
EM	17031	031600AMC	0117	02	NOX	0070	20020101	20021231	0.00497	TON
EM	17031	031600AMC	0117	02	NOX	0070	20020601	20020831	0.95	TON
EM	17031	031600AMC	0117	02	PM10-PRI	0070	20020101	20021231	2.61	TON
EM	17031	031600AMC	0117	02	SO2	0070	20020101	20021231	7.74	TON
EM	17031	031600AMC	0117	02	VOC	0070	20020101	20021231	0.00008	TON
EM	17031	031600AMC	0117	02	VOC	0070	20020601	20020831	0.00039	TON
EM	17031	031600AMC	0126	01	SO2	0091	20020101	20021231	0.00001	TON
EM	17031	031600AMC	0129	01	CO	0081	20020101	20021231	0.00001	TON
EM	17031	031600AMC	0129	01	NOX	0081	20020101	20021231	0	TON
EM	17031	031600AMC	0129	01	NOX	0081	20020601	20020831	0.00006	TON
EM	17031	031600AMC	0129	01	VOC	0081	20020101	20021231	0.00002	TON
EM	17031	031600AMC	0129	01	VOC	0081	20020601	20020831	0.00015	TON
EM	17031	031600AMC	0129	02	CO	0080	20020101	20021231	0.00002	TON
EM	17031	031600AMC	0129	02	NOX	0080	20020101	20021231	0	TON

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Recor	StateCo	State Facility Ide	Emission	Proce	Pollutant Cc	Emission Relea	Start Date	End Date	Emission Numeric Value	Emission Unit N
EM	17031	031600AMC	0129	02	NOX	0080	20020601	20020831	0.00026	TON
EM	17031	031600AMC	0129	02	VOC	0080	20020101	20021231	1.13	TON
EM	17031	031600AMC	0129	02	VOC	0080	20020601	20020831	0.00046	TON
EM	17031	031600AMC	0131	01	PM10-PRI	0084	20020101	20021231	0.78	TON
EM	17031	031600AMC	0131	02	PM10-PRI	0083	20020101	20021231	5.96	TON
EM	17031	031600AMC	0131	03	PM10-PRI	0085	20020101	20021231	0.88	TON
EM	17031	031600AMC	0131	05	PM10-PRI	0072	20020101	20021231	25.66	TON
EM	17031	031600AMC	0131	06	PM10-PRI	0095	20020101	20021231	6.46	TON
EM	17031	031600AMC	0131	07	PM10-PRI	0096	20020101	20021231	0.36	TON
EM	17031	031600AMC	0131	08	PM10-PRI	0097	20020101	20021231	8.3	TON
EM	17031	031600AMC	0131	09	PM10-PRI	0098	20020101	20021231	0.8	TON
EM	17031	031600AMC	0132	01	CO	0100	20020101	20021231	0.00074	TON
EM	17031	031600AMC	0132	01	NOX	0100	20020101	20021231	0.00322	TON
EM	17031	031600AMC	0132	01	NOX	0100	20020601	20020831	1.04	TON
EM	17031	031600AMC	0132	01	PM10-PRI	0100	20020101	20021231	2.06	TON
EM	17031	031600AMC	0132	01	SO2	0100	20020101	20021231	14.37	TON
EM	17031	031600AMC	0132	01	VOC	0100	20020101	20021231	0.00005	TON
EM	17031	031600AMC	0132	01	VOC	0100	20020601	20020831	0.00042	TON

EXHIBIT 2

tblPointEM 7/11/2011

Recor	StateCo	State Facility Ide	Emission	Proce	Pollutant Cc	Emission Relea	Start Date	End Date	Emission Numer	Emission Unit N
EM	17031	031600AMC	0090	01	107028	0070	20020101	20021231	3.22548	LB
EM	17031	031600AMC	0090	01	108883	0070	20020101	20021231	0.59442	LB
EM	17031	031600AMC	0090	01	110543	0070	20020101	20021231	314.6904	LB
EM	17031	031600AMC	0090	01	120127	0070	20020101	20021231	0.00042	LB
EM	17031	031600AMC	0090	01	129000	0070	20020101	20021231	0.00087	LB
EM	17031	031600AMC	0090	01	191242	0070	20020101	20021231	0.00021	LB
EM	17031	031600AMC	0090	01	193395	0070	20020101	20021231	0.00031	LB
EM	17031	031600AMC	0090	01	205992	0070	20020101	20021231	0.00031	LB
EM	17031	031600AMC	0090	01	206440	0070	20020101	20021231	0.00052	LB
EM	17031	031600AMC	0090	01	207089	0070	20020101	20021231	0.00031	LB
EM	17031	031600AMC	0090	01	208968	0070	20020101	20021231	0.00031	LB
EM	17031	031600AMC	0090	01	218019	0070	20020101	20021231	0.00031	LB
EM	17031	031600AMC	0090	01	50000	0070	20020101	20021231	13.1121	LB
EM	17031	031600AMC	0090	01	50328	0070	20020101	20021231	0.00021	LB
EM	17031	031600AMC	0090	01	53703	0070	20020101	20021231	0.00021	LB
EM	17031	031600AMC	0090	01	56553	0070	20020101	20021231	0.00031	LB
EM	17031	031600AMC	0090	01	71432	0070	20020101	20021231	0.36714	LB
EM	17031	031600AMC	0090	01	7439921	0070	20020101	20021231	0.08741	LB
EM	17031	031600AMC	0090	01	7439965	0070	20020101	20021231	0.06643	LB
EM	17031	031600AMC	0090	01	7439976	0070	20020101	20021231	0.04546	LB
EM	17031	031600AMC	0090	01	7440020	0070	20020101	20021231	0.36714	LB
EM	17031	031600AMC	0090	01	7440382	0070	20020101	20021231	0.03497	LB
EM	17031	031600AMC	0090	01	7440417	0070	20020101	20021231	0.0021	LB
EM	17031	031600AMC	0090	01	7440439	0070	20020101	20021231	0.19231	LB
EM	17031	031600AMC	0090	01	7440473	0070	20020101	20021231	0.24476	LB
EM	17031	031600AMC	0090	01	7440484	0070	20020101	20021231	0.01469	LB
EM	17031	031600AMC	0090	01	75070	0070	20020101	20021231	2.72374	LB
EM	17031	031600AMC	0090	01	7782492	0070	20020101	20021231	0.0042	LB
EM	17031	031600AMC	0090	01	83329	0070	20020101	20021231	0.00031	LB
EM	17031	031600AMC	0090	01	85018	0070	20020101	20021231	0.00297	LB

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Recor	StateCo	State Facility Ide	Emission	Proce	Pollutant Cc	Emission Relea	Start Date	End Date	Emission Numer	Emission Unit N
EM	17031	031600AMC	0090	01	86737	0070	20020101	20021231	0.00049	LB
EM	17031	031600AMC	0090	01	91203	0070	20020101	20021231	0.10665	LB
EM	17031	031600AMC	0090	01	CO	0070	20020101	20021231	6.02	TON
EM	17031	031600AMC	0090	01	NH3	0070	20020101	20021231	0.39	TON
EM	17031	031600AMC	0090	01	PM10-PRI	0070	20020101	20021231	0.54	TON
EM	17031	031600AMC	0090	01	PM25-PRI	0070	20020101	20021231	0.54	TON
EM	17031	031600AMC	0090	01	PM-PRI	0070	20020101	20021231	0.05	TON
EM	17031	031600AMC	0090	01	SO2	0070	20020101	20021231	0.04	TON
EM	17031	031600AMC	0090	02	NOX	0070	20020101	20021231	0.00667	TON
EM	17031	031600AMC	0090	02	NOX	0070	20020601	20020831	2	TON
EM	17031	031600AMC	0090	02	PM10-PRI	0070	20020101	20021231	0.00055	TON
EM	17031	031600AMC	0090	02	PM-PRI	0070	20020101	20021231	0.00078	TON
EM	17031	031600AMC	0090	02	SO2	0070	20020101	20021231	0.00341	TON
EM	17031	031600AMC	0091	01	107028	0071	20020101	20021231	2.63466	LB
EM	17031	031600AMC	0091	01	108883	0071	20020101	20021231	0.48552	LB
EM	17031	031600AMC	0091	01	110543	0071	20020101	20021231	257.04	LB
EM	17031	031600AMC	0091	01	120127	0071	20020101	20021231	0.00034	LB
EM	17031	031600AMC	0091	01	129000	0071	20020101	20021231	0.00071	LB
EM	17031	031600AMC	0091	01	191242	0071	20020101	20021231	0.00017	LB
EM	17031	031600AMC	0091	01	193395	0071	20020101	20021231	0.00026	LB
EM	17031	031600AMC	0091	01	205992	0071	20020101	20021231	0.00026	LB
EM	17031	031600AMC	0091	01	206440	0071	20020101	20021231	0.00043	LB
EM	17031	031600AMC	0091	01	207089	0071	20020101	20021231	0.00026	LB
EM	17031	031600AMC	0091	01	208968	0071	20020101	20021231	0.00026	LB
EM	17031	031600AMC	0091	01	218019	0071	20020101	20021231	0.00026	LB
EM	17031	031600AMC	0091	01	50000	0071	20020101	20021231	10.71	LB
EM	17031	031600AMC	0091	01	50328	0071	20020101	20021231	0.00017	LB
EM	17031	031600AMC	0091	01	53703	0071	20020101	20021231	0.00017	LB
EM	17031	031600AMC	0091	01	56553	0071	20020101	20021231	0.00026	LB
EM	17031	031600AMC	0091	01	71432	0071	20020101	20021231	0.29988	LB

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Recor	StateCo	State Facility Ide	Emission	Proce	Pollutant Cc	Emission Relea	Start Date	End Date	Emission Numer	Emission Unit N
EM	17031	031600AMC	0091	01	7439921	0071	20020101	20021231	0.0714	LB
EM	17031	031600AMC	0091	01	7439965	0071	20020101	20021231	0.05426	LB
EM	17031	031600AMC	0091	01	7439976	0071	20020101	20021231	0.03713	LB
EM	17031	031600AMC	0091	01	7440020	0071	20020101	20021231	0.29988	LB
EM	17031	031600AMC	0091	01	7440382	0071	20020101	20021231	0.02856	LB
EM	17031	031600AMC	0091	01	7440417	0071	20020101	20021231	0.00171	LB
EM	17031	031600AMC	0091	01	7440439	0071	20020101	20021231	0.15708	LB
EM	17031	031600AMC	0091	01	7440473	0071	20020101	20021231	0.19992	LB
EM	17031	031600AMC	0091	01	7440484	0071	20020101	20021231	0.012	LB
EM	17031	031600AMC	0091	01	75070	0071	20020101	20021231	2.22482	LB
EM	17031	031600AMC	0091	01	7782492	0071	20020101	20021231	0.00343	LB
EM	17031	031600AMC	0091	01	83329	0071	20020101	20021231	0.00026	LB
EM	17031	031600AMC	0091	01	85018	0071	20020101	20021231	0.00243	LB
EM	17031	031600AMC	0091	01	86737	0071	20020101	20021231	0.0004	LB
EM	17031	031600AMC	0091	01	91203	0071	20020101	20021231	0.08711	LB
EM	17031	031600AMC	0091	02	CO	0071	20020101	20021231	0.00386	TON
EM	17031	031600AMC	0091	02	NOX	0071	20020601	20020831	5.24	TON
EM	17031	031600AMC	0091	02	NOX	0071	20020101	20021231	0.01	TON
EM	17031	031600AMC	0091	02	PM10-PRI	0071	20020101	20021231	0.0013	TON
EM	17031	031600AMC	0091	02	PM-PRI	0071	20020101	20021231	0.0013	TON
EM	17031	031600AMC	0091	02	SO2	0071	20020101	20021231	0.03	TON
EM	17031	031600AMC	0091	02	VOC	0071	20020101	20021231	0.00025	TON
EM	17031	031600AMC	0091	02	VOC	0071	20020601	20020831	0.00211	TON
EM	17031	031600AMC	0094	01	50328	0074	20020101	20021231	0.00152	LB
EM	17031	031600AMC	0094	01	CO	0074	20020101	20021231	0.0038	TON
EM	17031	031600AMC	0094	01	NH3	0074	20020101	20021231	0.00576	TON
EM	17031	031600AMC	0094	01	NOX	0074	20020101	20021231	0.00173	TON
EM	17031	031600AMC	0094	01	NOX	0074	20020601	20020831	0.51	TON
EM	17031	031600AMC	0094	01	PM10-PRI	0074	20020101	20021231	0.00228	TON
EM	17031	031600AMC	0094	01	PM-PRI	0074	20020101	20021231	0.00527	TON

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Recor	StateCo	State Facility Ide	Emission	Proce	Pollutant Cc	Emission Relea	Start Date	End Date	Emission Numer	Emission Unit N
EM	17031	031600AMC	0094	01	VOC	0074	20020601	20020831	0.00889	TON
EM	17031	031600AMC	0094	01	VOC	0074	20020101	20021231	0.0011	TON
EM	17031	031600AMC	0095	01	50328	0075	20020101	20021231	0.00196	LB
EM	17031	031600AMC	0095	01	NOX	0075	20020101	20021231	0.03	TON
EM	17031	031600AMC	0095	01	NOX	0075	20020601	20020831	10.39	TON
EM	17031	031600AMC	0095	01	PM10-PRI	0075	20020101	20021231	0.00232	TON
EM	17031	031600AMC	0095	01	PM-PRI	0075	20020101	20021231	0.00813	TON
EM	17031	031600AMC	0095	01	VOC	0075	20020101	20021231	0.00109	TON
EM	17031	031600AMC	0095	01	VOC	0075	20020601	20020831	0.00878	TON
EM	17031	031600AMC	0096	01	140	0076	20020101	20021231	1.49771	LB
EM	17031	031600AMC	0096	01	50328	0076	20020101	20021231	0.0006	LB
EM	17031	031600AMC	0096	01	CO	0076	20020101	20021231	0.00163	TON
EM	17031	031600AMC	0096	01	NH3	0076	20020101	20021231	0.00346	TON
EM	17031	031600AMC	0096	01	NOX	0076	20020601	20020831	0.17	TON
EM	17031	031600AMC	0096	01	NOX	0076	20020101	20021231	0.00058	TON
EM	17031	031600AMC	0096	01	PM10-PRI	0076	20020101	20021231	0.00152	TON
EM	17031	031600AMC	0096	01	PM-PRI	0076	20020101	20021231	0.00146	TON
EM	17031	031600AMC	0096	01	VOC	0076	20020601	20020831	0.03	TON
EM	17031	031600AMC	0096	01	VOC	0076	20020101	20021231	0.00432	TON
EM	17031	031600AMC	0099	01	PM10-PRI	0078	20020101	20021231	0.0003	TON
EM	17031	031600AMC	0099	01	PM-PRI	0078	20020101	20021231	0.00055	TON
EM	17031	031600AMC	0107	01	PM-PRI	0082	20020101	20021231	0.08	TON
EM	17031	031600AMC	0115	01	PM-PRI	0082	20020101	20021231	0.01	TON
EM	17031	031600AMC	0116	01	107028	0070	20020101	20021231	0.00004	LB
EM	17031	031600AMC	0116	01	108883	0070	20020101	20021231	0.00001	LB
EM	17031	031600AMC	0116	01	110543	0070	20020101	20021231	0.00432	LB
EM	17031	031600AMC	0116	01	120127	0070	20020101	20021231	0	LB
EM	17031	031600AMC	0116	01	129000	0070	20020101	20021231	0	LB
EM	17031	031600AMC	0116	01	191242	0070	20020101	20021231	1.31541	UG
EM	17031	031600AMC	0116	01	193395	0070	20020101	20021231	1.95044	UG

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Recor	StateCo	State Facility Ide	Emission	Proce	Pollutant Cc	Emission Relea	Start Date	End Date	Emission Numer	Emission Unit N
EM	17031	031600AMC	0116	01	205992	0070	20020101	20021231	1.95044	UG
EM	17031	031600AMC	0116	01	206440	0070	20020101	20021231	0	LB
EM	17031	031600AMC	0116	01	207089	0070	20020101	20021231	1.95044	UG
EM	17031	031600AMC	0116	01	208968	0070	20020101	20021231	1.95044	UG
EM	17031	031600AMC	0116	01	218019	0070	20020101	20021231	1.95044	UG
EM	17031	031600AMC	0116	01	50000	0070	20020101	20021231	0.00018	LB
EM	17031	031600AMC	0116	01	50328	0070	20020101	20021231	1.31541	UG
EM	17031	031600AMC	0116	01	53703	0070	20020101	20021231	1.31541	UG
EM	17031	031600AMC	0116	01	56553	0070	20020101	20021231	1.95044	UG
EM	17031	031600AMC	0116	01	71432	0070	20020101	20021231	0.00001	LB
EM	17031	031600AMC	0116	01	7439921	0070	20020101	20021231	0	LB
EM	17031	031600AMC	0116	01	7439965	0070	20020101	20021231	0	LB
EM	17031	031600AMC	0116	01	7439976	0070	20020101	20021231	0	LB
EM	17031	031600AMC	0116	01	7440020	0070	20020101	20021231	0.00001	LB
EM	17031	031600AMC	0116	01	7440382	0070	20020101	20021231	0	LB
EM	17031	031600AMC	0116	01	7440417	0070	20020101	20021231	0	LB
EM	17031	031600AMC	0116	01	7440439	0070	20020101	20021231	0	LB
EM	17031	031600AMC	0116	01	7440473	0070	20020101	20021231	0	LB
EM	17031	031600AMC	0116	01	7440484	0070	20020101	20021231	0	LB
EM	17031	031600AMC	0116	01	75070	0070	20020101	20021231	0.00004	LB
EM	17031	031600AMC	0116	01	7782492	0070	20020101	20021231	0	LB
EM	17031	031600AMC	0116	01	83329	0070	20020101	20021231	1.95044	UG
EM	17031	031600AMC	0116	01	85018	0070	20020101	20021231	0	LB
EM	17031	031600AMC	0116	01	86737	0070	20020101	20021231	0	LB
EM	17031	031600AMC	0116	01	91203	0070	20020101	20021231	0	LB
EM	17031	031600AMC	0116	01	CO	0070	20020101	20021231	0.00005	TON
EM	17031	031600AMC	0116	01	NH3	0070	20020101	20021231	0.00002	TON
EM	17031	031600AMC	0116	01	NOX	0070	20020101	20021231	0.00066	TON
EM	17031	031600AMC	0116	01	NOX	0070	20020601	20020831	0.26	TON
EM	17031	031600AMC	0116	01	PM10-PRI	0070	20020101	20021231	0	TON

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Recor	StateCo	State Facility Ide	Emission	Proce	Pollutant Cc	Emission Relea	Start Date	End Date	Emission Numer	Emission Unit N
EM	17031	031600AMC	0116	01	PM25-PRI	0070	20020101	20021231	0	TON
EM	17031	031600AMC	0116	01	PM-PRI	0070	20020101	20021231	0	TON
EM	17031	031600AMC	0116	01	SO2	0070	20020101	20021231	0	TON
EM	17031	031600AMC	0116	01	VOC	0070	20020101	20021231	0	TON
EM	17031	031600AMC	0116	01	VOC	0070	20020601	20020831	0.00002	TON
EM	17031	031600AMC	0116	02	CO	0070	20020101	20021231	0.00131	TON
EM	17031	031600AMC	0116	02	NOX	0070	20020601	20020831	2.32	TON
EM	17031	031600AMC	0116	02	NOX	0070	20020101	20021231	0.00569	TON
EM	17031	031600AMC	0116	02	PM10-PRI	0070	20020101	20021231	0.00031	TON
EM	17031	031600AMC	0116	02	PM-PRI	0070	20020101	20021231	0.00044	TON
EM	17031	031600AMC	0116	02	SO2	0070	20020101	20021231	0.0035	TON
EM	17031	031600AMC	0116	02	VOC	0070	20020101	20021231	0.00009	TON
EM	17031	031600AMC	0116	02	VOC	0070	20020601	20020831	0.00093	TON
EM	17031	031600AMC	0117	01	107028	0070	20020101	20021231	0.00004	LB
EM	17031	031600AMC	0117	01	108883	0070	20020101	20021231	0.00001	LB
EM	17031	031600AMC	0117	01	110543	0070	20020101	20021231	0.00396	LB
EM	17031	031600AMC	0117	01	120127	0070	20020101	20021231	0	LB
EM	17031	031600AMC	0117	01	129000	0070	20020101	20021231	0	LB
EM	17031	031600AMC	0117	01	191242	0070	20020101	20021231	1.17933	UG
EM	17031	031600AMC	0117	01	193395	0070	20020101	20021231	1.81436	UG
EM	17031	031600AMC	0117	01	205992	0070	20020101	20021231	1.81436	UG
EM	17031	031600AMC	0117	01	206440	0070	20020101	20021231	0	LB
EM	17031	031600AMC	0117	01	207089	0070	20020101	20021231	1.81436	UG
EM	17031	031600AMC	0117	01	208968	0070	20020101	20021231	1.81436	UG
EM	17031	031600AMC	0117	01	218019	0070	20020101	20021231	1.81436	UG
EM	17031	031600AMC	0117	01	50000	0070	20020101	20021231	0.00017	LB
EM	17031	031600AMC	0117	01	50328	0070	20020101	20021231	1.17933	UG
EM	17031	031600AMC	0117	01	53703	0070	20020101	20021231	1.17933	UG
EM	17031	031600AMC	0117	01	56553	0070	20020101	20021231	1.81436	UG
EM	17031	031600AMC	0117	01	71432	0070	20020101	20021231	0	LB

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Recor	StateCo	State Facility Ide	Emission	Proce	Pollutant Cc	Emission Relea	Start Date	End Date	Emission Numer	Emission Unit N
EM	17031	031600AMC	0117	01	7439921	0070	20020101	20021231	0	LB
EM	17031	031600AMC	0117	01	7439965	0070	20020101	20021231	0	LB
EM	17031	031600AMC	0117	01	7439976	0070	20020101	20021231	0	LB
EM	17031	031600AMC	0117	01	7440020	0070	20020101	20021231	0	LB
EM	17031	031600AMC	0117	01	7440382	0070	20020101	20021231	0	LB
EM	17031	031600AMC	0117	01	7440417	0070	20020101	20021231	0	LB
EM	17031	031600AMC	0117	01	7440439	0070	20020101	20021231	0	LB
EM	17031	031600AMC	0117	01	7440473	0070	20020101	20021231	0	LB
EM	17031	031600AMC	0117	01	7440484	0070	20020101	20021231	0	LB
EM	17031	031600AMC	0117	01	75070	0070	20020101	20021231	0.00003	LB
EM	17031	031600AMC	0117	01	7782492	0070	20020101	20021231	0	LB
EM	17031	031600AMC	0117	01	83329	0070	20020101	20021231	1.81436	UG
EM	17031	031600AMC	0117	01	85018	0070	20020101	20021231	0	LB
EM	17031	031600AMC	0117	01	86737	0070	20020101	20021231	0	LB
EM	17031	031600AMC	0117	01	91203	0070	20020101	20021231	0	LB
EM	17031	031600AMC	0117	01	CO	0070	20020101	20021231	0.00005	TON
EM	17031	031600AMC	0117	01	NH3	0070	20020101	20021231	0.00002	TON
EM	17031	031600AMC	0117	01	NOX	0070	20020601	20020831	0.11	TON
EM	17031	031600AMC	0117	01	NOX	0070	20020101	20021231	0.00062	TON
EM	17031	031600AMC	0117	01	PM10-PRI	0070	20020101	20021231	0	TON
EM	17031	031600AMC	0117	01	PM25-PRI	0070	20020101	20021231	0	TON
EM	17031	031600AMC	0117	01	PM-PRI	0070	20020101	20021231	0	TON
EM	17031	031600AMC	0117	01	SO2	0070	20020101	20021231	0	TON
EM	17031	031600AMC	0117	01	VOC	0070	20020101	20021231	0	TON
EM	17031	031600AMC	0117	01	VOC	0070	20020601	20020831	0.00001	TON
EM	17031	031600AMC	0117	02	CO	0070	20020101	20021231	0.00114	TON
EM	17031	031600AMC	0117	02	NOX	0070	20020601	20020831	0.95	TON
EM	17031	031600AMC	0117	02	NOX	0070	20020101	20021231	0.00497	TON
EM	17031	031600AMC	0117	02	PM10-PRI	0070	20020101	20021231	0.00027	TON
EM	17031	031600AMC	0117	02	PM-PRI	0070	20020101	20021231	0.00039	TON

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Recor	StateCo	State Facility Ide	Emission	Proce	Pollutant Cc	Emission Relea	Start Date	End Date	Emission Numer	Emission Unit N
EM	17031	031600AMC	0117	02	SO2	0070	20020101	20021231	0.00305	TON
EM	17031	031600AMC	0117	02	VOC	0070	20020101	20021231	0.00008	TON
EM	17031	031600AMC	0117	02	VOC	0070	20020601	20020831	0.00039	TON
EM	17031	031600AMC	0126	01	SO2	0091	20020101	20021231	0.00001	TON
EM	17031	031600AMC	0129	01	140	0081	20020101	20021231	0.40624	LB
EM	17031	031600AMC	0129	01	CO	0081	20020101	20021231	0.00001	TON
EM	17031	031600AMC	0129	01	NOX	0081	20020101	20021231	0	TON
EM	17031	031600AMC	0129	01	NOX	0081	20020601	20020831	0.00006	TON
EM	17031	031600AMC	0129	01	VOC	0081	20020101	20021231	0.00002	TON
EM	17031	031600AMC	0129	01	VOC	0081	20020601	20020831	0.00015	TON
EM	17031	031600AMC	0129	02	140	0080	20020101	20021231	0.40441	LB
EM	17031	031600AMC	0129	02	CO	0080	20020101	20021231	0.00002	TON
EM	17031	031600AMC	0129	02	NOX	0080	20020601	20020831	0.00026	TON
EM	17031	031600AMC	0129	02	NOX	0080	20020101	20021231	0	TON
EM	17031	031600AMC	0129	02	VOC	0080	20020101	20021231	0.00006	TON
EM	17031	031600AMC	0129	02	VOC	0080	20020601	20020831	0.00046	TON
EM	17031	031600AMC	0131	01	PM10-PRI	0084	20020101	20021231	0.00017	TON
EM	17031	031600AMC	0131	01	PM-PRI	0084	20020101	20021231	0.00037	TON
EM	17031	031600AMC	0131	02	PM10-PRI	0083	20020101	20021231	0.01	TON
EM	17031	031600AMC	0131	03	PM10-PRI	0085	20020101	20021231	0.00009	TON
EM	17031	031600AMC	0131	03	PM-PRI	0085	20020101	20021231	0.0002	TON
EM	17031	031600AMC	0131	05	PM10-PRI	0072	20020101	20021231	0.00293	TON
EM	17031	031600AMC	0131	05	PM-PRI	0072	20020101	20021231	0.00009	TON
EM	17031	031600AMC	0131	06	PM10-PRI	0095	20020101	20021231	0.00081	TON
EM	17031	031600AMC	0131	06	PM-PRI	0095	20020101	20021231	0.00081	TON
EM	17031	031600AMC	0131	07	PM10-PRI	0096	20020101	20021231	0.00005	TON
EM	17031	031600AMC	0131	07	PM-PRI	0096	20020101	20021231	0.00005	TON
EM	17031	031600AMC	0131	08	PM10-PRI	0097	20020101	20021231	0.00102	TON
EM	17031	031600AMC	0131	08	PM-PRI	0097	20020101	20021231	0.00102	TON
EM	17031	031600AMC	0131	09	PM10-PRI	0098	20020101	20021231	0.00009	TON

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Recor	StateCo	State Facility Ide	Emission	Proce	Pollutant Cc	Emission Relea	Start Date	End Date	Emission Numer	Emission Unit N
EM	17031	031600AMC	0131	09	PM-PRI	0098	20020101	20021231	0.00009	TON
EM	17031	031600AMC	0132	01	CO	0100	20020101	20021231	0.00074	TON
EM	17031	031600AMC	0132	01	NOX	0100	20020101	20021231	0.00322	TON
EM	17031	031600AMC	0132	01	NOX	0100	20020601	20020831	1.04	TON
EM	17031	031600AMC	0132	01	PM10-PRI	0100	20020101	20021231	0.00024	TON
EM	17031	031600AMC	0132	01	PM-PRI	0100	20020101	20021231	0.00025	TON
EM	17031	031600AMC	0132	01	SO2	0100	20020101	20021231	0.00753	TON
EM	17031	031600AMC	0132	01	VOC	0100	20020101	20021231	0.00005	TON
EM	17031	031600AMC	0132	01	VOC	0100	20020601	20020831	0.00042	TON
EM	17031	031600AMC	0133	01	71432	0079	20020101	20021231	107.52	LB

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Record T	StateCoun	State Facility Ide	Emission U	Process	Pollutant Code	Blan	Emission	Start Date	End Date	Start	End T	Bla	Emission Numeric Value	Emission Unit N	Emission Type
EM	17031	031600AMC	0090	01	CO		0070	20050101	20051231				0	TON	30
EM	17031	031600AMC	0090	01	CO		0070	20050601	20050831				0	TON	29
EM	17031	031600AMC	0090	01	NH3		0070	20050101	20051231				0	TON	30
EM	17031	031600AMC	0090	01	NOX		0070	20050101	20051231				0	TON	30
EM	17031	031600AMC	0090	01	NOX		0070	20050601	20050831				0	TON	29
EM	17031	031600AMC	0090	01	PM-PRI		0070	20050101	20051231				0	TON	30
EM	17031	031600AMC	0090	01	PM10-PRI		0070	20050101	20051231				0	TON	30
EM	17031	031600AMC	0090	01	PM25-PRI		0070	20050101	20051231				0	TON	30
EM	17031	031600AMC	0090	01	SO2		0070	20050101	20051231				0	TON	30
EM	17031	031600AMC	0090	01	VOC		0070	20050101	20051231				0	TON	30
EM	17031	031600AMC	0090	01	VOC		0070	20050601	20050831				0	TON	29
EM	17031	031600AMC	0090	02	NOX		0070	20050101	20051231				0	TON	30
EM	17031	031600AMC	0090	02	NOX		0070	20050601	20050831				0	TON	29
EM	17031	031600AMC	0090	02	PM-PRI		0070	20050101	20051231				0	TON	30
EM	17031	031600AMC	0090	02	PM10-PRI		0070	20050101	20051231				0	TON	30
EM	17031	031600AMC	0090	02	SO2		0070	20050101	20051231				0	TON	30
EM	17031	031600AMC	0091	01	CO		0071	20050101	20051231				0	TON	30
EM	17031	031600AMC	0091	01	CO		0071	20050601	20050831				0	TON	29
EM	17031	031600AMC	0091	01	NH3		0071	20050101	20051231				0	TON	30
EM	17031	031600AMC	0091	01	NOX		0071	20050101	20051231				0	TON	30
EM	17031	031600AMC	0091	01	NOX		0071	20050601	20050831				0	TON	29
EM	17031	031600AMC	0091	01	PM-PRI		0071	20050101	20051231				0	TON	30
EM	17031	031600AMC	0091	01	PM10-PRI		0071	20050101	20051231				0	TON	30
EM	17031	031600AMC	0091	01	PM25-PRI		0071	20050101	20051231				0	TON	30
EM	17031	031600AMC	0091	01	VOC		0071	20050101	20051231				0	TON	30
EM	17031	031600AMC	0091	01	VOC		0071	20050601	20050831				0	TON	29
EM	17031	031600AMC	0091	02	CO		0071	20050101	20051231				0	TON	30
EM	17031	031600AMC	0091	02	CO		0071	20050601	20050831				0	TON	29
EM	17031	031600AMC	0091	02	NOX		0071	20050101	20051231				0	TON	30
EM	17031	031600AMC	0091	02	NOX		0071	20050601	20050831				0	TON	29

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Record T	StateCoun	State Facility Ide	Emission U	Process	Pollutant Code	Blan	Emission	Start Date	End Date	Start	End	Bla	Emission Numeric Value	Emission Unit N	Emission Type
EM	17031	031600AMC	0091	02	PM-PRI		0071	20050101	20051231				0	TON	30
EM	17031	031600AMC	0091	02	PM10-PRI		0071	20050101	20051231				0	TON	30
EM	17031	031600AMC	0091	02	SO2		0071	20050101	20051231				0	TON	30
EM	17031	031600AMC	0091	02	VOC		0071	20050101	20051231				0	TON	30
EM	17031	031600AMC	0091	02	VOC		0071	20050601	20050831				0	TON	29
EM	17031	031600AMC	0094	01	CO		0074	20050101	20051231				0	TON	30
EM	17031	031600AMC	0094	01	CO		0074	20050601	20050831				0	TON	29
EM	17031	031600AMC	0094	01	NH3		0074	20050101	20051231				0	TON	30
EM	17031	031600AMC	0094	01	NOX		0074	20050101	20051231				0	TON	30
EM	17031	031600AMC	0094	01	NOX		0074	20050601	20050831				0	TON	29
EM	17031	031600AMC	0094	01	PM-PRI		0074	20050101	20051231				0	TON	30
EM	17031	031600AMC	0094	01	PM10-PRI		0074	20050101	20051231				0	TON	30
EM	17031	031600AMC	0094	01	PM25-PRI		0074	20050101	20051231				0	TON	30
EM	17031	031600AMC	0094	01	VOC		0074	20050101	20051231				0	TON	30
EM	17031	031600AMC	0094	01	VOC		0074	20050601	20050831				0	TON	29
EM	17031	031600AMC	0094	02	PM-PRI		0074	20050101	20051231				0	TON	30
EM	17031	031600AMC	0094	02	PM10-PRI		0074	20050101	20051231				0	TON	30
EM	17031	031600AMC	0095	01	NOX		0075	20050101	20051231				0	TON	30
EM	17031	031600AMC	0095	01	NOX		0075	20050601	20050831				0	TON	29
EM	17031	031600AMC	0095	01	PM-PRI		0075	20050101	20051231				0	TON	30
EM	17031	031600AMC	0095	01	PM10-PRI		0075	20050101	20051231				0	TON	30
EM	17031	031600AMC	0095	01	PM25-PRI		0075	20050101	20051231				0	TON	30
EM	17031	031600AMC	0095	01	VOC		0075	20050101	20051231				0	TON	30
EM	17031	031600AMC	0095	01	VOC		0075	20050601	20050831				0	TON	29
EM	17031	031600AMC	0096	01	CO		0076	20050101	20051231				0	TON	30
EM	17031	031600AMC	0096	01	CO		0076	20050601	20050831				0	TON	29
EM	17031	031600AMC	0096	01	NH3		0076	20050101	20051231				0	TON	30
EM	17031	031600AMC	0096	01	NOX		0076	20050101	20051231				0	TON	30
EM	17031	031600AMC	0096	01	NOX		0076	20050601	20050831				0	TON	29
EM	17031	031600AMC	0096	01	PM-PRI		0076	20050101	20051231				0	TON	30

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Record T	StateCoun	State Facility Ide	Emission U	Process	Pollutant Code	Blan	Emission	Start Date	End Date	Start	End	Bla	Emission Numeric Value	Emission Unit N	Emission Type
EM	17031	031600AMC	0096	01	PM10-PRI		0076	20050101	20051231				0	TON	30
EM	17031	031600AMC	0096	01	VOC		0076	20050101	20051231				0	TON	30
EM	17031	031600AMC	0096	01	VOC		0076	20050601	20050831				0	TON	29
EM	17031	031600AMC	0097	01	CO		0077	20050101	20051231				0	TON	30
EM	17031	031600AMC	0097	01	CO		0077	20050601	20050831				0	TON	29
EM	17031	031600AMC	0097	01	NOX		0077	20050101	20051231				0	TON	30
EM	17031	031600AMC	0097	01	NOX		0077	20050601	20050831				0	TON	29
EM	17031	031600AMC	0097	01	PM-PRI		0077	20050101	20051231				0	TON	30
EM	17031	031600AMC	0097	01	PM10-PRI		0077	20050101	20051231				0	TON	30
EM	17031	031600AMC	0097	01	SO2		0077	20050101	20051231				0	TON	30
EM	17031	031600AMC	0097	01	VOC		0077	20050101	20051231				0	TON	30
EM	17031	031600AMC	0097	01	VOC		0077	20050601	20050831				0	TON	29
EM	17031	031600AMC	0099	01	PM-PRI		0078	20050101	20051231				0	TON	30
EM	17031	031600AMC	0099	01	PM10-PRI		0078	20050101	20051231				0	TON	30
EM	17031	031600AMC	0106	01	VOC		0107	20050101	20051231				0	TON	30
EM	17031	031600AMC	0106	01	VOC		0107	20050601	20050831				0	TON	29
EM	17031	031600AMC	0107	01	PM-PRI		0082	20050101	20051231				0	TON	30
EM	17031	031600AMC	0107	01	PM10-PRI		0082	20050101	20051231				0	TON	30
EM	17031	031600AMC	0115	01	PM-PRI		0082	20050101	20051231				0	TON	30
EM	17031	031600AMC	0115	01	PM10-PRI		0082	20050101	20051231				0	TON	30
EM	17031	031600AMC	0116	01	CO		0070	20050101	20051231				0	TON	30
EM	17031	031600AMC	0116	01	CO		0070	20050601	20050831				0	TON	29
EM	17031	031600AMC	0116	01	NH3		0070	20050101	20051231				0	TON	30
EM	17031	031600AMC	0116	01	NOX		0070	20050101	20051231				0	TON	30
EM	17031	031600AMC	0116	01	NOX		0070	20050601	20050831				0	TON	29
EM	17031	031600AMC	0116	01	PM-PRI		0070	20050101	20051231				0	TON	30
EM	17031	031600AMC	0116	01	PM10-PRI		0070	20050101	20051231				0	TON	30
EM	17031	031600AMC	0116	01	PM25-PRI		0070	20050101	20051231				0	TON	30
EM	17031	031600AMC	0116	01	SO2		0070	20050101	20051231				0	TON	30
EM	17031	031600AMC	0116	01	VOC		0070	20050101	20051231				0	TON	30

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Record T	StateCoun	State Facility Ide	Emission U	Process	Pollutant Code	Blan	Emission	Start Date	End Date	Start	End T	Blai	Emission Numeric Value	Emission Unit N	Emission Type
EM	17031	031600AMC	0116	01	VOC		0070	20050601	20050831				0	TON	29
EM	17031	031600AMC	0116	02	CO		0070	20050101	20051231				0	TON	30
EM	17031	031600AMC	0116	02	CO		0070	20050601	20050831				0	TON	29
EM	17031	031600AMC	0116	02	NOX		0070	20050101	20051231				0	TON	30
EM	17031	031600AMC	0116	02	NOX		0070	20050601	20050831				0	TON	29
EM	17031	031600AMC	0116	02	PM-PRI		0070	20050101	20051231				0	TON	30
EM	17031	031600AMC	0116	02	PM10-PRI		0070	20050101	20051231				0	TON	30
EM	17031	031600AMC	0116	02	SO2		0070	20050101	20051231				0	TON	30
EM	17031	031600AMC	0116	02	VOC		0070	20050101	20051231				0	TON	30
EM	17031	031600AMC	0116	02	VOC		0070	20050601	20050831				0	TON	29
EM	17031	031600AMC	0117	01	CO		0070	20050101	20051231				0	TON	30
EM	17031	031600AMC	0117	01	CO		0070	20050601	20050831				0	TON	29
EM	17031	031600AMC	0117	01	NH3		0070	20050101	20051231				0	TON	30
EM	17031	031600AMC	0117	01	NOX		0070	20050101	20051231				0	TON	30
EM	17031	031600AMC	0117	01	NOX		0070	20050601	20050831				0	TON	29
EM	17031	031600AMC	0117	01	PM-PRI		0070	20050101	20051231				0	TON	30
EM	17031	031600AMC	0117	01	PM10-PRI		0070	20050101	20051231				0	TON	30
EM	17031	031600AMC	0117	01	PM25-PRI		0070	20050101	20051231				0	TON	30
EM	17031	031600AMC	0117	01	SO2		0070	20050101	20051231				0	TON	30
EM	17031	031600AMC	0117	01	VOC		0070	20050101	20051231				0	TON	30
EM	17031	031600AMC	0117	01	VOC		0070	20050601	20050831				0	TON	29
EM	17031	031600AMC	0117	02	CO		0070	20050101	20051231				0	TON	30
EM	17031	031600AMC	0117	02	CO		0070	20050601	20050831				0	TON	29
EM	17031	031600AMC	0117	02	NOX		0070	20050101	20051231				0	TON	30
EM	17031	031600AMC	0117	02	NOX		0070	20050601	20050831				0	TON	29
EM	17031	031600AMC	0117	02	PM-PRI		0070	20050101	20051231				0	TON	30
EM	17031	031600AMC	0117	02	PM10-PRI		0070	20050101	20051231				0	TON	30
EM	17031	031600AMC	0117	02	SO2		0070	20050101	20051231				0	TON	30
EM	17031	031600AMC	0117	02	VOC		0070	20050101	20051231				0	TON	30
EM	17031	031600AMC	0117	02	VOC		0070	20050601	20050831				0	TON	29

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Record T	StateCoun	State Facility Ide	Emission U	Process	Pollutant Code	Blan	Emission	Start Date	End Date	Start	End	Bla	Emission Numeric Value	Emission Unit N	Emission Type
EM	17031	031600AMC	0126	01	SO2		0091	20050101	20051231				0	TON	30
EM	17031	031600AMC	0129	01	CO		0081	20050101	20051231				0	TON	30
EM	17031	031600AMC	0129	01	CO		0081	20050601	20050831				0	TON	29
EM	17031	031600AMC	0129	01	NOX		0081	20050101	20051231				0	TON	30
EM	17031	031600AMC	0129	01	NOX		0081	20050601	20050831				0	TON	29
EM	17031	031600AMC	0129	01	PM-PRI		0081	20050101	20051231				0	TON	30
EM	17031	031600AMC	0129	01	PM10-PRI		0081	20050101	20051231				0	TON	30
EM	17031	031600AMC	0129	01	VOC		0081	20050101	20051231				0	TON	30
EM	17031	031600AMC	0129	01	VOC		0081	20050601	20050831				0	TON	29
EM	17031	031600AMC	0129	02	CO		0080	20050101	20051231				0	TON	30
EM	17031	031600AMC	0129	02	CO		0080	20050601	20050831				0	TON	29
EM	17031	031600AMC	0129	02	NOX		0080	20050101	20051231				0	TON	30
EM	17031	031600AMC	0129	02	NOX		0080	20050601	20050831				0	TON	29
EM	17031	031600AMC	0129	02	PM-PRI		0080	20050101	20051231				0	TON	30
EM	17031	031600AMC	0129	02	PM10-PRI		0080	20050101	20051231				0	TON	30
EM	17031	031600AMC	0129	02	VOC		0080	20050101	20051231				0	TON	30
EM	17031	031600AMC	0129	02	VOC		0080	20050601	20050831				0	TON	29
EM	17031	031600AMC	0131	01	PM-PRI		0084	20050101	20051231				0	TON	30
EM	17031	031600AMC	0131	01	PM10-PRI		0084	20050101	20051231				0	TON	30
EM	17031	031600AMC	0131	02	PM-PRI		0083	20050101	20051231				0	TON	30
EM	17031	031600AMC	0131	02	PM10-PRI		0083	20050101	20051231				0	TON	30
EM	17031	031600AMC	0131	03	PM-PRI		0085	20050101	20051231				0	TON	30
EM	17031	031600AMC	0131	03	PM10-PRI		0085	20050101	20051231				0	TON	30
EM	17031	031600AMC	0131	04	PM-PRI		0086	20050101	20051231				0	TON	30
EM	17031	031600AMC	0131	04	PM10-PRI		0086	20050101	20051231				0	TON	30
EM	17031	031600AMC	0131	05	PM-PRI		0072	20050101	20051231				0	TON	30
EM	17031	031600AMC	0131	05	PM10-PRI		0072	20050101	20051231				0	TON	30
EM	17031	031600AMC	0131	06	PM-PRI		0095	20050101	20051231				0	TON	30
EM	17031	031600AMC	0131	06	PM10-PRI		0095	20050101	20051231				0	TON	30
EM	17031	031600AMC	0131	07	PM-PRI		0096	20050101	20051231				0	TON	30

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Record T	StateCoun	State Facility Ide	Emission U	Process	Pollutant Code	Blan	Emission	Start Date	End Date	Start	End T	Bla	Emission Numeric Value	Emission Unit N	Emission Type
EM	17031	031600AMC	0131	07	PM10-PRI		0096	20050101	20051231				0	TON	30
EM	17031	031600AMC	0131	08	PM-PRI		0097	20050101	20051231				0	TON	30
EM	17031	031600AMC	0131	08	PM10-PRI		0097	20050101	20051231				0	TON	30
EM	17031	031600AMC	0131	09	PM-PRI		0098	20050101	20051231				0	TON	30
EM	17031	031600AMC	0131	09	PM10-PRI		0098	20050101	20051231				0	TON	30
EM	17031	031600AMC	0132	01	CO		0100	20050101	20051231				0	TON	30
EM	17031	031600AMC	0132	01	CO		0100	20050601	20050831				0	TON	29
EM	17031	031600AMC	0132	01	NOX		0100	20050101	20051231				0	TON	30
EM	17031	031600AMC	0132	01	NOX		0100	20050601	20050831				0	TON	29
EM	17031	031600AMC	0132	01	PM-PRI		0100	20050101	20051231				0	TON	30
EM	17031	031600AMC	0132	01	PM10-PRI		0100	20050101	20051231				0	TON	30
EM	17031	031600AMC	0132	01	SO2		0100	20050101	20051231				0	TON	30
EM	17031	031600AMC	0132	01	VOC		0100	20050101	20051231				0	TON	30
EM	17031	031600AMC	0132	01	VOC		0100	20050601	20050831				0	TON	29
EM	17031	031600AMC	0133	01	VOC		0079	20050101	20051231				0	TON	30
EM	17031	031600AMC	0133	01	VOC		0079	20050601	20050831				0	TON	29
EM	17031	031600AMC	0135	01	PM-PRI		0126	20050101	20051231				11.34	TON	30
EM	17031	031600AMC	0135	01	PM10-PRI		0126	20050101	20051231				5.36	TON	30
EM	17031	031600AMC	0135	01	PM25-PRI		0126	20050101	20051231				1.65	TON	30
EM	17031	031600AMC	0106	01	100414		0107	20050101	20051231				0.00000009	LB	30
EM	17031	031600AMC	0106	01	108883		0107	20050101	20051231				0.00000107	LB	30
EM	17031	031600AMC	0106	01	110543		0107	20050101	20051231				0.00000168	LB	30
EM	17031	031600AMC	0106	01	1330207		0107	20050101	20051231				0.00000047	LB	30
EM	17031	031600AMC	0106	01	71432		0107	20050101	20051231				0.00000092	LB	30
EM	17031	031600AMC	0106	01	95476		0107	20050101	20051231				0.00000013	LB	30

EXHIBIT 4

FacilitySiteIdent	FacilitySiteProgr	StateAr	Tri	Sta	UnitIc	UnitPrc	Emissi	ProcessPr	EISFacilitySiteId	EISEmissionsUni	EISEmissionsPro	Ef	Enc	SourceClass	Ai	ProcessDescript	LastEmissionsYe	ProcessCommer
031600AMC	ILEPA	17031							7300111	9850813	67644714			30300304		coke quenching	2005	
031600AMC	ILEPA	17031							7300111	9850713	67644814			30300317		combustion sta	2005	
031600AMC	ILEPA	17031							7300111	9850913	67644614			30300303		coke pushing	2005	
031600AMC	ILEPA	17031							7300111	9850413	67645114			30300314		topside leaks	2005	
031600AMC	ILEPA	17031							7300111	9850313	67645214			30300315		by-product rec	2005	
031600AMC	ILEPA	17031							7300111	9850613	67644914			30300302		charging	2005	
031600AMC	ILEPA	17031							7300111	9850513	67645014			30300308		door leaks	2005	
031600AMC	ILEPA	17031			0131	ILEPA	01	ILEPA	7300111	9851213	44819114			30300306		COAL CONVEYI	2007	
031600AMC	ILEPA	17031			0131	ILEPA	03	ILEPA	7300111	9851213	44819214			30300331		COKE CONVEYI	2007	
031600AMC	ILEPA	17031			0131	ILEPA	07	ILEPA	7300111	9851213	44818914			30300306		COAL BUNKER	2007	
031600AMC	ILEPA	17031			0131	ILEPA	09	ILEPA	7300111	9851213	44819014			30300306		UTILITIES (FUGI	2007	
031600AMC	ILEPA	17031			0131	ILEPA	08	ILEPA	7300111	9851213	44818714			30300351		COKE SCREENI	2007	
031600AMC	ILEPA	17031			0131	ILEPA	05	ILEPA	7300111	9851213	44818814			30300306		SHAKER MIXIN	2007	
031600AMC	ILEPA	17031			0131	ILEPA	02	ILEPA	7300111	9851213	44818514			30300306		COAL STORAGE	2007	
031600AMC	ILEPA	17031			0131	ILEPA	06	ILEPA	7300111	9851213	44818614			30300306		BREAKER BUILD	2007	
031600AMC	ILEPA	17031			0132	ILEPA	01	ILEPA	7300111	9851113	44819314			10200707		EMISSIONS FRO	2007	
031600AMC	ILEPA	17031			0090	ILEPA	02	ILEPA	7300111	9851013	44819514			10200707		COKE OVEN GA	2007	
031600AMC	ILEPA	17031			0091	ILEPA	02	ILEPA	7300111	9852213	44817114			10200707		COKE OVEN GA	2007	
031600AMC	ILEPA	17031							7300111	9850213	67645314			30300315		by-product rec	2005	
031600AMC	ILEPA	17031			0090	ILEPA	01	ILEPA	7300111	9851013	44819414			10200602		NATURAL GAS	2007	
031600AMC	ILEPA	17031			0116	ILEPA	01	ILEPA	7300111	9851613	44817814			10200602		NATURAL GAS	2007	
031600AMC	ILEPA	17031			0116	ILEPA	02	ILEPA	7300111	9851613	44817914			10200707		COKE OVEN GA	2007	
031600AMC	ILEPA	17031			0117	ILEPA	01	ILEPA	7300111	9851513	44818114			10200602		NATURAL GAS	2007	
031600AMC	ILEPA	17031			0117	ILEPA	02	ILEPA	7300111	9851513	44818014			10200707		COKE OVEN GA	2007	
031600AMC	ILEPA	17031			0126	ILEPA	01	ILEPA	7300111	9851413	44818214			30300351		EMISSIONS FRO	2007	
031600AMC	ILEPA	17031			0129	ILEPA	02	ILEPA	7300111	9851313	44818414			30300314		FUGITIVE EMIS	2007	
031600AMC	ILEPA	17031			0129	ILEPA	01	ILEPA	7300111	9851313	44818314			30300314		FUGITIVE EMIS	2007	
031600AMC	ILEPA	17031			0099	ILEPA	01	ILEPA	7300111	9851913	44817514			30300315		SCRUBBER EMI	2007	
031600AMC	ILEPA	17031			0096	ILEPA	01	ILEPA	7300111	9852013	44817414			30300308		FUGITIVE EMIS	2007	
031600AMC	ILEPA	17031			0115	ILEPA	01	ILEPA	7300111	9851713	44817714			30388801			2007	

EmissionsProcess 7/7/2011

FacilitySiteIdent	FacilitySiteProgr	StateAr	Tri	Stat	UnitIc	UnitPrc	Emissi	ProcessPr	EISFacilitySiteId	EISEmissionsUni	EISEmissionsPro	Ef	Enc	SourceClass	Ai	ProcessDescript	LastEmissionsYe	ProcessCommer
031600AMC	ILEPA	17031			0107	ILEPA	01	ILEPA	7300111	9851813	44817614			30388801			2007	
031600AMC	ILEPA	17031			0094	ILEPA	01	ILEPA	7300111	9852313	44817014			30300303		FUGITIVE EMIS	2007	
031600AMC	ILEPA	17031			0095	ILEPA	01	ILEPA	7300111	9852113	44817314			30300304		QUENCHING E	2007	
031600AMC	ILEPA	17031			0091	ILEPA	01	ILEPA	7300111	9852213	44817214			10200707		NATURAL GAS	2007	

EXHIBIT 4

7012-002

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, and SIERRA CLUB, Intervenors.	)	PCB 10-75 (Permit Appeal--Air)

CERTIFICATE OF SERVICE

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

I, the undersigned non-attorney, state that the following documents were served on all counsel of record via U.S. Mail and electronic mail on September 7, 2011:

Chicago Coke's Responses to
IEPA's First Set of Interrogatories to Petitioner

Chicago Coke's Responses to
IEPA's First Requests for Admission of Facts to Petitioner

By: Jeanette M. Podlin
Jeanette M. Podlin

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

7012-002

SERVICE LIST

Chicago Coke Co., Inc. v. Illinois Environmental Protection Agency
PCB 10-75
(Permit Appeal -- Air)

Andrew B. Armstrong
Assistant Attorney General
Environmental Bureau
69 West Washington Street
18th Floor
Chicago, Illinois 60602

Bradley P. Halloran, Hearing Officer
Illinois Pollution Control Board
James R. Thompson Center
100 West Randolph Street
Suite 11-500
Chicago, Illinois 60601

Ann Alexander, Senior Attorney
Shannon Fisk, Senior Attorney
Natural Resources Defense Council
2 North Riverside Plaza, Suite 2250
Chicago, Illinois 60606

7012-002

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, and SIERRA CLUB, Intervenors.	)	PCB 10-75 (Permit Appeal--Air)

CHICAGO COKE'S RESPONSES TO IEPA'S FIRST SET OF INTERROGATORIES TO PETITIONER

Petitioner CHICAGO COKE CO., INC. ("Chicago Coke"), by and through its attorneys SWANSON, MARTIN & BELL, LLP, responds to respondent THE ILLINOIS ENVIRONMENTAL PROTECTION AGENCY's ("IEPA") interrogatories.

GENERAL STATEMENTS and OBJECTIONS

A. Chicago Coke's responses are based upon non-privileged information currently known by it, and its investigation is ongoing. Chicago Coke reserves the right to supplement, amend, or correct these responses in accordance with the Board's procedural rules and the Illinois Code of Civil Procedure.

B. Chicago Coke will not provide privileged or protected information responsive to a particular interrogatory or request for production, if any. If any privileged or protected information is inadvertently provided in response to

interrogatories and requests for production, the provision of such information is not to be construed as a waiver of the attorney-client privilege, attorney work-product doctrine, common interest or joint defense privilege, the self-critical analysis privilege, the privilege applicable to information prepared in anticipation of litigation, and any other applicable privilege.

C. Chicago Coke further objects to IEPA's interrogatories to the extent they seek information that is not presently in Chicago Coke's possession, custody or control, or is not now or has never been in the control of Chicago Coke.

D. Chicago Coke reserves the right to supplement or amend its responses at any time prior to trial.

E. Any response given or document produced by Chicago Coke is subject to any objections regarding relevance, materiality, admissibility and all other objections on any other grounds that would require excluding the statement or document if offered at deposition, hearing, trial or other proceeding, or in any pleading or submission. All such objections are hereby expressly reserved and may be interposed at the time of attempted use.

F. Chicago Coke objects to the interrogatories as unduly burdensome to the extent they seek information already within IEPA's possession, information that is equally available to IEPA, or information that is in the public domain.

G. To the extent they contain no time limitation, Chicago Coke objects to the interrogatories as vague, overly broad, and unduly burdensome.

INTERROGATORIES

1. For each interrogatory, identify:

    a. The individual(s) answering these interrogatories on behalf of Petitioner, including his or her relationship to Petitioner, and how long he or she has been associated with Petitioner.

    b. Each person who provided information or who otherwise consulted, participated, or assisted in connection with providing answers to these interrogatories, the nature of any such consultation or assistance, whether the information was based on personal knowledge, and if not on the basis of personal knowledge, on what basis it was provided.

ANSWER: Chicago Coke objects to this interrogatory as overly broad and seeking information that is neither material nor relevant to the issues in this case. However, in the spirit of discovery, and without waiving objection, Chicago Coke states that answers to interrogatories were prepared by Chicago Coke's counsel, in consultation with Simon Beemsterboer of Chicago Coke. Mr. Beemsterboer can be contacted through Chicago Coke's counsel.

2. For each response to Respondent's First Requests for Admission of Facts to Petitioner, identify:

    a. Each person who provided information or who otherwise consulted, participated, or assisted in connection with providing a response to the requests, the nature of any such consultation or assistance, whether the information was based on personal knowledge, and if not on the basis of personal knowledge, on what basis it was provided.

b. The requests which each person identified in response to this interrogatory provided information for, or was otherwise consulted regarding.

ANSWER: Responses to IEPA's requests to admit were prepared by Chicago Coke's counsel, in consultation with Simon Beemsterboer of Chicago Coke. Mr. Beemsterboer can be contacted through Chicago Coke's counsel.

3. Pursuant to Supreme Court Rule 213(f)(1), identify all lay witnesses whom Petitioner intends to call at a hearing of this matter, and for each witness so identified, identify the subjects on which the witness is expected to testify and all documents on which the witness will rely.

ANSWER: Chicago Coke objects to this interrogatory as premature and inapplicable. No schedule for identifying lay witnesses, pursuant to Supreme Court Rule 213(f), has been entered in this case. Chicago Coke will supplement this response and identify lay witnesses at the appropriate time, if a scheduling order is issued.

4. Pursuant to Supreme Court Rule 213(f)(2), identify all independent expert witnesses whom Petitioner intends to call at a hearing of this matter, and for each such witness so identified, identify the subjects on which the witness is expected to testify, the opinions Petitioner expects to elicit, and all documents on which each such witness will rely.

ANSWER: Chicago Coke objects to this interrogatory as premature and inapplicable. No schedule for identifying independent expert witnesses, pursuant

to Supreme Court Rule 213(f)(2), has been entered in this case. Chicago Coke will supplement this response and identify independent expert witnesses at the appropriate time, if a scheduling order is issued.

5. Pursuant to Supreme Court Rule 213(f)(3), identify all controlled expert witnesses whom Petitioner intends to call at a hearing of this matter, and for each such witness so identified, identify the subject matter on which the witness is expected to testify, the conclusions and opinions of the witness and bases therefore, the qualifications of the witness, all reports or other documents prepared or relied upon by the witness about the case, and all documents on which the witness will rely.

ANSWER: Chicago Coke objects to this interrogatory as premature and inapplicable. No schedule for identifying controlled expert witnesses, pursuant to Supreme Court Rule 213(f)(3), has been entered in this case. Chicago Coke will supplement this response and identify controlled expert witnesses at the appropriate time, if a scheduling order is issued.

Respectfully submitted,

CHICAGO COKE CO., INC.

By: _____
One of its attorneys
(as to form and objections)

Dated: September 7, 2011

Michael J. Maher
Elizabeth S. Harvey
Swanson, Martin & Bell LLP
330 N. Wabash Avenue, Suite 3300
Chicago, IL 60611
312/321-9100

VERIFICATION

Simon Beemsterboer, being first duly sworn on oath, states that he is a representative of Chicago Coke Co., Inc.; that he has read Chicago Coke Co., Inc.'s answers to IEPA's interrogatories; and that the answers are true to the best of his knowledge and belief.

Simon Beemsterboer

DEBRA ALLEN
Notary Public
SEAL
State of Indiana
My Commission Expires June 28, 2018

SUBSCRIBED & SWORN to before me,
a Notary Public, this 1st day of
September, 2011.

7012-002

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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

CHICAGO COKE'S RESPONSES TO IEPA'S FIRST REQUESTS FOR ADMISSION OF FACTS TO PETITIONER

Petitioner CHICAGO COKE CO., INC. ("Chicago Coke"), by and through its attorneys SWANSON, MARTIN & BELL, LLP, responds to respondent THE ILLINOIS ENVIRONMENTAL PROTECTION AGENCY's ("IEPA") First Requests for Admission of Facts.

GENERAL STATEMENTS and OBJECTIONS

A. Chicago Coke's responses are based upon non-privileged information currently known by it, and its investigation is ongoing. Chicago Coke reserves the right to supplement, amend, or correct these responses in accordance with the Board's procedural rules and the Illinois Code of Civil Procedure.

B. Chicago Coke will not provide privileged or protected information, if any, responsive to a particular request. If any privileged or protected information is

inadvertently provided, the provision of such information is not to be construed as a waiver of the attorney-client privilege, attorney work-product doctrine, common interest or joint defense privilege, the self-critical analysis privilege, or the privilege applicable to information prepared in anticipation of litigation.

C. Chicago Coke further objects to IEPA's requests to the extent they seek information that is not presently in Chicago Coke's possession, custody or control, or is not now or has never been in the control of Chicago Coke.

D. Chicago Coke reserves the right to supplement or amend its responses at any time prior to trial.

E. Any response given or document produced by Chicago Coke is subject to any objections regarding relevance, materiality, admissibility and all other objections on any other grounds that would require excluding the statement or document if offered at deposition, hearing, trial or other proceeding, or in any pleading or submission. All such objections are hereby expressly reserved and may be interposed at the time of attempted use.

F. Chicago Coke objects to the requests to admit as unduly burdensome to the extent they seek information already within IEPA's possession, information that is equally available to IEPA, or information that is in the public domain.

G. Chicago Coke objects to the form of the requests to admit, as violating 35 Ill.Adm.Code 101.618(c) and Supreme Court Rule 216(g).

H. Chicago Coke objects to the relevance of certain requests for admission of fact. The facts asked to be admitted are not relevant to the issues raised in this appeal, and Chicago Coke will object to any attempt to use the facts in this proceeding.

REQUESTS

1. As of February 22, 2010, Petitioner had never produced coke at the Facility.

   RESPONSE: See General Objection H. Without waiving objection, and reserving all rights: Admitted.

2. As of February 22, 2010, Petitioner had never used the Facility for any industrial purpose other than transloading.

   RESPONSE: See General Objection H. Without waiving objection, and reserving all rights: Admitted.

3. In its condition as of February 22, 2010, the Facility was not capable of producing coke.

   RESPONSE: See General Objection H. Without waiving objection, and reserving all rights: Admitted.

4. In its condition as of November 15, 2002, the Facility was not capable of producing coke.

   RESPONSE: See General Objection H. Without waiving objection, and reserving all rights: Admitted.

5. From November 15, 2002 to February 22, 2010, continuously, the Facility has never been in such a condition that it was able to produce coke.

   RESPONSE: See General Objection H. Without waiving objection, and

reserving all rights: Admitted.

6. For the year 2003, Petitioner's operations at the Facility did not emit any NO_x, PM or VOM.

RESPONSE: See General Objection H. Without waiving objection, and reserving all rights: Admitted.

7. For the year 2004, Petitioner's operations at the Facility did not emit any NO_x or VOM.

RESPONSE: See General Objection H. Without waiving objection, and reserving all rights: Admitted.

8. For the year 2004, Petitioner's operations at the Facility emitted only 4.3 tons of PM.

RESPONSE: See General Objection H. Without waiving objection, and reserving all rights: Admitted.

9. All emissions of PM from operations at the Facility that Petitioner reported to the Illinois EPA for the year 2004 were attributable to transloading operations.

RESPONSE: See General Objection H. Without waiving objection, and reserving all rights: Admitted.

10. For the year 2005, Petitioner's operations at the Facility did not emit any NO_x or

VOM.

RESPONSE: See General Objection H. Without waiving objection, and reserving all rights: Admitted.

11. For the year 2005, petitioner's operations at the Facility emitted only 11.34 tons of PM.

RESPONSE: See General Objection H. Without waiving objection, and reserving all rights: Admitted.

12. All emissions of PM from operations at the Facility that Petitioner reported to the Illinois EPA for the year 2005 were attributable to transloading operations.

RESPONSE: See General Objection H. Without waiving objection, and reserving all rights: Admitted.

13. For the year 2006, Petitioner's operations at the Facility did not emit any NO_x, PM or VOM.

RESPONSE: See General Objection H. Without waiving objection, and reserving all rights: Admitted.

14. For the year 2007, Petitioner's operations at the Facility did not emit any NO_x, PM or VOM.

RESPONSE: See General Objection H. Without waiving objection, and reserving all rights: Admitted.

15. For the year 2008, Petitioner's operations at the Facility did not emit any NO_x, PM or VOM.

RESPONSE: See General Objection H. Without waiving objection, and reserving all rights: Admitted.

16. As of February 22, 2010, Petitioner had never placed the coke oven battery at the Facility into operation.

RESPONSE: See General Objection H. Without waiving objection, and reserving all rights: Admitted.

17. As of February 22, 2010, Petitioner had never placed the coke oven by-products plant at the Facility into operation.

RESPONSE: See General Objection H. Without waiving objection, and reserving all rights: Admitted.

18. As of February 22, 2010, Petitioner had never placed the boilers at the Facility into operation.

RESPONSE: See General Objection H. Without waiving objection, and reserving all rights: Admitted.

19. As of February 22, 2010, Petitioner had never completed a pad-up rebuild of the coke oven battery at the Facility.

RESPONSE: See General Objection H. Without waiving objection, and reserving all rights: Admitted.

20. Petitioner did not pay any fees to the Illinois EPA related to a CAAPP permit for the Facility for the year 2008.

RESPONSE: See General Objection H. Without waiving objection, and reserving all rights: Admitted.

21. Petitioner did not pay any fees to the Illinois EPA related to a CAAPP permit for the Facility for the year 2009.

RESPONSE: See General Objection H. Without waiving objection, and reserving all rights: Admitted.

22. For the years 2003, 2006, 2007, and 2008, Petitioner's operations at the Facility emitted no regulated air pollutants.

RESPONSE: See General Objection H. Without waiving objection, and reserving all rights: Admitted.

Respectfully submitted,

CHICAGO COKE CO., INC.

By: _____
One of its attorneys
(as to form and objections only)

Dated: September 7, 2011.

Michael J. Maher
Elizabeth S. Harvey
Swanson, Martin & Bell LLP
330 N. Wabash Avenue, Suite 3300
Chicago, IL 60611
312/321-9100

VERIFICATION

Simon Beemsterboer, being first duly sworn on oath, states that he is a representative of Chicago Coke Co., Inc.; that he has read Chicago Coke Co., Inc.'s responses to IEPA's first request for admission of facts; and that the admissions contained in the answers are true to the best of his knowledge and belief.

Simon Beemsterboer

DEBRA ALLEN
Notary Public
SEAL
State of Indiana
My Commission Expires June 26, 2018

SUBSCRIBED & SWORN to before me,
a Notary Public, this 1st day of
September, 2011.

EXHIBIT 5

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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

NOTICE OF FILING

TO: See Attached Service List

PLEASE TAKE NOTICE that on the 17th day of July 2012, I filed with the Office of the Clerk of the Illinois Pollution Control Board the attached Certificate of Service of Discovery Responses, a copy of which is hereby served upon you.

Respectfully submitted,

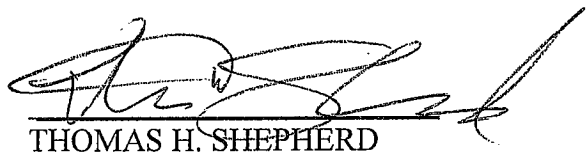
ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

By: _____

Thomas H. Shepherd
Assistant Attorney General
Illinois Attorney General's Office
Environmental Bureau
69 West Washington Street, 18th Floor
Chicago, Illinois 60602
(312) 814-5361

CERTIFICATE OF SERVICE

I, THOMAS H. SHEPHERD, do certify that I caused the attached Notice of Filing and Respondent's Second Supplemental Responses to Petitioner's Interrogatories to Respondent to be served this 17th day of July, 2012, upon the persons listed on the attached Service List, by depositing true and correct copies of same in an envelope, postage prepaid, with the United States Postal Service at 69 West Washington Street, Chicago, Illinois, unless otherwise noted on the Notice of Filing.



THOMAS H. SHEPHERD

SERVICE LIST
(PCB 10-75 (Permit Appeal))

John Therriault, Assistant Clerk
Illinois Pollution Control Board
100 West Randoph, Suite 11-500
Chicago, Illinois 60601
(Notice and Certificate only, by email)

Bradley P. Halloran, Hearing Officer
Illinois Pollution Control Board
100 West Randoph, Suite 11-500
Chicago, Illinois 60601
(Notice and Certificate only)

Michael J. Maher
Elizabeth Harvey
Erin E. Wright
Swanson, Martin & Bell, LLP
330 North Wabash Avenue, Suite 3300
Chicago, Illinois 60611
(by mail and email)

Ann Alexander
Shannon Fisk
Natural Resources Defense Council
2 North Riverside Plaza, Suite 2250
Chicago, Illinois 60606
(by mail and email)

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 SECOND SUPPLEMENTAL 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 supplements its Respondent's First Supplemental Responses to Petitioner's Interrogatories to Respondent and 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
1021 North Grand Avenue East
Springfield, Illinois 62794-9276
(217) 785-9250

Rob Kaleel
Manager

Illinois EPA Bureau of Air
Division of Air Pollution Control
Air Quality Planning Section
1021 North Grand Avenue East
Springfield, Illinois 62794-9276
(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:

Subject to and without waiving its general objections herein, Respondent states that the individuals identified in Response's Answer to Interrogatory No. 2 were involved in permitting and ERCs for the following entities: A. Finkl & Sons, Air Products, Brown Printing, ExxonMobil, Indeck-Elwood, Quebecor World, Robbins Community Power, and ConocoPhillips. Pursuant to Rule 213(e) of the Illinois Supreme Court Rules, Respondent directs Petitioner to the documents contained on the disc accompanying Respondent's First Supplemental Response to Petitioner's Document Requests to Respondent, including pages 00002, 18,470, 18966-18973, 20,006, 20,058, 21,629, 23,462, and 25,549. Respondent further states that it has had informal conversations with sources regarding offsets. However, Respondent does not recall the details surrounding such conversations, and does not maintain a database of informal inquiries or responses. Respondent directs Petitioner to documents 25,831-26,063 contained on the disc accompanying Respondent's First Supplemental Response to Petitioner's Document Requests to Respondent.

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

Subject to and without waiving its general objections herein, Respondent identifies the following: the facility went into cold-idle in February 2002; the facility was shutdown at the time of purchase by Petitioner; Petitioner never operated the Facility for coking purposes; Annual Emissions Reports ("AERs") submitted for the years 2003, 2006, 2007, and 2008 identify no emissions of regulated air pollutants from the Facility; AERs submitted for the years 2004 and 2005 identify minimal emissions of regulated air pollutants from the independent, trans-loading operations at the Facility only; the duration of shutdown of the facility; the failure to actively pursue repair or reconstruction of the facility; the non-action of the facility on the 2005 construction permit; the lack of maintenance of the facility; the time and capital required to make facility operable; the difficulties in restarting the facility; the absence of the source in the emissions inventory; the non-inclusion of the facility emission's in the Maintenance Plan submitted to the United States Environmental Protection Agency; and the facility ceasing to pay fees and submit reports.

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

Subject to and without waiving its general objections herein, Respondent identifies: the guidance contained on the United States Environmental Protection Agency's website; the guidance contained in the Administrative Record previously provided, including pages 0001-0068, 0104-0131, 1440-1462, and 1537-1544; the Clean Air Act, 42 U.S.C. 7401 *et seq.*, including but not limited to Title I, Parts A and D; and Title 40, Part 51 of the Code of Federal Regulations, including but not limited to Subpart I.

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

Subject to and without waiving its general objections herein, Respondent identifies the Environmental Protection Act, 415 ILCS 5/1 *et seq.*, and 35 Ill. Adm. Code Part 203, including but not limited to Subparts A, B, and C.

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. Furthermore, Respondent identifies the following federal guidance contained in the Administrative Record previously provided: 0001-0068, 0104-0131, 1440-1462, and 1537-1544.

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 ground that it argumentatively mischaracterizes Respondent's "position." Subject to and without waiving its general and specific objections herein, Respondent identifies the Clean Air Act, 42 U.S.C. 7401 et seq., including but not limited to Title I, Parts A and D; Title 40, Part 51 of the Code of Federal Regulations, including but not limited to Subpart I.

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 ground that it argumentatively mischaracterizes Respondent's "position." Subject to and without waiving its general and specific objections herein, Illinois EPA identifies the Environmental Protection Act, 415 ILCS 5/1 *et seq.*, and 35 Ill. Adm. Code Part 203, including but not limited to Subparts A, B, and C.

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 ground that it argumentatively mischaracterizing Respondent's "determin[ation]" as to Chicago Coke's "request." Subject to and without waiving its general and specific objections hereto, Respondent states that it is unaware of any such proceeding, request, or permit application because facilities do not "own" ERCs. Respondent further states that it is unaware of any other proceeding, request, or permit application in which Respondent determined that emissions reductions were unavailable for use as offsets because the facility at which the reductions occurred was "permanently shut down." Respondent further states that it has informally indicated to sources that emission reductions were too old to be used as offsets; however, Respondent does not recall the details surrounding such instances.

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

Subject to and without waiving its general and specific objections hereto, Respondent states 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

Subject to the general objections hereto, Respondent states that it does not recall.

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

Subject to and without waiving its general and specific objections hereto, Respondent states that it has not identified any facility or entity in response to Petitioner's Interrogatory No. 16.

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

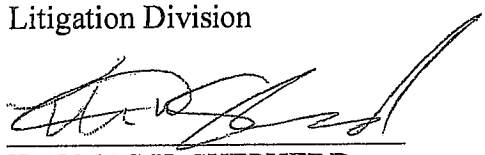
Respondent specifically objects to this Interrogatory as being premature and reiterates that it has not yet completed its preparation for a hearing. Notwithstanding the general and specific objections to this Interrogatory herein, and without waiving them, Respondent states that it has not identified 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

BY: 

THOMAS H. SHEPHERD
Assistant Attorney General
Environmental Bureau
69 West Washington Street, 18th Floor
Chicago, Illinois 60602
Tel: (312) 814-5361

EXHIBIT 6

U.S. Environmental Protection Agency
Region 5 - Air and Radiation Division

Correspondence

Document

(AR-18J)
February 14, 2006

Mr. Paul Dubenetzky
Assistant Commissioner
Office of Air Quality
Indiana Department of Environmental Management
100 North Senate Avenue
Indianapolis, Indiana 46204

Dear Mr. Dubenetzky:

We have reviewed the your September 13, 2005, letter requesting that the Environmental Protection Agency (EPA) provide a determination on the availability of New Source Review emission offset credits from the shutdown of a coating line at Sonoco Flexible Packaging, Incorporated. We would like to provide you with the following analysis.

According to your letter, Sonoco Flexible Packaging (Sonoco) shutdown its Tower 7 coating line in 2005, resulting in an estimated emissions reduction of 507 tons per year (tpy) of volatile organic compounds (primarily Toluene). It is our understanding that the Tower 7 coating line has been permanently shutdown and removed from the emissions inventory as a source of emissions at the Sonoco facility. If this facility had continued to operate this coating line, it would have become subject to 40 CFR Part 63 Subpart JJJJ (the Paper and Other Web Coating NESHAP) and been required to reduce Toluene emission from this coating line by the compliance date of December 5, 2005. However, since Sonoco shut down this coating line prior to the compliance date, the volatile organic compound (primarily Toluene) reductions necessary to comply with Subpart JJJJ were no longer an applicable requirement.

Section 173(c)(2) of the Clean Air Act (Act) provides that "[e]missions reductions otherwise required by [the Act] shall not be creditable as emissions reductions for purposes of any such offset requirement." Id. Since the coating line shutdown prior to the compliance date, we find that all of the actual emission reductions should be available and creditable because the reductions resulting from the shutdown of the Tower 7 coating line were not "required by the Act". This finding was made in consultation with the Office of Air Quality, Planning, and Standards.

If you have any concerns or questions regarding this letter, please feel free to contact Ethan Chatfield, of my staff, at (312) 886-5112.

Sincerely yours,

/S/

Stephen Rothblatt, Director
Air and Radiation Division

SonocoOffset.final.let.pdf

EXHIBIT 7

BEFORE THE ADMINISTRATOR
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

IN THE MATTER OF MONROE ELECTRIC GENERATING PLANT ENTERGY LOUISIANA, INC. PROPOSED OPERATING PERMIT Proposed by the Louisiana Department of Environmental Quality	PETITION NO. 6-99-2 ORDER RESPONDING TO PETITIONER'S REQUEST THAT THE ADMINISTRATOR OBJECT TO ISSUANCE OF A STATE OPERATING PERMIT

ORDER PARTIALLY GRANTING AND PARTIALLY DENYING PETITION FOR OBJECTION TO PERMIT

On February 9, 1999, Ms. Merrijane Yerger, Managing Director of the Citizens for Clean Air & Water ("CCAW" or "Petitioner"), petitioned the Environmental Protection Agency ("EPA"), pursuant to section 505(b) of the Clean Air Act ("CAA" or "the Act"), to object to issuance of a proposed State operating permit to Entergy Louisiana, Inc.'s Monroe Electric Generating Plant in Monroe, Louisiana ("Monroe plant"). The proposed operating permit for the Monroe plant was proposed for issuance by the Louisiana Department of Environmental Quality ("LDEQ") pursuant to title V of the Act, CAA §§ 501 - 507, the federal implementing regulations, 40 CFR Part 70, and the State of Louisiana regulations, Louisiana Administrative Code ("L.A.C."), Title 33, Part III, Chapter 5, sections 507 et seq.

Petitioner has requested that EPA review, investigate, and make an administrative determination on the entire matter of the proposed operating permit and planned restart of the Monroe plant, pursuant to section 505(b) of the Act and 40 CFR § 70.8(c). Petitioner alleges that the proposed operating permit is not in compliance with applicable requirements of the Act including Prevention of Significant Deterioration ("PSD") permitting requirements and New Source Performance Standards ("NSPS"). Petitioner also alleges that Entergy's operating permit application fails to adequately demonstrate compliance with hazardous waste disposal requirements under the Resource Conservation and Recovery Act ("RCRA").

For the reasons set forth below, I find that the proposed title V permit does not assure compliance with applicable PSD requirements as set forth in the Louisiana State Implementation Plan ("SIP"). I therefore grant the Petitioner's request in part and object to issuance of the proposed title V permit unless the

permit is revised in accordance with this Order. I deny the Petitioner's remaining claims.

I. STATUTORY AND REGULATORY FRAMEWORK

Section 502(d)(1) of the Act calls upon each State to develop and submit to EPA an operating permit program to meet the requirements of title V. The State of Louisiana submitted a title V program governing the issuance of operating permits on November 15, 1993, and subsequently revised this program on November 10, 1994. 40 CFR Part 70, Appendix A. In September of 1995, EPA granted full approval of the Louisiana title V operating permits program, which became effective on October 12, 1995. 60 Fed. Reg. 47296 (Sept. 12, 1995); 40 CFR Part 70, Appendix A. This program is codified in L.A.C. Title 33, Part III, Chapter 5, sections 507 et seq. Major stationary sources of air pollution and other sources covered by title V are required to obtain an operating permit that includes emission limitations and such other conditions as are necessary to assure compliance with applicable requirements of the Act. See CAA §§ 502(a) and 504(a).

The title V operating permits program is a vehicle for ensuring that existing air quality control requirements are appropriately applied to facility emission units in a single document and that compliance with these applicable requirements is assured. See Order In re Roosevelt Regional Landfill, at 2 (May 4, 1999). Such applicable requirements include the requirement to obtain preconstruction permits that comply with applicable new source review requirements. Id. at 8.[1]

Under section 505(b) of the Act and 40 CFR § 70.8(c), states are required to submit all operating permits proposed pursuant to title V to EPA for review and EPA will object to permits

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[1] Louisiana defines "federally applicable requirement" in relevant part to include "any standard or other requirement provided for in the Louisiana State Implementation Plan ("SIP") approved or promulgated by EPA through rulemaking under title I of the Clean Air Act that implements the relevant requirements of the Clean Air Act, including any revisions to that plan promulgated in 40 CFR part 52, subpart T." L.A.C. 33:III.502. EPA approved a PSD program in the State of Louisiana's SIP on April 24, 1987. 52 Fed. Reg. 13671; 40 CFR § 52.986. Thus, the applicable requirements of the Act respecting the Monroe plant permit include the requirement to comply with the applicable PSD requirements under the Louisiana SIP.

determined by the Agency not to be in compliance with applicable requirements or the requirements of 40 CFR Part 70. If EPA does not object to a permit on its own initiative, section 505(b)(2) of the Act and 40 CFR § 70.8(d) provide that any person may petition the Administrator, within 60 days of the expiration of EPA's 45-day review period, to object to the permit.

To justify exercise of an objection by EPA to a title V permit pursuant to section 505(b)(2), a petitioner must demonstrate that the permit is not in compliance with the requirements of the Act, including the requirements of Part 70. Petitions must, in general, be based on objections to the permit that were raised with reasonable specificity during the public comment period. A petition for review does not stay the effectiveness of the permit or its requirements if the permit was issued after the expiration of EPA's 45-day review period and before receipt of the objection. If EPA objects to a permit in response to a petition and the permit has not been issued, the permitting authority shall not issue the permit until EPA's objection has been resolved. 40 CFR § 70.8(d).

II. BACKGROUND

The Monroe plant, located in Monroe, Louisiana,[2] currently consists of three units (Units 10, 11 and 12), each with a boiler and ancillary equipment, which were installed in 1961, 1963, and 1968, respectively.[3] Each boiler is fired primarily with natural gas, but is also capable of being fired with diesel fuel oil.[4]

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[2] The Monroe area is currently designated as attainment for all National Ambient Air Quality Standards ("NAAQS") established by EPA.

[3] The City of Monroe built the plant in approximately 1895, and owned and operated the plant until 1978, when Louisiana Power & Light became the operator and subsequently the owner of the plant. Louisiana Power & Light changed its name to Entergy Louisiana, Inc. in 1996.

Units 10, 11 and 12 are the most recent additions Units 1 through 9 at the Monroe plant have been permanently decommissioned. The last of these, Unit 9, was permanently retired effective December 31, 1987. See Memo from D.L. Aswell, LP&L, to William Phillips, SSI (Dec. 18, 1987). This memo and other documents referred to in this Order are on file with EPA.

[4] The proposed title V permit would allow up to 15 percent of the facility's fuel use to be diesel fuel oil.

The rated capacities of the units are 23 megawatts ("MW"), 41 MW, and 74 MW, respectively. The total heat input for the units is 1,961 million British thermal units ("MMBtu"). Installation of these boilers was not subject to PSD review because it predated the PSD program.

On July 1, 1988, Louisiana Power & Light ("LP&L"), predecessor to Entergy Louisiana, Inc. ("Entergy"), placed the plant's three units in extended reserve shutdown ("ERS").[5] According to Entergy, these units were placed in extended reserve shutdown because of the addition of new electric generating capacity in the area. Memo from Entergy to EPA, "Actions Taken By Entergy At Monroe Generating Station." At the time of shutdown, LP&L projected that Units 10, 11 and 12 would not be needed for three to five years. Id. That period grew to eleven years as a result of "many factors," according to Entergy, including increased competition and demand-side management. Id.

Some time around September, 1988, LP&L initiated a number of activities at the Monroe plant to prepare the plant for extended shutdown, including draining, disconnecting and covering equipment, and installing and operating dehumidification equipment to prevent corrosion of the units. During shutdown, LP&L/Entergy conducted some inspection and maintenance activities, primarily in response to problems with the

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[5] Memo from E.M. Ormond, LP&L, to Glenn F. Phillips (June 28, 1988). Extended reserve shutdown is a program implemented by the Entergy Operating Companies (of which Entergy Louisiana is a member) in the mid-1980's to save money by placing units in inactive status and reducing operating staff, maintenance costs, and deferring the cost of repairing units. See Louisiana Public Service Commission, Order No. U-20925-G at 8-9 (Nov. 18, 1998).

The record further reflects that the units were not in regular operation for several years prior to placing the units in extended reserve shutdown. See Letter from Entergy to Jayne Fontenot, Chief, Permits Issuance Section, EPA, Region VI (July 18, 1994) (noting that Monroe plant has not operated on a routine basis since 1981). Internal LDEQ memoranda further suggest that the Monroe plant ceased operating around January 1988. See Memo from Paul Laird, LDEQ Northeast Regional Office, to John R. Newton, LDEQ, Air Quality Div. (Feb. 8, 1989); Memo from Paul Laird, LDEQ Northeast Regional Office, to John R. Newton, LDEQ, Air Quality Div. (Feb. 24, 1988).

dehumidification system.[6] During this period, LP&L/Entergy also maintained relevant environmental permits for the Monroe plant, including payment of air quality maintenance fees to LDEQ (between $1,100 and $1,300 per year), maintenance of water permits, and applications for an acid rain permit (received October 23, 1996) and a title V operating permit.

Entergy now proposes to restart Units 10, 11 and 12 at the Monroe plant beginning this summer. On September 16, 1996, Entergy submitted a title V permit application to LDEQ. The total estimated annual emissions of air pollutants associated with the plant, in tons per year ("tpy"), are as follows: nitrogen oxides ("NO_x"), 4,972.65 tpy; sulfur dioxide ("SO_2"), 679.84 tpy; carbon monoxide ("CO"), 361.65 tpy; particulate matter ("PM_{10}"), 32.46 tpy; and volatile organic compounds ("VOCs"), 12.74 tpy. These projected annual emission rates are incorporated as annual emission limits in the proposed title V permit. The requested operating permit includes no limitations on the hours of operation or the capacities at which the units would operate. Most relevant for purposes of this Order, neither the permit application nor the proposed permit provides for obtaining a PSD permit for the units prior to restart, under the Louisiana PSD program.

LDEQ submitted a proposed title V permit to EPA Region VI for review on November 16, 1998. The permit went out for public comment on November 25, 1998. Public commenters requested a public hearing. Notice of a public hearing was published on January 16, 1999. A public hearing was held by LDEQ on February 18, 1999. The public comment period ended April 20, 1999. EPA's 45-day review period expired on December 31, 1998. On February 9, 1999, Citizens for Clean Air & Water filed a timely petition with EPA pursuant to section 505(b)(2) of the Clean Air Act requesting that EPA object to issuance of the proposed permit for the Entergy Monroe plant. As of this date, no final permit has been issued.

III. ISSUES RAISED BY PETITIONER

Petitioner objects to issuance of the proposed permit on five grounds: (1) LDEQ failed to subject the Monroe plant to PSD review; (2) the maximum capacity of the Monroe plant may have been increased by some unknown method at some time between 1976

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[6] Other activities included stack inspections in 1992, installation of an oil/water separator for the stormwater system in 1996, and cleaning of the diesel fuel oil tank system in 1996.

and the time of the title V application without being subject to PSD review or NSPS; (3) the proposed permit fails to incorporate enforceable one-hour maximum emission rate limitations for sulfur dioxide and other criteria pollutants; (4) the proposed permit includes apparent annual emissions increases that suggest PSD review should be conducted for the sulfur dioxide emissions; and (5) sufficient information has not been provided in Entergy's permit application to ensure compliance with RCRA disposal requirements.[7]

In addition, the Petitioner requests the following: (1) that EPA issue an information request letter to Entergy and the City of Monroe under section 114 of the Act, requiring them to disclose all matters raised by this petition; and (2) that EPA conduct an on-site inspection of the Monroe plant to determine whether PSD and NSPS have been triggered.

Items (1), (3) and (4) are either addressed in the PSD applicability analysis or rendered moot by EPA's conclusion that the proposed title V permit must be revised to ensure compliance with applicable PSD requirements. Section V addresses Item (2); Section VI addresses Item (5). In response to Petitioner's request for an inspection, on May 17, 1999, EPA conducted an inspection of the Monroe plant to verify the activities being conducted at the plant and to confirm that the plant is not operating. Finally, in response to Petitioner's request that EPA issue an information request letter, EPA believes it has sufficient information to respond to the Petition and that there is no need at this time for such a letter.

IV. PSD APPLICABILITY ANALYSIS

The following sections describe EPA's analytical tests for determining PSD applicability and apply these tests to the proposed restart of the Monroe plant. EPA concludes that the proposed restart of the Monroe plant should be subject to PSD requirements and thus, that the title V permit does not assure compliance with the applicable PSD requirements set forth in the Louisiana SIP. The analysis in this Order, however, does not

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[7] These objections were also raised during the public hearing and in correspondence to LDEQ and Region VI from Mr. Alexander J. Sagady, Environmental Consultant, on behalf of CCAW, dated February 18, 1999. Accordingly, Petitioner has met her obligation to base the petition on objections to the permit raised with reasonable specificity during the public comment period.

purport to dictate the specific PSD permit terms that the State should adopt in revising the title V permit.

A. Analytical Approach

Part C of title I of the Clean Air Act establishes the statutory framework for protecting public health and welfare from adverse effects of air pollution, notwithstanding attainment and maintenance of all NAAQS. Congress specified that the PSD program is intended to:

> (1) "insure that economic growth will occur in a manner consistent with the preservation of existing clean air resources"; and
> (2) "assure that any decision to permit increased air pollution . . . is made only after careful evaluation of all the consequences of such a decision and after adequate procedural opportunities for informed public participation in the decisionmaking process."

CAA § 160.

To accomplish these purposes, the Act relies primarily on a permitting program as the mechanism for reviewing proposals to increase air pollution in areas meeting the NAAQS. The Act generally requires PSD permits prior to construction and/or operation of new major stationary sources and major modifications to stationary sources in areas designated attainment or unclassified for the pollutants to be emitted by the sources. See CAA §§ 165(a) and 169(2)(C). "Modification" is defined to include, "any physical change in, or change in the method of operation of, a stationary source which increases the amount of any air pollutant emitted by such source or which results in the emission of any air pollutant not previously emitted." CAA § 111(a)(4). By regulation, EPA has limited the facially broad sweep of the PSD provisions to only "major" modifications. 40 CFR § 51.166(i); see also L.A.C. 33:III.509(I).

As described in the following sections, reactivation of facilities that have been in an extended condition of inoperation may trigger PSD requirements as "construction" of either a new major stationary source or a major modification of an existing stationary source. Where facilities are reactivated after having been permanently shutdown, operation of the facility will be treated as operation of a new source. Alternatively, shutdown and subsequent reactivation of a long-dormant facility may trigger PSD review by qualifying as a major modification. This section describes EPA's approach for analyzing whether restart of

a facility triggers PSD review as: (1) a new major source under EPA's Reactivation Policy; (2) a major modification by virtue of a physical change resulting in a significant net emissions increase; or (3) a major modification by virtue of a change in the method of operation resulting in a significant net increase in emissions.[8]

1. Restart Treated as New Source -- EPA's Reactivation Policy

EPA has a well-established policy that reactivation of a permanently shutdown facility will be treated as operation of a new source for purposes of PSD review.[9] The key determination to be made under this policy is whether the facility to be reactivated was "permanently shutdown." In general, EPA has explained that whether or not a shutdown should be treated as permanent depends on the intention of the owner or operator at the time of shutdown based on all facts and circumstances. Shutdowns of more than two years, or that have resulted in the removal of the source from the State's emissions inventory, are presumed to be permanent. In such cases it is up to the facility owner or operator to rebut the presumption.

To determine the intent of the owner or operator, EPA has

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[8] Whether a source is subject to preconstruction review as a new source or as a major modification may be significant in particular cases for determining the appropriate analysis of control technology options and other PSD requirements. For example, analysis of control technology for major modifications might consider the age or configuration of the source where review for new sources might not. Likewise, analysis of alternatives for new sources might consider alternative locations where the same analysis for major modifications might not.

[9] See Memo from Edward E. Reich, Director, Div. of Stationary Source Enforcement, to Stephen A. Dvorkin, Chief, General Enforcement Branch, Region II (Sept. 6, 1978); Memo from Edward E. Reich, Director, Stationary Source Enforcement Div., to William K. Sawyer, General Enforcement Branch, Region II (Aug. 8, 1980); Memo from John S. Seitz, Director, Stationary Source Compliance Div., OAQPS, to David P. Howekamp, Director, Air Mgt. Div., Region IX (May 27, 1987); Letter from David P. Howekamp, Director, Air Mgt. Div., Region IX, to Robert T. Connery, Holland & Hart (Nov. 6, 1987); Memo from John B. Rasnic, Director, Stationary Source Compliance Div., OAQPS, to Douglas M. Skie, Director, Air Programs Branch (Nov. 9, 1991).

examined factors such as the amount of time the facility has been out of operation, the reason for the shutdown, statements by the owner or operator regarding intent, cost and time required to reactivate the facility, status of permits, and ongoing maintenance and inspections that have been conducted during shutdown. No single factor is likely to be conclusive in the Agency's assessment of these factors, and the final determination will often involve a judgment as to whether the owner's or operator's actions at the facility during shutdown support or refute any express statements regarding the owner's or operator's intentions.[10]

While the policy suggests that the key determination is whether, at the time of shutdown, the owner or operator intended shutdown to be permanent, in practice, after two years, statements of original intent are not considered determinative. Instead, EPA assesses whether the owner or operator has demonstrated a continuous intent to reopen. To make this assessment, EPA looks at activities during time of shutdown that evidence the continuing validity of the original intent not to permanently shut down.

Thus, to preserve their ability to reopen without a new source permit, EPA believes owners and operators of shutdown facilities must continuously demonstrate concrete plans to restart the facility sometime in the reasonably foreseeable future. If they cannot make such a demonstration, it suggests that for at least some period of the shutdown, the shutdown was intended to be permanent. Once it is found that an owner or operator has no real plan to restart a particular facility, such owner or operator cannot overcome this suggestion that the shutdown was intended to be permanent by later pointing to the

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[10] See Memo from John S. Seitz, Director, Stationary Source Compliance Div., OAQPS, to David P. Howekamp, Director, Air Mgt. Div., Region IX (May 27, 1987) (finding shutdown of Noranda Lakeshore Mines' roaster leach plant to be permanent despite express statements from the facility owners that shutdown was temporary, and evidence that the plant was maintained during shutdown); but cf. Memo from John B. Rasnic, Director, Stationary Source Compliance Div., OAQPS, to Douglas M. Skie, Chief, Air Programs Branch (Nov. 19, 1991) (finding reactivation of Watertown Power Plant did not trigger PSD based on the fact that the statements of intent by the owners were supported by documentation regarding maintenance of the facility during shutdown and, as a result, the ability to reactivate the plant easily).

most recent efforts to reopen the facility.[11]

2. Restart as a Major Modification -- Physical Change

In addition to possibly triggering PSD requirements as a new source, restart of an idle facility may also trigger PSD review if it meets the definition of a major modification. EPA's PSD regulations define "major modification" as "any physical change in or change in the method of operation of a major stationary source that would result in a significant net emissions increase of any pollutant subject to regulation under the Act." 40 CFR § 51.166(b)(2)(i); see also L.A.C. 33:III.509(B).[12]

"Physical change" is not defined in the Clean Air Act or in EPA's PSD regulations. Instead, EPA's regulations describe those activities that are not considered physical changes; most notably, the regulations exclude routine maintenance, repair and replacement. Outside these exceptions, the Agency and courts have interpreted "physical change" broadly. See, e.g., Wisconsin Elec. Power Co. v. Reilly ("WEPCO"), 893 F.2d 901, 908 (7th Cir. 1990) (noting that "courts considering the modification provisions of NSPS and PSD have assumed that 'any physical change' means precisely that").

As a result of this broad statutory definition, most analysis of whether PSD review is triggered under this provision will focus on whether the activities at the facility fit within

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[11] This approach for assessing the intent of the owner or operator is consistent with the general notion that a company cannot sit indefinitely on a governmental permission to emit air pollution without showing some definite intention to use it. See 40 CFR § 52.21(r) (construction must be commenced within 18 months of receiving a permit); L.A.C. 33:III.509(R); see also In re West Suburban Recycling and Energy Center, L.P., PSD Appeal No. 97-12, slip op. at 8 (EAB, Mar. 10, 1999) (finding PSD permit should be denied because "there is no realistic prospect that the resource recovery facility described in WSREC's permit application will be completed").

[12] Net emissions increases are calculated by combining any increase in actual emissions from a particular physical change or change in the method of operations, with any increase or decrease in actual emissions at the source that are contemporaneous with the particular change and otherwise creditable. 40 CFR § 51.166(b)(3); see also L.A.C. 33:III.509(B). See infra at V.A.4.

one of the regulatory exceptions, in particular the routine maintenance, repair and replacement exception provided in 40 CFR § 50.21(b)(2)(iii)(a). To distinguish between physical changes and work that is routine, "EPA makes case-by-case determinations by weighing the nature, extent, purpose, frequency, and cost of the work, as well as other relevant factors, to arrive at a common-sense finding." WEPCO, 893 F.2d at 910 (quoting Memo from Don R. Clay, Acting Assistant Admin. for Air and Radiation, to David A. Kee, Director, Air and Radiation Div., Region V (Sept. 9, 1988)); see also Letter from David P. Howekamp, Director, Air Mgt. Div., Region IX, to Robert T. Connery, Holland & Hart ("Cyprus Casa Grande Letter") (Nov. 6, 1987) (concluding work conducted at facility was not routine "when viewed as a whole").

3. Restart as a Major Modification -- Change in the Method of Operation

Restart of a long-dormant facility may also be treated as a major modification subject to PSD review if it represents a "change in the method of operation of a major stationary source that would result in a significant net emissions increase of any pollutant subject to regulation under the Act." 40 CFR § 51.166(b)(2)(i); see also L.A.C. 33:III.509(B). As with the term "physical change," the regulations do not define the meaning of "change in the method of operation" except by listing those activities that do not constitute such changes. 40 CFR § 51.166(b)(2)(iii); see also L.A.C. 33:III.509(B). The most relevant exception for analyzing whether restart of a shutdown facility might be treated as a change in the method of operation is 40 CFR § 51.166(b)(2)(iii)(f); see also L.A.C. 33:III.509(B). This provision exempts from PSD review "[a]n increase in the hours of operation or in the production rate, unless such change would be prohibited under any federally enforceable permit condition which was established after January 6, 1975, pursuant to 40 CFR 52.21 or under regulations approved pursuant to 40 CFR subpart I or 40 CFR 51.166." 40 CFR § 51.166(b)(2)(iii)(f); see also L.A.C. 33:III.509(B).

The purpose of this "increase in hours" exception was to avoid undue disruption by allowing routine increases in production during the normal course of business in order to respond to market conditions. In the preamble to the PSD rulemaking, EPA explained:

> While EPA has concluded that as a general rule Congress intended any significant net increase in such emissions to undergo PSD or nonattainment review, it is also convinced that Congress could not have intended a company to have to

> get an NSR permit before it could lawfully change hours or rate of operation. Plainly, such a requirement would severely and unduly hamper the ability of any company to take advantage of favorable market conditions.

45 Fed. Reg. 52676, 52704 (Aug. 7, 1980). The court in WEPCO explained further, "This exclusion . . . was provided to allow facilities to take advantage of fluctuating market conditions, not construction or modification." 893 F.2d at 916 n.11.

Analysis of whether restart of a facility constitutes a mere increase in the hours of operation or production rate must consider whether the proposed activity is of the kind intended to be covered by the provision. Specifically, EPA will look at whether the proposed change requires enhanced flexibility to avoid hampering a company's ability to respond to market fluctuations. In general, reactivation after long periods of shutdown, though obviously motivated by long-term changes in the market, is not a response to the same type of market fluctuations and does not merit the same permitting flexibility envisioned by the regulations.

Restart of a long-dormant facility also may not be entitled to coverage under the "increase in hours" exemption if it would disturb a prior assessment of the environmental impact of the source. In the preamble for the 1980 PSD rulemaking, after expressing its belief that Congress intended to allow certain facilities flexibility to respond to market fluctuations, EPA explained, "At the same time any change in hours or rate of operation that would disturb a prior assessment of a source's environmental impact should have to undergo scrutiny." 45 Fed. Reg. 52676, 52704 (Aug. 7, 1980). As a result, EPA will not exempt increases in the hours of operation in situations where the increase in hours would be prohibited by a permit condition or where the increase would "interfere with a state's efforts in air quality planning . . . ." Letter from David P. Howekamp, Director, Air Mgt. Div., Region IX, to Robert T. Connery, Holland & Hart (Nov. 6, 1987).

In the Cyprus Casa Grande PSD applicability determination, EPA concluded that restart of a roaster/leach/acid ("RLA") plant after 10 years of shutdown constituted a change in the method of operation. EPA distinguished restart of the plant from a mere increase in the hours of operation, explaining that the exemption was not intended to cover restart of facilities after long periods of shutdown. The letter explained:

> EPA's original intention to disallow the [increase in hours]

> exclusion where it would "disturb a prior assessment of a source's environmental impact" leads me to conclude that the exclusion should not be applied here. This is so because our present assessment as well as that of the State of Arizona, is that the RLA plant in its current non-operating condition has no environmental impact. This is evidenced in part by the removal of the plant from the state's emission inventory and the surrender of operating permits. An additional factor is the simple physical fact that the RLA plant has had zero emissions for ten years.

Letter from David P. Howekamp, Director, Air Mgt. Div., Region IX, to Robert T. Connery, Holland & Hart (Nov. 6, 1987).

4. Restart as a Major Modification -- Emissions Netting Baseline

Once restart is found to be involve either a physical change or a change in the method of operation, the Agency must determine if the change results in a significant net emissions increase of a pollutant subject to regulation under the Act. 40 CFR § 51.166(b)(2)(i); see also L.A.C. 33:III.509(B). The first step in calculating the net emissions increase is to determine whether the particular physical or operational change in question would itself result in a significant increase in "actual emissions." See 40 CFR § 51.166(b)(3)(i)(a) and (b)(21); see also L.A.C. 33:III.509(B). If so, the second step is to identify and quantify any other prior increases and decreases in "actual emissions" that would be "contemporaneous" with the particular change and otherwise creditable. See 40 CFR § 51.166(b)(3)(i)(b); L.A.C. 33:III.509(B). The third step is to total the increase from the particular change with the other contemporaneous increases and decreases. See 40 CFR § 51.166(b)(3)(i)(b); L.A.C. 33:III.509(B). If the total would exceed zero, then a "net emissions increase" would result from the change. Whether this net emissions increase of a regulated pollutant is "significant" is determined in accordance with the annual tonnage thresholds set forth in 40 CFR § 51.166(b)(23) and L.A.C. 33:III.509(B).

The primary issue in calculating the net emissions increase associated with the restart of a shutdown facility is usually calculation of the actual emissions increase. To calculate the actual emissions increase associated with the change, the emissions from the source after the change is made must be compared to the "baseline emissions" of the source, which are the actual emissions of the source as of a "particular date" (i.e., immediately prior to the physical or operational change in

question). The regulations provide, "In general, actual emission as of a particular date shall equal the average rate . . . at which the unit actually emitted the pollutant during a two-year period which precedes the particular date [the date of the change] and which is representative of normal source operations." 40 CFR § 51.166(b)(21)(ii); see also L.A.C. 33:III.509(B).

The regulations give EPA (or the permitting authority) discretion to set a different period for determining baseline emissions if such a period is more representative of normal source operations. 40 CFR § 51.166(b)(21)(ii); see also L.A.C. 33:III.509(B). EPA, however, has applied its discretion narrowly in assigning representative periods other than the two years immediately preceding the physical or operational change. One exception was provided in the preamble to the 1992 "WEPCO rulemaking." 57 Fed. Reg. 32314, 32325 (July 21, 1992). There EPA said that for utilities it would consider as "representative," actual emission levels from any two years within the five years preceding the physical or operational change.[13] In that same preamble, however, EPA specifically rejected one commenter's argument that EPA should consider a two-year period within the last five years of a plant's operation as the representative period for plants that have been shut down for more than five years. See 57 Fed. Reg. 32314, 32325 (July 21, 1992).

On more than one occasion, EPA has made clear that in calculating the net emissions increase for reactivation of long-dormant sources potentially subject to PSD, the source is considered to have zero emissions as its baseline. In both the Cyprus Casa Grande applicability determination and the Cyprus Minnesota applicability determination, EPA set the baseline emissions level at zero for facilities that had been shut down or idle for 10 years. See Letter from David P. Howekamp, Director, Air Mgt. Div., Region IX, to Robert T. Connery, Holland & Hart (Nov. 6, 1987); Memo from John Calcagni, Director, Air Quality Mgt. Div., to David Kee, Director, Air and Radiation Div., Region V ("Cyprus Minnesota") (Aug. 11, 1992). In the Cyprus Minnesota applicability determination, after noting EPA's policy announcement in the WEPCO rulemaking, EPA explained that it has

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[13] See also Memo from John Calcagni, Director, EPA Air Quality Management Div., to David Kee, Director, Air and Radiation Div., EPA Region V (Aug. 11, 1992) (noting that representative period other than previous two years generally limited to catastrophic occurrences); EPA, Draft New Source Review workshop Manual at A.39 (Oct. 1990).

limited flexibility to adjust the "representative period."

For many reactivations of long-shutdown facilities that fall within the definition of a physical or operational change, the only step in calculating "significant net emissions increase" will be a determination of whether the increase in emissions resulting from the change is significant under 40 CFR § 51.166(b)(23)[14] because the baseline for actual emissions will be zero, and there will be no other emissions increases or decreases that are contemporaneous with the change.[15]

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[14] For Louisiana, the thresholds are provided at L.A.C. 33:III.509(B) in the definition of "significant" and are the same as the federal thresholds relevant here.

[15] As discussed above, the PSD regulations provide that the increase in emissions is determined by subtracting the affected units' pre-change "actual emissions" (referred to above as the "baseline") from their post-change "actual emissions." For units that have not "begun normal operations," the regulations generally provide that actual emissions are equal to the units' "potential to emit." 40 CFR § 51.166(b)(21)(iv). EPA interprets this provision to mean that units which have undertaken a non-routine physical or operational change have not "begun normal operations" within the meaning of the PSD regulations, since pre-change emissions may not be indicative of how the units will be operated following the non-routine change. See 57 Fed. Reg. 32314, 32326 (amending rules only for certain modifications at electric utility steam generating units and reserving "begun normal operations" language for other modifications); 63 Fed. Reg. 39857, 39859 n.4 (July 24, 1998) (post-change emissions of unit following non-routine change is potential to emit). In practice, this provision merely establishes a regulatory presumption that the units will operate at their maximum design capacity following the change. Sources can and frequently do rebut this presumption and avoid PSD applicability. They do so by agreeing to add pollution controls and/or accepting operational restrictions in a "minor NSR" permit or similar instrument that limits their emissions following the change to levels that are not significantly greater than pre-change actual emissions. See 40 CFR § 51.166(b)(4).

Since 1992, EPA regulations have allowed states to adopt a somewhat different approach to determining emissions increases for electric utility steam generating units. See 40 CFR § 51.166(b)(21)(iv), (v). Such units' post-change emissions may be established by a source estimating the future emissions of the unit and submitting to the state information to confirm the

B. Applicability of PSD to Restart of Monroe Plant

1. PSD Applicability Under EPA's Reactivation Policy

Entergy is proposing to restart three units at its Monroe plant that have been placed in "extended reserve shutdown" since July 1, 1988. At the outset, under EPA's Reactivation Policy, because these units have been shut down for more than two years, shutdown of these units is presumed to be permanent. Unless Entergy provides adequate support to rebut this presumption, restart of these units will be treated as activation of a new source subject to PSD. The remainder of this section discusses whether Entergy has adequately demonstrated that the units were never intended to be permanently shut down.[16]

Before formally placing the Monroe plant into extended reserve shutdown, then-owner LP&L prepared an Extended Reserve Shutdown Plan dated October 27, 1987, which described plans to maintain the plant in a reserved status to be available when the

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accuracy of those estimates. See 40 CFR §§ 51.166(b)(21)(v), (b)(32). However, states and localities are not required to include these special provisions for electric utility steam generating units in their PSD programs. See 40 CFR § 51.166(b) (allowing variations from federal rules when local rules are more stringent). Louisiana has not adopted the special provisions; accordingly, Entergy's post-change emissions will in this case be determined by its potential to emit, rather than by its projections of future emissions. In this case, however, even if Louisiana had adopted the special provisions for utilities, it would not change the outcome. This is so because Entergy has projected, and its proposed title V permit reflects, that it will operate at its full, unrestricted maximum capacity of 8760 hours per year. See Proposed Operating Permit, Monroe Electric Generating Plant, at 15 (General Condition III) (incorporating projected annual and hourly emissions rates).

[16] Entergy has submitted its own self-determination on PSD applicability. Letter from Frank Harbison, Sr. Lead Environmental Analyst, Entergy, to Larry Devillier, Asst. Administrator, LDEQ (Jan. 28, 1999). In addition, Entergy has provided various materials regarding maintenance activities, work needed to bring the plant back on line, permitting activities, and ERS decisionmaking. Letter from Gerald G. McGlamery, Louisiana Enviro. Admin., Entergy, to Hilry Lantz, Air Quality Div., LDEQ (Feb. 3, 1999); Memo from Entergy to EPA, "Actions Taken By Entergy At Monroe Generating Station" (w/ attachments).

demand for electricity increased. This plan included the installation of dehumidification systems, which were subsequently installed, to preserve the electric generation units. At the time of shutdown, at least, it appears that LP&L did not envision a permanent shutdown, but rather a temporary shutdown to respond to market conditions at the time. See Memo from Entergy to EPA, "Actions Taken By Entergy At Monroe Generating Station."

During shutdown, LP&L/Entergy continued to conduct minimum maintenance at the plant. These activities primarily involved responding to problems with the dehumidification system. Entergy has provided maintenance records dating back to May 9, 1988 showing maintenance undertaken at the plant each year throughout the shutdown period and indicating that LP&L/Entergy staff made multiple inspection or maintenance visits to the facility.

During the period of shutdown, LP&L/Entergy also continued to pay annual state air quality maintenance fees. Entergy has provided receipts for these payments for the period October 7, 1988 through August 18, 1998. On December 14, 1995, Entergy applied for a title IV Acid Rain permit, which it received October 23, 1996.

Based on this record it would appear that Entergy did not intend at the time of shutdown, and has never intended, to permanently shut down the Monroe plant. On the other hand, it appears that Entergy has not, until very recently, had definite plans to restart these units.

The Louisiana Public Service Commission ("LPSC"), in a review of whether Entergy had properly included ERS facilities, including the Monroe plant, in its list of "available" facilities,[17] found that Entergy had not adequately demonstrated that these ERS facilities would be returned to service. LPSC, Order No. U-020925-G (Nov. 18, 1998). Specifically, LPSC found that Entergy had not analyzed the costs of returning the ERS units to service, could not give a time frame for returning any

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[17] The dispute before the LPSC centered around a tariff agreement between Entergy companies whereby each company had to identify its available capacity and pay or receive compensation according to whether it produced power below or in excess of its listed available capacity. LPSC. Order No. U-020925 at 8-10. The agreement defined a unit as "available" if it was under the control of the system operator, was down for maintenance, or was in extended reserve shutdown with the intent of returning the unit to service at a future date. Id. at 10.

of the units to service beyond saying that they would be needed some time in the next 10 years, and had not made any efforts to confirm that they would be needed in the next 10 years. LPSC concluded that the fees resulting from Entergy's inclusion of the capacity of these ERS facilities could not be justified because Entergy had not made efforts to reach a decision "based on consideration of current and future resource needs, the projected length of time the unit would be in ERS status, the projected cost of maintaining such unit, and the projected cost of returning the unit to service."

The record before the EPA includes significant circumstantial evidence suggesting that Entergy has never intended the shutdown of the Monroe plant to be permanent. Despite this evidence, however, EPA continues to have serious doubts as to whether Entergy truly intended during much of the 11-year shutdown to expect to use the Monroe plant in the foreseeable future.[18] Because restart of the plant more clearly triggers PSD as a major modification involving a change in the method of operation, EPA does not need to make a final conclusion regarding Entergy's regulatory status under the Reactivation Policy at this time.

2. Physical Changes Triggering PSD

As described previously, changes at a facility may be treated as a major modification subject to PSD review in one of two ways -- changes involving a physical change of the source and changes involving a change in the method of operation at the source. Entergy has submitted a description of the work, and associated costs, being conducted in order to restart the three units at the Monroe plant. The total projected cost is approximately $5.3 million. Of that, Entergy states that $1.4 million will be spent on capital improvements. These include replacement of PCB-contaminated transformers, replacement of controls using mercury, and installation of continuous emissions monitoring equipment. The remaining work includes inspection and

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[18] The disparity between the company's efforts to maintain the plant to avoid the appearance of permanent shutdown, and its failure to adequately demonstrate to the LPSC its plans to use the plant in the future, highlight one of the weaknesses of EPA's Reactivation Policy in determining the appropriate regulatory treatment of the restart of facilities after a lengthy shutdown. As a result, I have directed my staff to reevaluate EPA's Reactivation Policy to determine if steps can be taken to clarify the circumstances under which restart of a long-dormant source should be subject to new source review as a new source.

cleaning of equipment, some minor repairs of valves and piping, and replacement of auxiliary equipment such as batteries and lab equipment.

Analysis of whether these changes trigger PSD applicability must consider whether, "as a whole," the changes are exempt as routine maintenance, repair and replacement. See 40 CFR § 51.166(b)(2)(iii); L.A.C. 33:III.509(B). In our review of the proposed reactivation of the Cyprus Casa Grande RLA plant EPA explained:

> Although the [contractor's] report notes the good condition of the acid plant and characterizes some of the needed work as "minor" or "moderate," viewed as a whole, the minimum necessary rehabilitation effort is extensive, involving replacement of key pieces of equipment . . . and substantial time and cost [(four months and $905,000)]. In an operating plant some of the individual items of the planned rehabilitation, e.g. painting, if performed regularly as part of a standard maintenance procedure while the plant was functioning or in full working order, could be considered routine. Here, however, this and other numerous items of repair, as well as replacement and installation of new equipment, are needed in order for the RLA plant to begin operation. The fact that the plant requires four months of extensive rehabilitation work despite the adequate maintenance Noranda claims to have undertaken during the shutdown underscores the non-routine nature of the physical change that will occur at the plant.

Letter from David P. Howekamp, Director, Air Mgt. Div., Region IX, to Robert T. Connery, Holland & Hart (Nov. 6, 1987).

While the activities necessary to restart the Monroe plant might, collectively, appear to be part of a large, non-routine effort, EPA is not, at this time, making a finding as to whether this effort amounts to a physical change of the source. Because restart of the plant most clearly amounts to a change in the method of operation, as described below, EPA need not reach a final conclusion on whether such concentrated efforts without repair or replacement of key pieces of equipment or key components should be considered routine.[19]

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[19] It is worth noting that while the Cyprus rehabilitation effort included replacement of key pieces of equipment, the rationale for our conclusion in Cyprus Casa Grande turned on the non-routine collection of activities, and not on whether

3. Change in the Method of Operation of the Monroe Plant

For the last eleven years the Monroe plant has been inoperative. To operate the plant now after such a long shutdown constitutes a change in the method of operation within the meaning of the PSD regulations. The mere fact that the plant is changing from a lengthy "non-operational" and "unmanned" condition,[20] to one in which the plant is fully operational, fits the common sense meaning of a "change in the method of operation."

The proposed changes in the operation of the plant do not qualify as exempt increases in either the hours of operation or the rate of production, see 40 CFR § 51.166(b)(2)(iii)(f), and L.A.C. 33:III.509(B), because they are not the type of changes intended to be covered by the regulatory exemption. As discussed above, the purpose of the "increase in hours" exception was to provide flexibility to allow sources to adjust their operations to take advantage of currently favorable or changing market conditions without requiring a PSD permit. Restart of the Monroe plant neither calls for the same type of permitting flexibility nor can be considered a response to the kind of short-term, real-time market fluctuations envisioned by EPA in adopting the exemption.

This is not a situation where the sources's ability to plan ahead for permitting is constrained by the need for quick responses to short-term changes in the market. In its own analysis of PSD applicability, Entergy notes that unlike normal work outages where overtime is required to get the plants operational again, repairs at the Monroe plant will be conducted using "straight time" because "there will be no need to have the units available for dispatch in a short time frame." Memo from Mark G. Adams, Entergy to Myra Costello, Entergy (Aug. 3, 1998). Further, unlike the situations envisioned by the exemption, restart of a long-dormant facility involves permits for more than

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individual activities were themselves routine or non-routine.

[20] In a 1994 letter to LDEQ, Entergy states that as a result of placing the plant in ERS status in 1988, "[the] plant is non-operational and unmanned." Letter from Entergy to Cheryl LeJeune, Office of Water Resources, LDEQ (July 18, 1994). Entergy also noted that, "It has not generated electricity for six years and has not operated on a routine basis since 1981." Letter from Entergy to Jayne Fontenot, Chief, Permits Issuance Section, EPA, Region VI (July 18, 1994).

just air releases. Entergy has budgeted over $175,000 to obtain all of the necessary permits including a new water discharge permit to reflect the change from inoperation. Where a facility requires numerous permits to once again operate, PSD permit review is no longer the solitary hindrance that the exemption was designed to avoid.

EPA also believes the decision to operate after eleven years of shutdown, while certainly motivated by changes in the marketplace, is not the kind of quick decision to respond to quick market fluctuations that EPA intended to allow without the burden of the PSD permitting process. In the WEPCO rulemaking, EPA discussed its view of the time period in which one would expect to see the effect of market fluctuations for the utility sector:[21]

> By presumably allowing a utility to use any 2 consecutive years within the past 5, the rule better takes into consideration that electricity demand and resultant utility operations fluctuate in response to various factors such as annual variability in climatic or economic conditions that affect demand, or changes at other plants in the utility system that affect the dispatch of a particular plant. By expanding a baseline for a utility to any consecutive 2 in the last 5 years, these types of fluctuations in operations can be more realistically considered, with the result being a presumptive baseline more closely representative of normal source operation.

57 Fed. Reg. 32314, 32325 (July 21, 1992). The eleven-year shutdown of the Monroe plant is well beyond the period in which one would expect to see changes in operation in response to the kind of market fluctuations addressed by the "increase in hours" exception. The decision to restart the plant after such a long period is a more fundamental change in the way the company has done and plans to do business. Entergy's decision to restart the Monroe plant looks less like a quick decision to take advantage of market conditions at an already-operational plant and more like a decision to begin operation of a source that has not previously participated in the market.

EPA has also made clear that the "increase in hours"

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[21] EPA's comments were made in the context of describing the representative period for determining baseline emissions from utilities, but the analysis of what constitutes normal operations is equally relevant to the discussion here.

exemption is not available where it would "disturb a prior assessment of a source's environmental impact." For the last eleven years, the State has carried the Monroe plant in its emissions inventory with zero actual emissions. From all accounts, the State has treated the plant as having no environmental impact. Restart of the plant would disturb this assessment and is not, therefore, entitled to the "increase in hours exemption."

The State's assessment of the plant's environmental impact is further demonstrated by the State's submittal for the Ozone Transport Assessment Group ("OTAG") modeling effort to assess interstate NOx transport contributions to ozone nonattainment in downwind States. In late 1995, 37 States including Louisiana, provided their emissions inventories to EPA for modeling and analysis. Fifteen of those 37 States (including Louisiana) claimed that actual emissions from sources in their State had no impact on downwind ozone nonattainment. In 1995, the Monroe plant was included in the State's emissions inventory and was still included in that inventory as having zero emissions when the ultimate transport analysis was concluded in 1997. OTAG used this inventory data to project emissions contributions and nonattainment problems throughout the 37-State region through 2007. During this modeled period, emissions from the Monroe plant were assumed to be zero. Based in large part upon OTAG's modeling results, EPA declined to require Louisiana to revise its SIP as part of the recent "NOx SIP Call."[22] EPA concluded that the weight of evidence did not support a finding that Louisiana made a significant contribution to downwind nonattainment. See, 62 Fed. Reg. 60318, 60340 (Nov. 7, 1997), 63 Fed. Reg. 57356, 57398 (Oct. 27, 1998).[23]

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[22] The Court of Appeals for the D.C. Circuit has stayed the SIP Call pending further order by the court. State of Michigan v. EPA, No. 98-1497 (D.C. Cir. Order filed May 25, 1999).

[23] EPA conducted subsequent modeling efforts to evaluate the costs and air quality impacts associated with the proposed NOx SIP Call controls. This modeling did not rely on state inventory data. Instead, the approach looked at Energy Information Administration data regarding available power plants, and projected emissions based on future demand and likely order of dispatch (considering factors such as the plant's age and fuel type). This approach predicted future NOx emissions from Unit 12 of the Monroe plant of 148 tons per year. This amount of emissions corresponds to approximately 550 hours of full-load operation per year at Unit 12. Such minimal operations do not

EPA believes restart of the Monroe plant will constitute a change in the method of operation that is not otherwise exempted by the PSD regulations. The only possible exemption, the "increase in hours" exemption, simply was not intended to cover this kind of change. As a result, EPA must next consider whether the change in the method of operation will result in a significant net emissions increase, thereby triggering PSD applicability as a major modification.

4. Calculating Net Emissions Increase

Restart of the Monroe plant will result in emissions of NOx, SO2, CO, PM10 and VOC. As discussed previously, the emissions baseline for long-dormant sources such as the Monroe plant are generally considered to be zero. EPA believes the zero emissions baseline is representative of normal source operations at the Monroe plant, which has had no emissions for the last eleven years.

The following table lists the significance levels, see 40 CFR § 51.166(b)(23)(i) and L.A.C. 33:III.509(B), in tons per year for each of the pollutants that could be emitted upon restart of the Monroe plant. In addition, the table lists Entergy's potential to emit (assuming full-time operation, as is reflected in the proposed operating permit) for these same pollutants. The potential to emit is assumed to be the source's "actual emissions" following the change in the method of operation. See note 16, supra.

POLLUTANT	SIGNIFICANCE LEVEL (TPY)	POTENTIAL TO EMIT (TPY)
NOx	40	4,972.65
SO2	40	679.84
CO	100	361.65
PM10	15	32.46
VOC	40	12.74

With the exception of VOC, restart of the Monroe plant will result in a significant emissions increase over its current zero emissions baseline for each of the listed pollutants.

The regulations define the contemporaneous period as ex-

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alter EPA's conclusions. No emissions were projected for any of the other units at the plant.

tending back five years from the physical or operational change. No changes in emissions at the Monroe plant have been made during last 5 years because it has been shut down during this entire period. As a result there have been no increases or decreases in emissions that are contemporaneous with the change. See 40 CFR § 51.166(b)(3)(ii); L.A.C. 33:III.509(B). Therefore, the net emissions increases from start-up of the Monroe plant would be approximately those stated in the chart above. Hence, EPA agrees with Petitioner that the title V permit for the Monroe plant should be revised to assure compliance with the Louisiana SIP PSD requirements because start-up of the plant would be subject to PSD as a major modification under the Clean Air Act, 40 CFR § 51.166, and L.A.C. 33:III.509(B).

V. NSPS APPLICABILITY

Petitioner claims that the maximum capacity of the affected facilities at the Monroe plant may have been increased by some unknown method at some time between 1976 and the time of the title V application without being subject to NSPS review. Petitioner points to differences in reported emission capacities that suggest a modification has occurred at the Monroe plant. In the April 27, 1976 compliance report from the City of Monroe to the Louisiana Air Control Commission, the total capacity of the Monroe plant was reported as 1365 MMBtu/hr. In the September 18, 1996 title V permit application, however, Entergy reports the Monroe plant's capacity as 1961 MMBtu/hr. While EPA believes that Entergy has adequately explained this discrepancy in reported capacities (see below), EPA nonetheless evaluates in this section whether the changes to the Monroe plant might otherwise be subject to NSPS.

Section 111 of the Clean Air Act requires EPA to adopt standards of performance for stationary sources constructed or modified after the date the standards are proposed. CAA §§ 111(a)(2),(3) and (b)(1); see also 40 CFR § 60.1.[24] Unlike the PSD program, reactivation of long-dormant facilities is not considered construction of a new source. See Memo from Edward E. Reich, Dir., Div. Of Stationary Source Enf., to Sandra S. Gardebring, Dir., Region V Enf. Div. (Oct. 30, 1980). Installation of Units 10, 11 and 12 occurred prior to adoption of

[24] Louisiana has adopted the federal NSPS regulations by reference. See L.A.C. 33:III.3003(A). For purposes of this section, only the federal regulations are cited.

all NSPS regulations.[25] Thus, to determine NSPS applicability for restart of the Monroe plant, EPA need only consider whether the affected facilities have been modified or reconstructed. See 40 CFR §§ 60.14 and 60.15.

A "modification" for purposes of NSPS applicability is defined as:

> [A]ny physical change in, or change in the method of operation of, an existing facility which increases the amount of any air pollutant (to which a standard applies) emitted into the atmosphere by that facility or which results in the emission of any air pollutant (to which a standard applies) into the atmosphere not previously emitted.

40 CFR § 60.1. As with PSD, the analysis of whether an activity constitutes a modification is a two-part test. The first step -- identifying a physical or operation change -- is similar to the first step for finding a PSD modification. The second step of the NSPS analysis -- finding an emissions increase -- differs from the emission netting step of PSD.

To find an increase in emissions, EPA compares the hourly emissions capacity of an affected facility before and after the change. See 40 CFR § 60.14; see also WEPCO, 893 F.2d at 913. The changes at the Monroe plant do not appear to be of the type that would increase the hourly emissions capacity of the affected facilities. As described above, the major work being performed at the Monroe plant appears to involve upgrading certain controls, replacing PCB-containing transformers and some repairs and maintenance of the boilers and associated auxiliary equipment. Based on the information currently before it, EPA believes the affected facilities could operate at the projected capacities with or without the changes that have occurred at the source. If, after further investigation, EPA finds that changes to the facility in fact will increase the emissions capacity of the affected facilities, EPA will revisit the question of NSPS applicability.

In response to Petitioner's claims that reported emissions capacities had increased, Entergy explained that values derived from fuel consumption in 1975 were erroneously reported as

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[25] The first NSPS for fossil-fuel-fired steam generators applied to sources for which construction was commenced after August 17, 1971. 40 CFR, Part 60, subpart D.

maximum heat input values and appeared to be less than those stated in the permit application. Entergy's explanation appears to be confirmed by reference to specification sheets for the boilers. Because the manufacturer's specification sheets for the boilers reflect the same heat input values as represented in the permit application, EPA concludes that, standing alone, the differences in the reported emissions capacities, do not demonstrate a change in the emissions capacity of the affected facilities.

NSPS may also be triggered, irrespective of changes in emission capacities, if the changes to the affected facility amount to reconstruction of the facility. 40 CFR § 60.15(b). A facility is considered to be reconstructed when the represented fixed capital costs of new replacement components to reactivate the facility exceed 50% of the fixed capital costs required to construct a comparable new facility. 40 CFR § 60.15(b). Here, Entergy has projected the total cost (capital and O&M) to restart all affected facilities at the Monroe plant will be approximately $5.3 million. Entergy estimates approximately $1.4 million of these costs will be capital expenditures. Of these capital expenditures, it appears that at least half relate to replacement of PCB-containing transformers and thus do not relate to changes to the affected facilities. Given the small capital costs associated with reactivation of the affected facilities, it does not appear that the restart activities at the Monroe plant would trigger NSPS based upon a reconstruction analysis.

VI. RCRA DISPOSAL REQUIREMENTS

Entergy's permit application contains reference to two different procedures to remove iron oxide and copper from the boilers. One procedure involves using up to 30,000 pounds of ethylenediaminetetraacetic acid ("EDTA"). Spent boiler cleaning solutions containing this chemical and scavenged metals are injected into the boiler for combustion. The Petitioner claims that Entergy's permit application does not contain sufficient information concerning the analysis of typical spent boiler cleaning solutions nor citation to any regulatory provision that would exempt boiler cleaning solutions from RCRA disposal regulations. The Petitioner further asserts that if the spent boiler cleaning solutions exhibit RCRA hazardous waste characteristics, disposal would be prohibited unless the facility obtains a RCRA permit, became regulated under EPA's Boiler and Industrial Furnace regulations, or otherwise demonstrated that the spent boiler cleaning solution complied with EPA's "comparable fuels" specification.

To justify exercise of an objection by EPA to a title V permit pursuant to section 505(b)(2) of the Act, the Petitioner must demonstrate that the permit is not in compliance with the requirements of the Clean Air Act, including the requirements of the Louisiana SIP. RCRA requirements are not applicable requirements of the Act. See 40 CFR § 70.2. Therefore, this issue cannot be addressed as part of the petition process. However, the emissions themselves would be regulated under Louisiana's Air Quality regulations and federal/state hazardous waste requirements.

Under Louisiana Air Permit General Condition XVII, Entergy must submit any small emissions (generally less than 5 tpy in total) resulting from routine operations that are predictable, expected, periodic, and quantifiable to the Louisiana Air Quality Division for approval as authorized emissions. If the emissions are considered non-routine, Entergy must apply for a variance under L.A.C. 33.III.917. Thus, the emissions from the combustion of the spent boiler cleaning solutions are regulated under Louisiana's air quality regulations. In addition, if the spent boiler cleaning solution were to exhibit RCRA hazardous waste characteristics, Entergy would be required to comply with all applicable federal and state hazardous waste management requirements.

VII. CONCLUSION

For the reasons set forth above, I find that the proposed title V permit fails to assure compliance with applicable PSD requirements set forth in the Louisiana SIP. As a result, I partially grant the February 9, 1999 petition requesting that the Agency object to the proposed Entergy permit, and I hereby object to issuance of the proposed Entergy Permit. I deny the remainder of the February 9, 1999 petition. Pursuant to section 505(b) of the Act and 40 CFR § 70.8(d), LDEQ shall not issue the permit unless it is revised in accordance with this Order.

Date:

_____

Carol M. Browner
Administrator

EXHIBIT 8

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[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	
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EXHIBIT 9

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

FEB 27 1979

MEMORANDUM

SUBJECT: Emission Offset Policy - Determination of Replacement Facility

FROM: Director
Division of Stationary Source Enforcement

TO: Carl V. Blomgren, Director
Air and Hazardous Materials Division, Region VII

This is in response to a telephone determination request made to this office on February 8, 1979, by Craig Smith of your staff. From that conversation it appears that Kansas has proposed in its SIP to use the closing of a National Can Company Plant in November 1977 as an offset applied towards construction of a new Reynolds metals can company. The new plant is to be built several blocks from the closed facility, in the same nonattainment area. The spot vacated by the closed facility is now occupied by a totally different facility. The question raised was whether the new plant should be considered a replacement facility, in which case credit from the closed facility may be applied to offset emissions from the new can plant.

This office has determined that the proposed offset is not in accordance with the requirements of the Emission Offset Interpretative Ruling of January 16, 1979 (44 FR 3274-85) and cannot be approved.

According to footnote 6 of Appendix S (44 FR 3284), "where an applicant can establish that it shut down or curtailed production after August 7, 1977, or less than one year prior to the date or application, whichever is earlier, and the proposed new source is a replacement for the shutdown or curtailment, credit for such shutdown or curtailment may be applied to offset emissions from the new source". Although fulfilling the time requirement (the source shutdown occurred after the date of enactment of the 1977 Clean Air Act Amendments), the Kansas SIP provision does not fulfill the requirement that the new source clearly be a replacement.

The new source will be constructed at a different location by a different company, at a time nearly two years after the old source closed down. This situation does not represent a replacement, and is not covered under the emission offset provision of footnote 6.

The revised offset ruling does allow banking of reductions which exceed the requirement of more than equivalent offsets to insure reasonable further progress. A State may allow emission offsets banked after January 16, 1979 to be used provided they, are identified and accounted for in the SIP control strategy. However, a source shutdown prior to the filing of a new source apolication could not he used for offsets, and excess emissions reductions could not be banked, unless the new source is clearly a replacement.

This meimo has been prepared with the concurrence of the Office of Air Quality Planning and Standards. If you have any additional questions, please contact Robert Myers of my staff at FTS 755-2564.

Edward E. Reich

cc: Kent Berry, OAQPS
Larry Novey, OGC

DSSE:BMyers:ncb:2/22/79:3202:52564

EXHIBIT 10

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 6
1445 ROSS AVENUE. SUITE 1200
DALLAS. TX 75202-2733

November 19, 1992

Mr. William R. Campbell
Executive Director
Texas Air Control Board
12124 Park 35 Circle
Austin, Texas 78753

Re: Interim guidance on New Source Review (NSR) Questions Raised in Letters Dated September 9 and 24, 1992.

Dear Mr. Campbell:

This is in response to letters to my staff dated September 9 and 24, 1992, from Ms. Karen Olson and Mr. Kerry Drake respectively, of the Permits Division. These letters raised significant questions and issues related to the new source permitting in nonattainment areas as required by the Clean Air Act Amendments (CAAA) of 1990. As discussed during a conference call September 30, 1992, and an October 8, 1992, meeting in Dallas, we are providing this initial response which addresses most of the items of concern. We will, however, be furnishing you with any additional guidance to remaining items which are identified in a subsequent letter.

The Environmental Protection Agency (EPA) has provided many of the Agencys' interpretations of the new Part D NSR requirements in the General Preamble to Title I (57 FR 13498) dated April 16, 1992. We wish to commend the State of Texas for its action in adopting revisions to its NSR rules consistent with Title I of the 1990 CAAA. However, it is not surprising that in a program of this magnitude some ambiguities remain. At this time, we are not expecting any additional national guidance in the near future. However, we agree with you that we jointly need some basis to proceed between the November 15, 1992, effective date of your nonattainment NSR permitting regulations and any additional direction we may receive at the national level. Therefore, we hope to use this and subsequent letters to articulate the interim guidance we will follow in the absence of national guidance. After national guidance is issued, it may be necessary to revise this interim guidance to conform to such national guidance. Any application which has been submitted and determined to be complete after the issuance of final national guidance, may be subject to the interpretations of such final guidance.

Outlined below is our interim guidance in response to the questions raised by the Texas Air Control Board (TACB) in its letters dated September 9 and 24, 1992.

1. Does any increase in emissions at a major source trigger the de minimis threshold test? Is there a lower cutoff?

There is a concern that the current de minimis rule would be onerous and not practical for certain small changes such as adding a valve, pump, or small boiler. The TACB has suggested that an individual change of less than 5 tons per year (tpy) increase not be required to undergo nonattainment review nor should it trigger the requirement to perform de minimis netting. If the proposed increase equals or exceeds 5 tpy, only those increases and decreases; of 1 tpy or greater will be included in the de minimis test.

We appreciate the concern that a literal interpretation of the definition of de minimis, as contained in Section 182(c)(6) of the Clean Air Act (CAA), could be potentially onerous to the States, the individual permit applicants, and EPA. However, our concern with setting a de minimis threshold is that projects that would aggregate to 25 tpy or greater should in no way become excluded from the NSR permitting requirements. In order to ensure this, we would support in this interim guidance the following two step approach. 1) we would agree with an interim policy of setting a de minimis threshold at 5 tpy for purposes of starting the accounting process for the netting calculation. If a project's emissions would be less than 5 tpy, then the company would not be subject to the 5 year de minimis threshold test, provided that de minimis netting is not required in Step 2 below. However, the source would be required to keep track of the emissions changes. The 5 year de minimis threshold test would only be applied when the project's emissions equal or exceed 5 tpy. Once this 5 tpy de minimis level would be exceeded, then all emissions increases and decreases associated with a physical change or change in the method of operation would be included in the test. The source would then be subject to the nonattainment permit requirements if the net emission increase is greater than 25 tpy. 2) The second test is as follows. If the aggregate of emission increases and decreases after November 15, 1992, become greater than 25 tpy (excluding projects for which an application was received before November 15, 1992, and was subsequently determined to be complete), then the source would be subject to performing the 5 year de minimis threshold test. If the accumulation of all emission increases and decreases over the contemporaneous timeframe was determined greater than 25 tpy, then the nonattainment NSR requirements would be applicable.

Your staff has noted concern with tracking the accumulation of emissions for Step 2. One way to implement the policy outlined could be to have the source submit a certification with the application for a permit or exemption. This certificate would state that the increase from the project does not exceed 5 tpy and the accumulation of increases and decreases since November 15, 1992, does not exceed 25 tpy. The State could then use the annual emission statements that companies will have to submit starting in 1993 as a check that no source has had net increases more than 25 tpy without going through nonattainment New Source Review.

Neither of these approaches allow for excluding increases of 1 tpy or less from emissions tracking. However, it does allow for exclusion of routine repair, replacement or maintenance which may be excluded from review under the definition of major modification.

Enclosed are example calculations of how the above described netting would work.

2. What is the exact definition of the 5 year period for the de minimis threshold test?

In the September 9, 1992, letter, TACB proposed to use the same definition as found in the Prevention of Significant Deterioration (PSD)/NSR regulations prior to November 15, 1992, which specify that the contemporaneous period begins 5 years prior to commencement of construction and ends when the proposed project begins operation: However, in section 101.1 of TACB's revised regulations, TACB defined the 5 year period to be 5 consecutive calendar years which includes the year of the project and the 4 previous years, which is consistent with the statutory definition of de minimis emissions. As was discussed on October 8, 1992, TACB would need to revise its regulation to be consistent with its proposal to have the 5 year period under the nonattainment NSR regulations identical to the 5 year period for PSD netting. We agree that Texas could use either definition of the 5 year period. This is premised on our belief that the contemporaneous timeframe for netting under the PSD program (40 CFR 52-21 (b)(3)(ii)) is as stringent or more stringent than the definition in Section 182(c)(6) of the CAA. Both the definition in Section 182 (c) (6) and the PSD definition in 52.21(b)(3)(ii) specify a 5 year timeframe including the period when the increase or particular change occurs.

3. Do majar sources, such as asphalt concrete plants, that move often within nonattainment areas, as well as in and out of nonattainment areas, require a nonattainment permit each time they move?

Portable sources currently in an ozone nonattainment area may relocate within the same nonattainment area without obtaining a nonattainment permit, provided that no physical change or change in the method of operation occurs which results in an emissions increase. A source relocating from outside the nonattainment area must obtain a permit if it has not been previously permitted within the area and is not included in the emissions inventory for the nonattainment area. A nonattainment permit is also required if a source relocates from one nonattainment area to another nonattainment area.

This guidance is not meant to exempt the relocation of sources that are not generally considered portable from nonattainment NSR. For example, moving a painting operation from one part of a nonattainment area to another would result in review.

4. TACB states that the definition of major source it serious and severe ozone nonattainment areas in Sections 182 (c) and (d) could be interpreted to include fugitives emissions. They would like to extend this definition to marginal and moderate ozone nonattainment areas for the purposes of Consistency.

   On October 8, 1992, TACB indicated that it would retain their existing definition of a major facility/stationary source. Its revised NSR regulations presently do not require fugitive emissions to be considered in determining applicability unless the source belongs to certain categories specified in the regulation. This is an acceptable approach.

5. For sources which trigger review for nitrogen oxides (NO_x) under both nonattainment review and PSD, TACB proposes to conduct a combined review which will include nonattainment review enhanced by NO_x increment modeling.

   This is the type of review that we anticipated would be performed and appears to be a reasonable and correct approach. As agreed upon October 8, 1992, all applicable requirements of the PSD review and nonattainment review must be met.

6. What are applicants and permit engineers expected to do when implementing lowest achievable emission rate (LAER)?

   TACB mentioned the need for certain specified improvements in the RACT/BACT/LAER Clearinghouse, including the need for specifying emission levels in consistent units (i.e. lb/mmbtu, ppm, gr/dscf, etc.).

On October 8, 1992, it was agreed that the LAER determination would include a review of the RACT/BACT/LAER Clearinghouse. The review of the clearinghouse information would serve as a floor for the LAER determination. However, at this time the Clearinghouse is not considered comprehensive enough to be an adequate reference by itself for the ultimate determination of LAER. Ultimately LAER should be decided based on the technical evaluation and experience of the State permit engineer in conjunction with consideration of comments from EPA and the public. This approach should ensure that LAER is determined consistent with the regulatory definition.

7. How and to what depth must the alternative site analysis be performed?

TACB had suggested that an applicant include an alternative site analysis in its permit application, which TACB would maintain in the permit file.

In the absence of national guidance, we support development by TACB of reasonable interim procedures that can be implemented. Such interim procedures should include an appropriate level of technical review (as determined by the State) 'and ensure that comments from the public and EPA are adequately addressed for the public record.

At the meeting in Dallas on October 8, 1992, Ns. Karen Olson provided us material on the Texas Enterprise Zone Program from the Texas Department of Commerce. We are continuing to explore potential uses of the established Enterprise Zones Program for satisfying the alternative site analysis requirements. We will respond separately to you on this question.

8. When a modification exceeds de minimis level, is only the current project to be offset, or is tie entire contemporaneous increase to be offset? If the offset provided by the applicant is in excess of the required amount, can the balance be used for future offsets?

In the absence of written national guidance on this subject, we are interpreting that only emissions associated with the specific project that results in the de minimis level being triggered are required to be offset. It is important to note that any emission increases occurring since the 1990 emission baseline must appear in future reasonable further progress tracking, be accounted for in the 15 percent requirement and be accounted for in the

attainment demonstration. It is in the State's discretion to require a more restrictive interpretation (such as offsetting the entire net emissions increase) during the interim in order to further progress toward attainment.

In regard to remaining excess offset credits, they would remain creditable if they continued to meat all criteria for creditable emissions reductions. This excess could also be deposited (or retained if previously deposited) in an approved bank.

9. Several questions were raised concerning the internal offsetting provisions for serious ozone nonattainment areas in Section 182 (c)(7) and (8) of the Act. These questions include: (A) What is an internal offset? (a) If an internal offset is provided would not the modification have been de minimis in the first place? (C) Would an internal offset be considered in future de minimis threshold tests? (D) Do these rules apply for serious areas only? (2) Since TACB proposes to do netting consistent with PSD does that eliminate this option?

National guidance does not presently exist to address the issue of internal offsets. Since TACB proposes to use the "Plant wide" source definition (as opposed to a "dual source" definition), internal offsets would be accounted for in the source wide netting under the de minimis rule in Section 182(c)(6) of the CAA.

Because the use of internal offsets are optional under Sections 182 (c) (7) and (8) of the CAA, and EPA has not issued national guidance concerning the use of internal offsets, TACB has agreed not to implement the provisions of Sections 182 (c) (7) and (8) which relate to internal offsets during the interim period covered by this guidance. We agree with this approach since the State's regulation does not define the term internal offsets or the extent of its use.

In connection with this matter, we note that footnote 2 of Table I (definition of "major modification") of TACB is revised definitions provides that best available control technology (BACT) may be used as an alternative to LAER in severe ozone nonattainment areas if an offset ratio of 1.3 to 1 is used. This would be contrary to the above discussion, and to the 1990 CAAA. Footnote 2 was apparently included to incorporate the 1.3 to 1 internal offset provision in Section 182(c)(8), which provides relief from the requirement to utilize LAER at a source whose potential emissions are greater than 100 tpy, if an internal

offset ratio of 1.3 to 1 is used. It was agreed on October 8, 1992, that TACB would delete Footnote 2, consistent with the previous paragraph in which TACB agreed not to implement the internal offset provisions.

10. What is the status of pre-1990 baseline increases and reductions in the context of the de minimis threshold test and for offsetting? TACB expands this question further in its letter dated September 24, 1992.

Pre-1990 emissions increases and decreases are creditable for the purpose of determining applicability (i.e. netting). Under this interim policy, the period for which netting would be performed would be consistent with the PSD definition. (See response to question 2). Pre-1990 decreases (with the exception of shutdowns or curtailment of production or operating hours) may be used for the purposes of satisfying general offset requirements only if they are federally enforceable prior to 1990, are still federally enforceable, and are carried over as growth in an approved post-1990 attainment demonstration. Use of prior shutdowns before an approved attainment demonstration is in place, will be addressed by EPA in a separate response.

Clearly, if the State wishes, it can be more stringent by not allowing pre-1990 emission decreases to be used for offsets. This approach may be especially useful in instances where pre-1990 credits cannot be well accounted for in the Rate of Progress State Implementation Plan (SIP)

11. Is there a time frame for offset expiration?

In general, offsets can continue to exist as long as they are accounted for in each subsequent emissions inventory. They expire if they are used, or relied upon, in issuing a permit for a major stationary source or major modification in a nonattainment area, or are used in a demonstration of reasonable further progress.

The State may include an expiration date in its SIP to ensure effective management of the offsets. For example, TACB's proposed banking rule would require each individually banked offset to expire 5 years after date the reduction occurs, if it is not used. The rule also provides that a particular banked reduction will depreciate by 3% each year that it remains in the bank. EPA is supportive of the approach Texas has taken in its proposed banking rule to limit the lifetime of the offsets and to allow for an annual depreciation.

12. NO_x is a precursor for both ozone and particulate matter less than 10 microns (PM-10). What defines a major source for a precursor in this case? Will NO_x be offset for ozone and PM-10?

With reference to ozone, NO_x will be treated just like volatile organic compounds (VOC) except in transport regions where the major source threshold will be 100 tpy. (There are, of course, no transport regions in Region 6.) NO_x Will be regulated as a precursor for PM-10 only in certain sections of the country where EPA determines, in conjunction with the State, that precursors contribute significantly to the nonattainment area problem. (Texas is not considered to be one of those areas at present).

13. What are the precursors to PM-10?

As stated in the April 2, 1991, memorandum from John Calcagni (Director, Air Quality Management Division) to the Regional Air Division Directors, entitled PM-10 Moderate Area SIP Guidance: Final Staff Work Product PM-10 precursors are defined to include volatile organic compounds which form secondary organic compounds, sulfur dioxide which forms sulfate compounds, and nitrogen oxides which form nitrate compounds (pg. 7). In general, EPA believes that PM-10 precursor emissions will not significantly contribute to PM-10 ambient levels except in a few major metropolitan areas (e.g., Loos Angeles, Salt Lake County, Utah County, Denver, San Joaquin Valley) (pg. 10). No areas in Texas were specifically mentioned in the Staff Work Product. See also the discussion in Item 12 above.

Additional question from TACB's letter dated September 24, 1992:

14. once a project has been offset, will the amount that is offset be relied upon in future determinations of the contemporaneous net increase? Restated, will the slate be partially or totally "wiped clean" (depending on whether or not the current project is offset, or the entire contemporaneous increase is offset)?

First, recall that netting credits cannot be acquired outside the source for which the permit application is submitted. If a reduction has been used only as a netting credit and the source has netted out of review, then the credit is available as long as it remains in the contemporaneous time period.

If an emission reduction at a source is used as an external offset for another source, that reduction can no longer be relied upon for netting purposes at the first source. Restated, the increase from the proposed project and the project offset

would be wiped off the slate for future netting and offset transactions. In addition, if the State chooses to offset any additional contemporaneous increases and decreases, such changes are also wiped off the slate for future netting transactions. The remaining emission increases and decreases within the 5 year contemporaneous timeframe would continue to be included in future netting transactions.

If a reduction meets all the criteria for a creditable offset and only part is used in an offset transaction, the unused part can be applied to future offsets, if proper accounting and federal enforceability are ensured. An example would be as follows:

Source "A", a major stationary source in a nonattainment area, applies for a permit to modify. Source "B" shuts down operations that produce 250 tpy of VOC reductions. The emissions increase from the proposed project (excluding contemporaneous increases and decreases), after application of LAER, is 150 tpy, and the overall net emissions increase exceeds de minimis. The 250 tpy reduction from source "B" is made federally enforceable and used to offset the 150 tpy increase from source "A". If the sources are located in a severe ozone nonattainment area, the required offset ratio is 1.3 to I or 1.3 X 150 tpy = 195 tpy. The difference of 55 tpy remains creditable as an offset as long as it meets the criteria identified in item # 11, above. Of course, the State may choose to offset any contemporaneous increases and decreases in addition to the project increase consistent with the approved SIP.

We appreciate this opportunity to review these issues with you. We will respond to the remaining item you have identified as quickly as possible.

If you have any questions, please contact me at (214) 655-7200, Mr. Gerald Fontenot, Ms. Jole C. Luehrs, Mr. Stanley M. Spruiell, or Mr. Thomas H. Diggs, Air Programs Branch Staff, at (214) 655-7205, or Ms. Lucinda S. Watson, Office of Regional Counsel at (214) 655-8071.

Sincerely yours,

Stanley Meiburg
Director
Air, Pesticides and Toxics, Division (6T)

Enclosure

EXHIBIT 11

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

MAY 27 1987

MEMORANDUM

SUBJECT: Reactivation of Noranda Lakeshore Mines' RLA Plant and PSD Review

FROM: John S. Seitz, Director Stationary Source Compliance Division
Office of Air Quality Planning and Standards

TO: David P. Howekamp, Director Air Management Division, Region IX

Pursuant to your recent request, this memorandum addresses the status of Noranda Lakeshore Mines' roaster leach acid (RLA) plant in Arizona. Noranda is contemplating startup of the RLA plant which has been shut down since 1977. The company contends that the shutdown was not intended to be permanent, and therefore believes that the plant should not be subject to PSD review.

Whether or not a source which has been shut down is subject to PSD review upon reactivation depends on whether the shutdown is considered permanent. EPA evaluates permanence of shutdowns based on the intent of the owner or operator. The facts and circumstances of the particular case, including the duration of the shutdown and the handling of the shutdown by the State, are considered as evidence of the owner or operator's intent. This decision making framework follows the policy on plant reactivation which EPA set forth in 1978. The September 6, 1978 memorandum which initiated this policy states:"A shutdown lasting for two years or more, or resulting in removal of the source from the emissions inventory of the State, should be presumed permanent. The owner or operator proposing to reopen the source would have

the burden of showing that the shutdown was not permanent, and of overcoming any presumption that it was." Several memoranda later issued by SSCD (August 8, 1980; October 3, 1980; July 9, 1982) applied this shutdown/reactivation policy.

In the case of Noranda's RLA plant, your staff has provided the following information. The RLA plant, previously owned by Hecla Mining Company, was shut down by Hecla in 1977 due to market conditions. Reports issued by Hecla at the end of 1977 stated that the ALA facility could be operational within one week. However, due to poor economic conditions Hecla decided to terminate their lease for the ALA plant. In 1979 Noranda purchased the facility, but never operated the ALA plant due to similar economic problems; the ALA plant itself has not operated since 1977. The ALA plant was deleted from Noranda's operating permits in 1980, and Noranda' remaining operating permits were surrendered in 1984. In 1986, the ALA plant was removed from the State's emission inventory. Your staff has also indicated that the roaster may need at least several hundred thousand dollars worth of work before being operable, and could not come on line for approximately four months.

Since the ALA plant has been shut down for well over 2 years and has been removed from the State's emission inventory, EPA presumes that the shutdown was permanent. However, Noranda has submitted documentation to Region 9 seeking to demonstrate that the shutdown was not intended to be permanent. Included is a 1980 statement of intent for long term operation of the facility, evidence of some search for toll concentrates of sufficient quality to allow operation, and evidence of some level of custodial maintenance. The question which now arises is whether the information submitted is sufficient to rebut the presumption of a permanent shutdown.

EPA evaluates the permanence of the shutdown based on the demonstrated intent of the owner or operator to reopen the source. Facts and circumstances surrounding the shutdown, including duration of the shutdown and the handling of the shutdown by the source and State, are evidence of the owner's intent. In Noranda's case, the significant amount of time that has elapsed, as well as Noranda's failure to maintain the operating permit, removal of the ALA plant from the emissions inventory, and the time and capital that must be invested in the rehabilitation of the plant in order to make it operable, are evidence that the shutdown was intended to be permanent.

There is not sufficient evidence of intent to reopen the source to regard this as a temporary shutdown. Therefore, SSCD concurs with Region 9's determination that the source, for PSD purposes, is permanently shut down, and must meet Federal PSD requirements for construction and operation.

If You have any questions, please contact Sally M. Farrell at FTS 382- 2875.

cc: Wayne Blackard, Region IX
Nancy Harney, Region IX
Bruce Armstrong, OPAR
NSR Contacts

EXHIBIT 12

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION VII
324 EAST ELEVENTH STREET
KANSAS CITY, MISSOURI - 64106

October 9, 1979

Mr. Harvey D. Shell
Shell Engineering and Associates
P.O. Box 1091
Columbia, Missouri 65205

Dear Mr. Shell:

As discussed by Mr. Charles W. Whitmore of my staff on October 5, 1979, a source which has permanently ceased operation would be subject to prevention of significant air quality deterioration (PSD) review before it could be reactivated. As stated in my letter of September 25, 1979, the Environmental Protection Agency (EPA) presumes that any source shut down for two years or more has permanently ceased operation. However, the EPA also gives the source owner or operator the right to rebut this presumption by demonstrating the shutdown was never intended to be and, in fact, was not a permanent shutdown.

I have included three documents which establish the basis for the two-year presumption of permanency. They are the PSD regulations of June 19, 1978, the proposed revisions to the PSD regulations, dated September 5, 1979, and a determination by the Division of Stationary Source Enforcement, designated as PSD 67.

Section 52.21(k) of the PSD regulations of June 19, 1978, exempts from air quality impact analysis emissions which are of a temporary nature. The preamble of these regulations at the bottom of the first column of page 26394 discusses the definition of "temporary" and establishes that emissions occurring for less than two years in one location would generally be considered temporary.

The PSD 67 discusses a source which was shut down for four years due to an industrial accident and now proposes to reopen. The conclusion is made in this discussion that the source would be subject to a PSD review if the source had been shut down permanently. This decision also states that a shutdown lasting for two years or more, or which results in removing the source from the emissions inventory of the state is presumed to be permanent.

In the preamble of the proposed revisions to the PSD regulations, published September 5, 1979, page 51935 discusses the application of offsets within a major source complex to avoid an increase of emissions from the complex. The first full paragraph in the second column of the page states that emissions from the source over the last one to two year period may be considered in determining creditable offset. The preceding paragraph states that an obsolete unit which has been shut down for several years would not offer any credit for offsets.

The items discussed above establish EPA policy that temporary emissions and temporary shutdowns are considered to be of two-year duration or less. It also establishes that the credit which can be given for offset purposes must be the emissions of the last one or two year period. Thus, a source which has been shut down for more than that length of time could not be used for offset although it might physically be capable of operating. It then follows that a source which has not operated for in excess of two years and is not in the air quality baseline would be considered a new source if operation is commenced.

As stated in my letter of September 25, 1979, the owner or operator may rebut the presumption of permanent shutdown by demonstrating that the source was never intended to be a permanent shutdown. This could include such things as procedures which were taken to maintain the source in operating conditions, maintaining an emissions inventory in the state inventory file, or actively pursuing the repair or reconstruction of the source.

If you wish to discuss this further, please call Mr. Whitmore at (816)374-3791.

Sincerely yours,

William A. Spratlin

William A. Spratlin, Jr., P.E.
Chief, Air Support Branch
Air and Hazardous Materials Division

Enclosures

cc: Robert J. Schreiber, Jr., P.E.
Staff Director, Air Quality Program
Jefferson City, Missouri

Ms. Libby Scopino
Division of Stationary Source Enforcement
Washington, D.C.

EXHIBIT 13

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C.20460

SEP 6 1978

OFFICE OF
ENFORCEMENT

SUBJECT: PSD Requirements

FROM: Director
Division of Stationary Source Enforcement

TO: Stephen A. Dvorkin, Chief
General Enforcement Branch
Region II

In response to your memo dated June 29, 1978, we have consulted with the Offices of General Counsel and Air Quality Planning and Standards and provide the following responses to your questions regarding the applicability of several PSD requirements.

Q - 1(a).Is a source which shut down approximately four years ago because of an industrial accident, and which was not and is not required to obtain a permit under a SIP, subject to the requirements of PSD?This source was not subject to PSD requirements prior to March 1, 1978.

A - This is a question which we have not previously addressed, but we believe that EPA policy should be as follows.A source which had been shut down would be a new source for PSD purposes upon reopening if the shutdown was permanent.Conversely, it would not be a new source if the shutdown was not permanent.Whether a shutdown was permanent depends upon the intention of the owner or operator at the time of the shutdown as determined from all the facts and circumstances, including the cause of the shutdown and the handling of the shutdown by the State.A shutdown lasting for two years or more, or resulting in removal of the source from the emissions inventory of the State, should be presumed permanent.The owner or operator proposing to reopen the source would have the burden of showing that the shutdown was not permanent, and of overcoming any presumption that it was.Under the facts you have given us,

we would presume that the shutdown was permanent, since it has already lasted about four years.Consequently, unless the owner or operator of the source were to rebut that presumption, we would treat the source as a new source for PSD purposes.

We assume that your statement that the source was not subject to the PSD regulations in effect before March 1, 1978, means that it was not in one of the nineteen source categories listed in Section 52.21(d) (1) of those regulations.A proposed new source which was not in one of those categories would be subject to the PSD regulations promulgated on June 19, 1978, unless (1) all required SIP permits had been obtained by March 1, 1978, and (2) construction commences before March 19, 1979, is not discontinued for 18 months or more and is completed within a reasonable time.See Section 52.21(i) (3), 43 FR 26406.Here, all required SIP permits were obtained by March 1, since none was required.Consequently, the source would not be subject to the new regulations, assuming that the reopening is commenced before March 19, 1979, is not discontinued for more than 18 months and is completed within a reasonable time.

If we were to treat the source as an existing source for PSD purposes, we would also conclude that it is not subject to the new regulations.[SEE FOOTNOTE 1]No source on which construction commenced before June 1, 1975, would be subject to those regulations. [SEE FOOTNOTE 1] See Clean Air Act Sections 168(b), 169(4); 40 CFR 52.21(d) (1) (1977).Here, since the source was in operation about 4 years ago, construction on it presumably commenced before then, well before June 1, 1975.Hence, it would (presumably) not be subject to the new regulations.

Q- 1(b).Would your answer to 1.a., above, change if the source is or was required to obtain a SIP permit? A- If the source shut down temporarily, it would not be required to obtain a PSD permit in order to start up.

[FOOTNOTE 1]Application of this rule requires special guidance for multifacility sources which construct in phases. Generally, if one phase of a multifacility source commenced construction by June 1, 1975, all other mutually dependent phase especifically approved for construction at the same time will also be "grandfathered".On the other hand, each independent facility must have commenced construction individually by June 1, 1975, to have achieved grandfather status. See 43 FR 26396, 19 June 1978.

On the other hand, if the source shut down permanently, it would, upon reopening, be required to obtain a PSD permit unless the following two conditions were met:1) the SIP permit was obtained prior to 3/1/78 and 2) any construction necessary for reopening is commenced prior to 3/19/79, is not discontinued for 18 months or more and is completed within a reasonable time.

Q - 2.Is the EPA required in all cases to forebear from issuing a PSD permit until a SIP permit has been issued or is such forbearance required only when the source is subject to the "Interpretative Ruling" (41 FR 55524, December 21, 1976)?

A - EPA should refrain from issuing a PSD permit prior to issuance of a SIP permit only in cases where the source is also subject to the Interpretative Ruling.(See 43 FR 26402, column 3.)

Q - 3.In the evaluation of BACT, does equipment reliability play a part, i.e., should a unit capable of 80% control with a 20% downtime, be preferred to a unit capable of 90% control with a 35% downtime?Can backup equipment be required for BACT purposes?

A - Questions concerning BACT should be addressed to the Control Programs Development Division in Durham, N.C.

Q - 4.For the purpose of determining what constitutes "air pollution control equipment," what is meant by the phrase ". . . normal product of the source or its normal operation"?(43 FR 26392, mid. col., June 19, 1978).Does that refer to the quantity or quality of the product or both, i.e., if a baghouse collects 100% of the product, a settling chamber collects 20%, and without some device no product is collected, what is deemed to be "air pollution control equipment"?

A - If a source (such as one which produces zinc-oxide) cannot capture any of its product without the use of some type of control device, the least efficient control device used in the industry will be considered vital to the process.For example, if sources in such an industry typically employ either settling chambers or baghouses, potential emissions will be calculated as the emissions from such a source with a settling chamber installed.

Q - 5.Do the provisions of Section 167 of the Clean Air Act, which refer to issuance of an Order and seeking injunctive relief for PSD violations, create enforcement authorities independent of those created in Section 113 for SIP violations, or do they simply incorporate Section 113 by reference?

A - We believe that Section 167 provides the Agency with enforcement authority which

is not necessarily otherwise provided by Section 113.The Office of Enforcement is drafting guidance on implementation of Section 167.This guidance should be completed shortly.In the interim, the Agency should enforce against violations of the PSD requirements under the mechanisms established by Section 113, generally.There is one important situation, however, in which resort to Section 167 may be necessary.This would occur when a state had issued a permit that EPA considered to be invalid.In this situation, we believe that Section 167 provides the Agency with the authority to halt the construction of the source directly, without first having to resort to the cumbersome process of seeking a judicial declaration that the state permit is invalid.(See 42 FR 57473 (1977)).In this respect, Section 167 provides the agency with authority similar to that provided by section 113(a) (5) and (b)(5) to prevent sources with invalid permits from constructing in nonattainment areas.Please note, however, that no delegations for enforcement of the PSD requirements have been signed yet, and so any action under Section 167 would have to be taken in close coordination with DSSE, and any Section 167 orders would have to be signed by theAdministrator.

If you have any further questions on these issues, please contact Libby Scopino at FTS 755-2564.

Edward E. Reich

EXHIBIT 14

7012-002

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, and SIERRA CLUB, Intervenors.	)	PCB 10-75 (Permit Appeal--Air)

CERTIFICATE OF SERVICE

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

I, the undersigned non-attorney, state that I served the following documents to all counsel of record via U.S. Mail at or before 5:00 p.m. on July 19, 2011. These documents were served upon you via electronic mail on July 18, 2011:

Chicago Coke's Requests to Admit to Intervenors NRDC and Sierra Club

By: Jeanette M. Podlin
Jeanette M. Podlin

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

7012-002

SERVICE LIST

Chicago Coke Co., Inc. v. Illinois Environmental Protection Agency
PCB 10-75
(Permit Appeal -- Air)

Andrew B. Armstrong
Assistant Attorney General
Environmental Bureau
69 West Washington Street
18th Floor
Chicago, Illinois 60602

Bradley P. Halloran, Hearing Officer
Illinois Pollution Control Board
James R. Thompson Center
100 West Randolph Street
Suite 11-500
Chicago, Illinois 60601

Ann Alexander, Senior Attorney
Shannon Fisk, Senior Attorney
Natural Resources Defense Council
2 North Riverside Plaza, Suite 2250
Chicago, Illinois 60606

7012-002

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, and SIERRA CLUB, Intervenors.	)	PCB 10-75 (Permit Appeal--Air)

CHICAGO COKE'S REQUESTS TO ADMIT TO INTERVENORS NRDC AND SIERRA CLUB

Petitioner CHICAGO COKE CO., INC. ("Chicago Coke") issues these requests to admit, pursuant to 35 Ill. Adm. Code 101.614, 101.616, and 101.618, to intervenors the NATURAL RESOURCES DEFENSE COUNCIL ("NRDC") and SIERRA CLUB (collectively, "NRDC") . Pursuant to the Hearing Officer's order and the agreement of the parties, NRDC is required to answer these requests to admit no later than September 7, 2011. As required by Section 101.618(c), "Failure to respond to the following requests to admit [by September 7, 2011] may have severe consequences. Failure to respond to the following requests will result in all the facts requested being deemed admitted as true for this proceeding. If you have any questions about this

procedure, you should contact the hearing officer assigned to this proceeding or an attorney."

DEFINITIONS AND INSTRUCTIONS

Chicago Coke hereby incorporates by reference the definitions and instructions set forth in Chicago Coke's interrogatories to NRDC, served upon NRDC on July 18, 2011.

REQUESTS TO ADMIT

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

   RESPONSE:

2. Admit that no regulation promulgated by the IPCB defines the term "permanently shutdown", in the context of the use or availability of ERCs.

   RESPONSE:

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

   RESPONSE:

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

RESPONSE:

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

RESPONSE:

6. Admit that no regulation promulgated by IEPA defines the term "permanent shutdown", in the context of the use or availability of ERCs.

RESPONSE:

7. Admit that no regulation promulgated by IEPA defines the term "permanently shutdown", in the context of the use or availability of ERCs.

RESPONSE:

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

RESPONSE:

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

RESPONSE:

10. Admit that no federal statute defines the term "permanent shutdown", in the

context of the use or availability of ERCs.

RESPONSE:

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

RESPONSE:

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

RESPONSE:

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

RESPONSE:

14. Admit that no Illinois statute defines the term "permanent shutdown", in the context of the use or availability of ERCs.

RESPONSE:

15. Admit that no Illinois statute defines the term "permanently shutdown", in the context of the use or availability of ERCs.

RESPONSE:

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

RESPONSE:

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

RESPONSE:

18. 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".

RESPONSE:

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

RESPONSE:

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

RESPONSE:

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

RESPONSE:

Respectfully submitted,

CHICAGO COKE CO., INC.

By: _____
One of its attorneys

Dated: July 18, 2011

Michael J. Maher
Elizabeth S. Harvey
Swanson, Martin & Bell LLP
330 N. Wabash Avenue, Suite 3300
Chicago, IL 60611
312/321-9100