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.	)	

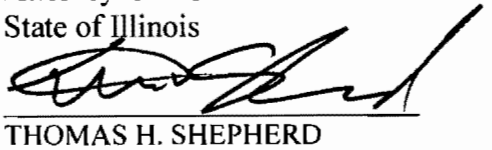
NOTICE OF FILING

TO: See Attached List

PLEASE TAKE NOTICE that on the 14th day of February, 2013, I filed with the Office of the Clerk of the Illinois Pollution Control Board the attached Respondent's Motion for Leave to Reply to Petitioner's Supplemental Response to IEPA's Motion for Summary Judgment, a copy of which is hereby served upon you.

Respectfully submitted,

LISA MADIGAN,
Attorney General of the
State of Illinois

By: 

THOMAS H. SHEPHERD
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THIS FILING IS SUBMITTED ON RECYCLED PAPER

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RESPONDENT'S MOTION FOR LEAVE TO REPLY TO PETITIONER'S SUPPLEMENTAL RESPONSE TO IEPA'S MOTION FOR SUMMARY JUDGMENT

Respondent, THE ILLINOIS ENVIRONMENTAL PROTECTION AGENCY ("Illinois EPA" or "Agency"), by and through its attorney, LISA MADIGAN, Attorney General of the State of Illinois, hereby respectfully seeks leave to file a reply to the Supplemental Response to IEPA's Motion for Summary Judgment ("Supplemental Response") filed by Petitioner, Chicago Coke Co., Inc. ("Chicago Coke").

In support of its Motion, the Illinois EPA states as follows:

Section 101.500(e) of the Board's Procedural Rules, 35 Ill. Adm. Code 101.500(e), allows for a reply by a movant in order to avoid prejudice. Chicago Coke's Supplemental Response contains multiple false and unfounded assertions against the Illinois EPA. Chicago Coke alleges that the Illinois EPA "manipulated the regulatory system by removing Chicago Coke from the emissions inventory, and subsequently using that removal to demonstrate compliance with the ozone standard, while at the same time

discussing the availability of the ERCs with Chicago Coke." (Suppl. Resp. at p. 3). Chicago Coke further charges the Illinois EPA with "manipulat[ing] the emissions inventory in order to block the use of otherwise valid ERCs" and thereby "artificially creat[ing] the situation to now allow IEPA to assert Section 203.303(b)(5) bars the use of the ERCs." (Suppl. Resp. at pp. 4-5).

However, the undisputed facts in this matter demonstrate that the Illinois EPA did not remove the Facility from the emissions inventory to "artificially create" a basis for the Agency's determination that the Facility's emission reductions were no longer available for use as emission offsets for the permitting of major new emission sources and/or modifications to sources in the Greater Chicagoland ozone and particulate matter nonattainment areas ("Emission Offsets"). Rather, the Illinois EPA removed the Facility from the emissions inventory because the Facility had been shut down for approximately six years at that point, there had been no emissions from coking operations at the Facility during that time, and Chicago Coke had advised the Illinois EPA that it never intended to begin operating the Facility.[1] Removal of the permanently shutdown and non-emitting Facility was appropriate to maintain an accurate emissions inventory; similarly, the Agency's reliance on the Facility's emission reductions was appropriate to assist the State in demonstrating attainment of the 1997 8-Hour Ozone National Ambient Air Quality Standard ("NAAQS") for the Chicago nonattainment area in 2009 ("Ozone Standard").

Indeed, Chicago Coke inexplicably fails to address the numerous occasions in which the Illinois EPA not only discussed, but clearly communicated to Chicago Coke its determination that the Facility was permanently shut down and that its emission

[1] The Illinois EPA's Motion for Summary Judgment sets forth in detail the facts establishing that the 2002 shutdown of the Facility was a permanent shutdown.

reductions were not available for use as Emission Offsets. It is undisputed that such occasions include January 2008, the same month the Illinois EPA removed Chicago Coke from the emissions inventory, and July 2008. It was not until January 2010 that Chicago Coke requested the Agency to readdress the matter. During the year and a half that had passed, the Agency relied on the Facility's emission reductions to assist in demonstrating attainment. In February 2010, the Illinois EPA again advised Chicago Coke that the emission reductions were not creditable as Emission Offsets. Thus, the Illinois EPA timely responded to each request for a determination by Chicago Coke, which was well-apprised of the Agency's position.

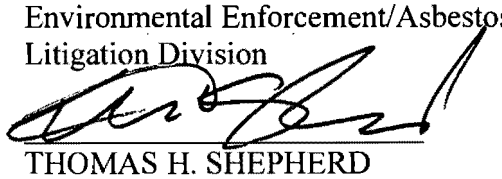
WHEREFORE, Respondent, THE ILLINOIS ENVIRONMENTAL PROTECTION AGENCY, respectfully seeks leave to file the Respondent's Reply to Chicago Coke's Supplemental Response to IEPA's Motion for Summary Judgment, attached hereto as Exhibit A.

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: 

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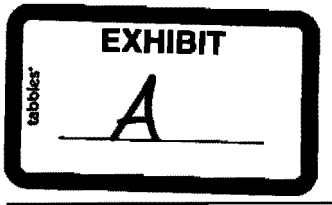
RESPONDENT'S REPLY TO CHICAGO COKE'S SUPPLEMANTAL RESPONSE TO IEPA'S MOTION FOR SUMMARY JUDGMENT

Respondent, THE ILLINOIS ENVIRONMENTAL PROTECTION AGENCY ("Illinois EPA" or "Agency"), by and through its attorney, LISA MADIGAN, Attorney General of the State of Illinois, hereby respectfully replies to Chicago Coke's Supplemental Response to IEPA's Motion for Summary Judgment ("Supplemental Response") and states as follows:

Respondent submits this reply to address false and unfounded assertions by Petitioner Chicago Coke Co., Inc. ("Chicago Coke"), against the Illinois Environmental Protection Agency ("Illinois EPA" or "Agency") regarding the removal of Chicago Coke's coke production facility ("Facility") as a source in the State of Illinois' emission inventory in 2008 and the State's subsequent demonstration of continued attainment of the 1997 8-Hour Ozone National Ambient Air Quality Standard ("NAAQS") for the Chicago nonattainment area in 2009 ("Ozone Standard").

The Supplemental Response is complete with baseless and improper allegations



against the Illinois EPA. Chicago Coke asserts that the Illinois EPA "manipulated the regulatory system by removing Chicago Coke from the emissions inventory, and subsequently using that removal to demonstrate compliance with the ozone standard, while at the same time discussing the availability of the ERCs with Chicago Coke." (Suppl. Resp. at p. 3). Chicago Coke further charges the Illinois EPA with "manipulat[ing] the emissions inventory in order to block the use of otherwise valid ERCs" and thereby "artificially creat[ing] the situation to now allow IEPA to assert Section 203.303(b)(5) bars the use of the ERCs." (Suppl. Resp. at pp. 4-5).

Contrary to the vitriol in Chicago Coke's filing, the undisputed facts in this matter demonstrate that the Illinois EPA did not remove the Facility from the emissions inventory to "artificially create" a basis for the Agency's determination that the Facility's emission reductions were no longer available for use as emission offsets for the permitting of major new emission sources and/or modifications to sources in the Greater Chicagoland ozone and particulate matter nonattainment areas ("Emission Offsets"). Rather, the Illinois EPA removed the Facility from the emissions inventory because the Facility had been shut down for approximately six years at that point, there had been no emissions from coking operations at the Facility during that time, and Chicago Coke had advised the Illinois EPA that it never intended to begin operating the Facility.[1] Removal of the permanently shutdown and non-emitting Facility was appropriate to maintain an accurate emissions inventory; similarly, the Agency's reliance on the Facility's emission reductions was appropriate to assist the State in demonstrating attainment of the NAAQS.

Chicago Coke argues that the Facility should not have been removed from the

[1] The Illinois EPA's Motion for Summary Judgment sets forth in detail the facts establishing that the 2002 shutdown of the Facility was a permanent shutdown.

inventory while Chicago Coke and the Illinois EPA were "discussing" the creditability of the emission reductions, and that the Illinois EPA delayed acting upon Chicago Coke's request for a determination, thus creating the current situation in which use of the emission reductions as ERCs would violate 35 Ill. Adm. Code 203.303.[2] In its fervor to charge the Illinois EPA with improper conduct and manipulation of the State's emissions inventory to suit the Agency's needs, Chicago Coke inexplicably fails to address the numerous occasions in which the Illinois EPA not only discussed, but clearly communicated to Chicago Coke its determination that the Facility was permanently shut down and that its emission reductions were not available for use as Emission Offsets. It is undisputed that such occasions include January 2008, the same month the Illinois EPA removed Chicago Coke from the emissions inventory, and July 2008. It was not until January 2010 that Chicago Coke requested the Agency to readdress the matter. During the year and a half that had passed, the Agency relied on the Facility's emission reductions to assist in demonstrating attainment. In February 2010, the Illinois EPA again advised Chicago Coke that the emission reductions were not creditable as Emission Offsets. Thus, the Illinois EPA timely responded to each request for a determination by Chicago Coke, which was well-apprised of the Agency's position.

It is undisputed that states are authorized to manage emission reductions as needed for purposes of attainment planning. Chicago Coke's repeated requests for "re-determinations" by the Illinois EPA did not suspend the Illinois EPA's obligation or authority to effectively manage the State's emissions inventory, rely upon emission

[2] Section 203.303(b)(5) prohibits the use of emission reductions as Emission Offsets if such reductions have been previously relied upon to demonstrate attainment. "Previously relied on" regards the status of the emission reductions at the time a source attempts to rely upon them in a construction permit to offset new emissions.

reductions for attainment purposes, or submit attainment planning documentation required by the Clean Air Act to the United States Environmental Protection Agency ("USEPA").[3]

The Agency's removal of the Facility from Illinois' emissions inventory in 2008, and its reliance on the reductions to demonstrate to USEPA continued attainment of the Ozone Standard in 2009, were not only well within the Agency's discretion, but were necessary and appropriate actions given that the Facility permanently shut down and ceased emitting in 2002.

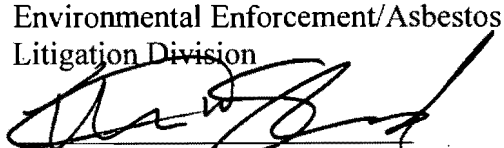
WHEREFORE, Respondent, THE ILLINOIS ENVIRONMENTAL PROTECTION AGENCY, respectfully requests that the Board grant summary judgment in favor of the Illinois EPA and affirm the Illinois EPA's February 22, 2010 decision.

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

[3] From a practical standpoint, indefinitely including emissions from permanently shutdown facilities in the emissions inventory is problematic. Such emissions would need to be continuously "tracked" in the inventory and "counted" in each Reasonable Further Progress ("RFP") calculation, attainment demonstration, and maintenance plan projection. Not only is this infeasible, but under certain circumstances, it could result in existing sources being required to over-control to make up emission reduction deficiencies (essentially providing shutdown sources a windfall at the expense of operating ones).

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CERTIFICATE OF SERVICE

I, THOMAS H. SHEPHERD, do certify that I filed electronically with the Office of the Clerk of the Illinois Pollution Control Board a Notice of Filing and Respondent's Motion for Leave to Reply to Petitioner's Supplemental Response to IEPA's Motion for Summary Judgment and caused them to be served this 14th day of February, 2013, by emailing true and correct copies of same upon the persons and e-mail addresses listed on the foregoing Notice of Filing at of before the hour of 5:00 p.m.

THOMAS H. SHEPHERD