

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, )  
 )  
 Intervenor. )

PCB 10-75  
(Permit Appeal)

**NOTICE OF FILING**

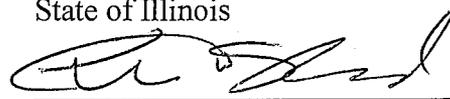
TO: See Attached Service List

PLEASE TAKE NOTICE that on the 12<sup>th</sup> day of July, 2013, I filed with the Office of the Clerk of the Illinois Pollution Control Board the attached **Respondent the Illinois Environmental Protection Agency's Response to Chicago Coke, Inc.'s Motion to Modify Board Order to Award Costs and Attorney's Fees**, copies of which are hereby served upon you.

Respectfully submitted,

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Attorney General of the  
State of Illinois

By:



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**THIS FILING IS SUBMITTED ON RECYCLED PAPER**  
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Petitioner,	)	
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PROTECTION AGENCY,	)	
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Respondent,	)	
	)	
NATURAL RESOURCES DEFENSE	)	
COUNCIL, INC., and SIERRA CLUB,	)	
	)	
Intervenors.	)	

**RESPONDENT THE ILLINOIS ENVIRONMENTAL PROTECTION AGENCY'S  
RESPONSE TO CHICAGO COKE, INC.'S MOTION TO MODIFY BOARD ORDER TO  
AWARD COSTS AND ATTORNEY'S FEES**

NOW COMES Respondent, THE ILLINOIS ENVIRONMENTAL PROTECTION AGENCY ("Respondent" or "Illinois EPA"), by and through its attorney, LISA MADIGAN, Attorney General of the State of Illinois, and in response to the Motion to Modify Board Order to Award Costs and Attorney Fees ("Motion to Modify") filed by Petitioner CHICAGO COKE CO. INC. ("Petitioner" or "Chicago Coke"), states as follows:

**INTRODUCTION**

In Chicago Coke's Motion to Modify, Petitioner requests pursuant to Section 10-55(c) of the Illinois Administrative Procedure Act ("IAPA"), 5 ILCS 100/10-55(c), that the Board modify its May 2, 2013 Memorandum and Order in this matter ("Order") to award Chicago Coke \$198,556.94<sup>1</sup> in fees and costs incurred in this litigation. Chicago Coke seeks to modify the Order despite having not sought such litigation expenses in its Petition or in its underlying

<sup>1</sup> An accounting of the invoices attached as Group Exhibit 1 to Exhibit C to Petitioner's Motion to Modify identifies \$197,190.80 in total costs and attorney's fees, which is \$168.30 less than the amount Chicago Coke seeks.

motion for summary judgment. The Illinois Environmental Protection Act ("Act"), 35 ILCS 5/1 *et. seq.*, does not authorize such relief for the invalidation of an Agency rule, and Section 10-55(c) of the IAPA expressly does not apply to orders by the Illinois Pollution Control Board ("Board"). Accordingly, the Agency respectfully requests that Petitioner's Motion to Modify be denied.

### **STANDARD OF REVIEW**

Section 10-55(c) of the IAPA provides as follows:

(c) In any case in which a party has any administrative rule invalidated by a court for any reason, including but not limited to the agency's exceeding its statutory authority or the agency's failure to follow statutory procedures in the adoption of the rule, the court shall award the party bringing the action the reasonable expenses of the litigation, including reasonable attorney's fees. 5 ILCS 100/10-55(c) (emphasis added).

The right to recover attorney's fees did not exist at common law. Carson Pirie Scott & Co. v. State of Ill. Dept. of Employment, 131 Ill. 2d 23, 49 (1989); Gonzales-Blanco v. Clayton, 120 Ill. App. 3d 848, 850 (1<sup>st</sup> Dist. 1983). Therefore, a successful party in litigation may obtain such fees only if they are provided for by statute or by agreement of the parties. Gonzales-Blanco, 120 Ill. App. 3d at 850; ESG Watts, Inc. v. Pollution Control Board, 286 Ill.App.3d 325, 337 (3rd Dist. 1997). It is well-established that "since the common law prohibits a prevailing party from recovering attorney's fees, statutes which allow for such awards must be strictly construed." Carson Pirie Scott, 131 Ill. 2d at 48.

In construing a statute, a court looks to its plain and ordinary meaning as evidenced by its language and, after ascertaining the intent of the legislature, should give that intent effect. Berrios v. Rybacki, 236 Ill. App. 3d 140, 146-47 (1<sup>st</sup> Dist. 1992), appeal denied, 148 Ill. 2d 639 (1993) ("Allowing attorneys fees to be recovered by the plaintiff is a derogation of common law... and must be strictly construed"); Gonzales-Blanco, 120 Ill. App. 3d at 850.

**ARGUMENT**

**I. Neither the Act nor the IAPA Authorize the Relief Petitioner Seeks.**

**A. Statutory Authorization**

The Board is a statutorily created agency under the Act, with its powers and authority identified therein. See e.g., People v. Fiorini, 143 Ill. 2d 318 (Section 31(b) of the Act “provides for the filing of a complaint before the [Board], an administrative agency established under the [A]ct”); Lombard v. Pollution Control Board, 66 Ill. 2d 503 (“An administrative agency, such as the [Board], has no greater powers than those conferred upon it by the legislative enactment creating it”). The Act allows for awards of attorney’s fees in very limited circumstances, none of which apply to this matter.<sup>2</sup> This permit appeal/Board proceeding was brought by petitioner under Section 40 of the Act, 415 ILCS 5/40. The section does not authorize an award of litigation expenses incurred in the invalidation of an Agency rule and no other provision of the Act allows for such relief.

Similarly, Section 10-55(c) of the IAPA does not authorize the Board to award attorney’s fees. The section clearly states that “a court” has the authority to award reasonable costs and fees if the court invalidates an administrative rule. 5 ILCS 100/10-55(c). While the term “court” is not defined in the IAPA, the term “agency” is. Section 1-20 of the IAPA defines “agency” in pertinent part as follows:

“Agency” means each officer, board, commission, and agency created by the Constitution, whether in the executive, legislative, or judicial branch of State government, but other than the circuit court; each officer,

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<sup>2</sup> See 415 ILCS 5/22.2(c)(1)(B); 415 ILCS 5/22.2(d)(3) and (4); 415 ILCS 5/42(f); 415 ILCS 5/45(b); 415 ILCS 5/52(c); and 415 ILCS 5/57.8(l). In its Motion to Modify, Petitioner references the Board’s authority to award legal fees through the Leaking Underground Storage Tank (“LUST”) Fund program under Section 57.8(l) of the Act, a section that is inapplicable to the instant matter.

department, board, commission, agency, institution, authority, university, and body politic and corporate of the State;... (Emphasis added).

Circuit courts are expressly excluded from the definition of “agency,” while the Board is expressly included. Id.; see also e.g., Fiorini, 143 Ill. 2d 318 (the Board is an administrative agency created under the Act). Throughout the IAPA, the General Assembly clearly distinguishes a court of law from an administrative agency like the Board, and does not use the terms “court” and “agency” interchangeably. Petitioner’s argument that the term “court” in Section 10-55(c) includes the Board requires an interpretation that a board is both an “agency” and a “court” under the IAPA, an interpretation that is unsupported by the IAPA.

The language of Section 10-55 itself evidences the General Assembly’s distinction between boards of the State and the circuit court. The section clarifies that the term “court” means “court for judicial review,” which does not include the Board. Generally, Sections 10-55(a)-(c) of the IAPA identify the limited circumstances for awards of expenses and attorney’s fees; 10-55(a) establishes criteria for recovery of attorney’s fees in administrative proceedings, while 10-55(c) establishes criteria for recovery of fees in circuit court proceedings. Specifically, Section 10-55(a) applies to any “contested case initiated by any agency that does not proceed to court for judicial review and on any issue where a court does not have jurisdiction to make an award of litigation expenses under Section 2-611 of Civil Practice Law...” 5 ILCS 100/10-55(a) (emphasis added). It is clear that in paragraph (a), the General Assembly uses the term “court” to refer to a court of law and “agency” to refer to administrative bodies as defined in Section 1-20. In paragraph (c), the legislature continues to use the term “court” with no distinction from the term’s use in the preceding paragraph (a).

Under well-established axioms of statutory interpretation, undefined terms in a statute must be given their plain and ordinary meaning and shall be construed with other pertinent

statutory provisions. See e.g., Town & Country Utilities, Inc. v. Illinois Pollution Control Board, 225 Ill. 2d 103, 117 (2007) (statutory phrases are to be interpreted along with other pertinent provisions of the statute); Michigan Avenue National Bank v. County of Cook, 191 Ill. 2d 493, 504 (2000) (“One of the fundamental principles of statutory construction is to view all provisions of an enactment as a whole... [w]ords and phrases should not be construed in isolation, but must be interpreted in light of other relevant provisions of the statute.”). Since the Board is an agency, and not a member of the judiciary, the term “court” as used in Section 10-55 does not include the Board.

If the legislature had intended to allow agencies such as the Board to award attorney’s fees, it could have easily done so. It could have supplemented the term “court” with “agency” or with “administrative law judge,” as defined in Section 1-15 of the IAPA, 5 ILCS 100/1-15.<sup>3</sup> Or, the General Assembly could have expressly allowed an award of such expenses in administrative “contested cases” involving invalidated rules, which may include this adjudicatory proceeding.<sup>4</sup> However, the General Assembly instead chose to authorize such awards only in the limited, specific situations described above.

Statutes allowing an award of attorney’s fees are to be strictly construed. Here, Petitioner’s interpretation of Section 10-55(c) to expand the term “court” to include the Board, a State agency under the IAPA, must fail based on the clear statutory language. Chicago Coke’s argument that a circuit court award of litigation expenses is not procedurally available to it in this particular matter is not pertinent to whether the Board has statutory authority to award attorney’s

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<sup>3</sup> An “administrative law judge” is defined to mean “the presiding officer or officers at the initial hearing before each agency or each continuation of that hearing. The term also includes but is not limited to hearing examiners, hearing officers, referees, and arbitrators.” 5 ILCS 100/1-15.

<sup>4</sup> Section 1-30 defines “contested case” as “an adjudicatory proceeding (not including ratemaking, rulemaking, or quasi-legislative, informational, or similar proceedings) in which the individual legal rights, duties, or privileges of a party are required by law to be determined by an agency only after an opportunity for a hearing.” 5 ILCS 100/1-30.

fees in this case, and is not an issue for the Board to address by expanding the scope of the IAPA, particularly since the Board was created by statute and its authority is clearly set forth in the Act. It is a matter for the General Assembly to examine if it chooses.

### **B. Legislative History**

The legislative history of Section 10-55 further confirms that the General Assembly intended the term “court” to mean “circuit court.” See 82d Ill. Gen. Assem., House Proceedings, June 16, 1981 at 122-25, attached hereto as Exhibit A. In the debate for Sections 10-55(a) and (c), Representative Harry Leinenweber described the two specific instances that apply in those subsections. The Representative noted that paragraph (a) allows a “person or firm to obtain their costs and attorney’s fees... in contested cases where an agency was found guilty of making charges which were found to be untrue and without reasonable cause.” Id. at 124. He recognized that the reference in paragraph (a) to matters not filed in “court” meant matters not filed in circuit court. Id. (emphasis added). Therefore, the General Assembly was using the term “court” in Section 10-55(a) to mean “circuit court.” As discussed above, the term “court” is used in both paragraphs (a) and (c) with no distinction.

Representative Ronald Stearney further elaborated on Section 10-55(c)’s limited scope by stating:

And namely I remind you and that’s when they can prove by going into a court at a later date and having the court rule that the agency exceeded its statutory authority or the agency failed to follow statutory procedure in the adoption of the rule. In those instances the court, in those instances the agreed [sic] party would have the right to recover its expenses and attorney’s fees. I think this Bill is sufficiently circumscribed to provide only recovery in those certain instances and for that reason it is rationable [sic].... Id. at 125-26 (emphasis added).

At no time in the debate did the General Assembly intend that such attorney's fees could be awarded in any forum other than the circuit courts and, in fact, Section 10-55(c) was so limited to protect agencies. Id.

Moreover, the General Assembly expressly contemplated that the Board is an "agency" for purposes of the IAPA's "Expenses and attorney's fees" provisions, and as such may have to pay awards for attorney's fees. In the legislative debate held on October 28, 1981, Representative Harold Katz expressly identified the "Pollution Control Board" as a state agency that could fall under Section 10-55(a)'s award of attorney's fees. See 82d Ill. Gen. Assem., House Proceedings, Oct. 28, 1981 at 72-73, attached hereto as Exhibit B. Accordingly, the legislature expressly contemplated the Board being an "agency" under Section 10-55 and not a "court" as the term is used in that section.

While the case law interpreting Section 10-55(c) is sparse, the Illinois Court of Claims has reviewed the jurisdictional scope of the term "court" therein. In Ardt v. Illinois, 48 Ill. Ct. Cl. 429 (Ill. Ct. Cl. 1995), 1995 WL 1051635 at \*6, the Court of Claims held that Section 10-55(c) "*only* comes into play when there has been a judicial invalidation of an administrative rule" and that it "involves *only* judicial proceedings in the court of general jurisdiction." (Emphasis in original).

In Ardt, the plaintiff sought an award of litigation expenses against the State of Illinois and the Illinois Department of Professional Regulation for the invalidation of an administrative rule. Id., 1995 WL 1051635 at \*1. The Court of Claims examined the language of Section 10-55 and held that it did not have jurisdiction under Section 10-55(c), because the term "court" was not intended to be a jurisdiction grant for the Court of Claims. Id. at \*8. But rather, the term encompassed "*only* judicial proceedings in the courts of general jurisdiction." Id. at \*6.

In Illinois Ayers Oil Co. v. IEPA, the Board recognized that under Section 10-55(c), “if a court declares a rule invalid, the petitioner can be awarded attorney’s fees.” PCB 03-214, Slip op. at p. 9 (Aug. 5, 2004) (emphasis added) (Petitioner conceded that Section 10-55(c) did not apply to a Board order). In that action for attorney’s fees under the LUST Fund program, the petitioner sought an award for attorney’s fees incurred in invalidating an Agency rule and cited Section 10-55(c) of the IAPA to compel the Board to order such an award under Section 57.8(l) of the Act. While the Board awarded such fees under the Act, it did so pursuant to its authority under the LUST Fund program and not under the IAPA. Id., Slip op. at p. 9.

**C. Admission Regarding Appropriate Forum for Award of Litigation Expenses.**

Finally, Petitioner’s counsel itself admits that the circuit court, and not the Board, is the appropriate forum to seek an award of attorney’s fees under the IAPA. In Petitioner Counsel’s first time entry for March 25, 2010, contained in the invoices submitted in support of Petitioner’s Motion to Modify, Petitioner’s counsel states that it “evaluate[d] Illinois' Administrative Procedure Act and annotations to confirm that the circuit court is the appropriate venue to award attorneys fees;...”. See Motion to Modify, Exh. C, Group Exh. 1. Thus, in its complaint filed in the Circuit Court of Cook County, Petitioner sought a declaratory judgment that the Illinois EPA exceeded its statutory authority and an award of reasonable litigation expenses for the invalidation of an administrative rule by the court under Section 10-55(c). See Motion to Modify, Exh. B. Such relief was not sought in Chicago Coke’s subsequent Petition filed with the Board or in its motion for summary judgment.

Accordingly, Petitioner is not allowed an award of reasonable costs and attorney’s fees arising from the Board’s Order. Neither the Act nor the IAPA authorizes such relief and Petitioner’s Motion to Modify should be denied.

**II. Request for a More Detailed Petition/Filing for Litigation Expenses and a Hearing to Ascertain Their Reasonableness**

As discussed above, neither the Act nor the IAPA authorize an award for litigation expenses in this matter. In the alternative, Respondent respectfully requests a more thorough filing/petition setting forth the claimed litigation expenses and a Board hearing to determine the reasonableness of the charges and services provided by counsel.

Section 10-55(c) expressly states that any award for litigation costs and fees relating to a court's invalidation of an agency rule must be for "reasonable expenses of the litigation, including reasonable attorney's fees." 5 ILCS 100/10-55(c). The court that invalidates an agency rule shall conduct an inquiry into the reasonableness of the fee petition. Ardt v. Illinois, 292 Ill. App. 3d 1059 (1<sup>st</sup> Dist. 1997) (trial court erred by merely approving the fee petition as presented and acting as if it had no discretion once it made the determination that the plaintiff was entitled to fees). Only those fees that are reasonable, consisting of reasonable charges for reasonable services may be awarded. Du Page v. Illinois Labor Relations Bd., 359 Ill. App. 3d 577 (2d Dist. 2005); Chicago v. Illinois Commerce Comm., 187 Ill. App. 3d 468 (1<sup>st</sup> Dist. 1989) (trial court abused its discretion when ordered fees equaling actual costs and not reasonable attorney's fees calculated at market rates commensurate with experience and expertise).

The reasonableness of fees is a matter of proof, and a party ordered to pay attorney fees has the right to conduct meaningful cross-examination on the issue. Fried v. Barad, 187 Ill. App. 3d 1024, 1030 (1<sup>st</sup> Dist. 1989); 6334 North Sheridan Condominium Ass'n v. Ruehle, 157 Ill. App. 3d 829, 834 (1<sup>st</sup> Dist. 1987). When a party who must pay attorney fees asks for an evidentiary hearing, he is entitled to one. Bank of America Nat. Trust and Sav. Ass'n v. Schulson, 305 Ill. App. 3d 941 (1<sup>st</sup> Dist. 1999); In re Burks, 100 Ill. App. 3d 700, 706 (1<sup>st</sup> Dist. 1981); Holland v. DeMichael, 79 Ill. App. 3d 974, 981 (1<sup>st</sup> Dist. 1979); Cf. Raintree Health Care

Center v. Illinois Human Rights Comm'n, 173 Ill. 2d 469, 494-95 (1996) (hearing on attorney's fees not required where issue was governed by Commission's rules, which expressly did not require a hearing).

Petitioner has not filed a motion for an award of costs and attorney's fees, but rather seeks to modify the Board's Order to award litigation expenses on a Petition that never requested them and on an underlying motion for summary judgment that never sought such relief. In the body of its Motion to Modify, Petitioner offers no showing of reasonableness of the expenses sought, fails to describe the underlying work, and never even identifies the total amount of litigation expenses sought from Respondent.

The only support Petitioner provides for its claimed litigation expenses is an attorney affidavit attaching 114 pages of expenses consisting of 37 invoices that contain over 650 time entries. See Motion to Modify, Exh. C. While the Affidavit of Ms. Harvey generally describes the motion practice and discovery in this matter, the descriptive sentences do not establish the reasonableness of Chicago Coke's \$198,556.94 fee petition in a three year old case. Nor does the attorney affidavit remotely grant Petitioner carte blanche as to the costs and fees in this action. Petitioner does not provide a breakdown of the billing rate, time, and cost for the specific Board filings, discovery review, legal research, etc., that were performed in this action. In this matter, no depositions were taken, no expert witnesses were retained and disclosed, and no hearing was held. Also, while Respondent did supplement the administrative record with a voluminous document production, not a single page produced by Respondent in response the discovery requests was attached to Petitioner's motion for summary judgment. Any attempt to rehab the Motion to Modify's deficiencies through a reply brief is improper. See e.g., Panhandle Eastern Pipeline, Co., v. IEPA, 314 Ill.App.3d 296, 300 (4<sup>th</sup> Dist. 2000) ("Of course, issues may

not be raised for the first time in a reply brief.”) citing Smith v. Intergovernmental Solid Waste Disposal Ass'n, 239 Ill.App.3d 123, 127 (4<sup>th</sup> Dist. 1992); see also 35 Ill. Adm. Code 101.500(e) (2012) (allowing reply to prevent material prejudice); People v. Tradition Investments, LLC, PCB 11-68, Slip. Op. at p. 2 (Oct. 6, 2011) (narrowing issues is insufficient grounds for reply).

Even with the vague points made in the filing at hand, several time entries are easily identified as being inappropriate for payment. As such, if the Board is to allow this type of fee reimbursement (which it should not), it must first require a more thorough filing/petition and order a hearing to ascertain the reasonableness of the expenses and attorney’s fees.

**A. Specific Objections to Certain Time Entries.**

As stated above, Petitioner’s filing is insufficient to show the reasonableness of the claimed litigation expenses. However, Respondent presents the following objections that it was able to develop through the presented legal invoices that demonstrate the need for a more detailed fee petition and a subsequent hearing.

**1. Petitioner is not entitled to fees for work related to the circuit court action.**

Despite Petitioner counsel’s representation that the fee petition does not seek recovery for the circuit court fees and costs and that such expenses were redacted from counsel’s invoices (Motion to Modify, Exh. C at ¶8(a)), several entries for such work are presented for reimbursement. The specific entries seek fees totaling **\$1,863.30** and are identified in the spreadsheet attached hereto as Exhibit C (“Costs and Fees Spreadsheet”) at pages 1-2. A more thorough fee petition and/or hearing may uncover additional claimed expenses incurred in the circuit court action.

**2. Petitioner is not entitled to fees for work related to the intervening action.**

Petitioner also is not entitled to fees for opposing the action to intervene filed by the National Resources Defense Council, Inc., and Sierra Club (collectively, "Intervenors"). The specific entries relating to Intervenors' action seek fees totaling **\$34,534.50** and are identified in the Cost and Fees Spreadsheet at pages 3-8. See Exh. C.

While Respondent was unable to identify any case law on point relating to Section 10-55(c) and fees incurred in litigating third-party and/or intervenor claims, under analogous attorney's fees provisions in other statutes, such fees are normally not awardable. In Bigby v. Chicago, the Seventh Circuit made clear that a defendant's fee liability under a Section 1983 claim "does not presumptively extend to cover the fees incurred by plaintiffs in litigating third party interests." 927 F.2d 1496, 1428-29 (7<sup>th</sup> Cir. 1991) (emphasis added); see also Rim Creek Coal Sales, Inc. v. Caperton, 31 F.3d 169, 178 (4<sup>th</sup> Cir. 1994) ("intervention-related fees and expenses... are not recoverable under 42 U.S.C. § 1983 by a prevailing party against a losing defendant.").

Here, Petitioner did not successfully invalidate an Agency rule by opposing Intervenors' motion to intervene. Respondent took no position on that motion. Yet Petitioner now seeks \$11,582.00 from Respondent for Chicago Coke's opposition of the motion to intervene.

Additionally, Petitioner seeks at least \$22,952.00 in litigation expenses relating to Intervenors' claims. Again, Respondent did not adopt the Intervenors' position and the expenses incurred were not for work to advance any claim against the Respondent and/or to invalidate any Agency rule.

**3. Lack of detailed information to separate the fees incurred for work relating to Petitioner's action against Respondent and the intervening action.**

As discussed above, Petitioner did not successfully invalidate an Agency rule by opposing the Intervenors' motion to intervene or in defending against the intervening action. In Group 1 to Exhibit C to Petitioner's Motion to Modify, Chicago Coke identifies several charges that lack detailed information to allow a separation of fees incurred in work relating to Petitioner's claim against Respondent from the Intervenors' action against Petitioner. The specific entries seek fees totaling **\$7,095.00** and are identified in the Costs and Fees Spreadsheet at pages 9-10. See Exh. C. Accordingly, more information is required to determine the reasonableness of these claimed litigation expenses.

**4. Lack of information to identify whether certain fees are reasonable and necessary.**

In Group 1 to Exhibit C to Petitioner's Motion to Modify, Chicago Coke seeks reimbursement for several charges that have been redacted and/or lack sufficient detail to the extent that Respondent is unable to ascertain whether this time is reimbursable. The specific entries seek fees totaling **\$1,809.50** and are identified in the Costs and Fees Spreadsheet at pages 11-12. See Exh. C.

**5. Not enough information is given to determine reasonableness of fees relating to communications with counsel.**

While Petitioner probably does not waive all attorney-client privilege by seeking attorney fees (Fischel & Kahn, Ltd. v. van Straaten Gallery, Inc., 189 Ill.2d 579 (2000)), the Board and Respondent will need more information to determine the reasonableness of the fees. The specific entries seek fees totaling **\$12,399.50** and are identified in the Costs and Fees Spreadsheet at pages 12-13. See Exh. C.

**6. Certain expenses are not related to this action.**

From the limited detail provided in Chicago Coke's fee petition, Respondent was able to determine that a few time entries were for work unrelated to this action. The specific entries seek fees totaling **\$142.50** and are identified in the Costs and Fees Spreadsheet at page 14. See Exh. C. A more thorough fee petition and/or hearing may uncover additional expenses unrelated to this matter.

**CONCLUSION**

Neither the Act nor the IAPA authorize an award of litigation expenses for the invalidation of an Agency rule by the Board, an administrative agency. Accordingly, Petitioner's Motion to Modify should be denied. Alternatively, the litigation expenses claimed by Petitioner are unreasonable and/or lack sufficient detail to allow such a determination. A more thorough filing/petition and a hearing are necessary for the Board to perform the required inquiry into the reasonableness of the fee petition.

WHEREFORE, the Illinois EPA respectfully requests that the Board deny Petitioner's Motion to Modify or in the alternative order a hearing to determine the reasonableness of the litigation expenses claimed by Petitioner.

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS  
*ex rel.* LISA MADIGAN, Attorney General  
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STATE OF ILLINOIS  
82ND GENERAL ASSEMBLY  
HOUSE OF REPRESENTATIVES  
TRANSCRIPTION DEBATE

64th Legislative Day

June 16, 1981

Speaker Ryan: "The House will be in Order and the Members will be in their seats. We'll be led in prayer today by Pastor Rudolph Shoultz from the Union Baptist Church in Springfield. Reverend Shoultz."

Reverend Schoultz: "Shall we pray? Spirit of the living God, Father, freshen us this day as we invoke Thy holy presence in our midst. We ask of Thee this day, dear Lord, to lift our hearts to the height that we may show our concern for those who have placed their trust in us by giving us this responsibility. Remove from us, dear Father, those things that may divide us, that may even remember the words of him who pen these words, liberty and justice for all. May those words echo through this Chamber this day, so in making our decision, we may work as a team and not as adversaries. May we ask of Thee, O God, to bless these ideals, that Thy kingdom will come upon this earth, bless him, who shall preside here this day, are the Leadership of this Chamber, we ask it in the name of the Father, the Son and the Holy Ghost. Amen."

Speaker Ryan: "Thank you, Reverend. Representative Nelson will lead in the Pledge today."

Nelson: "I pledge allegiance to the flag of the United States of America and to the Republic, for which it stands, one nation under God, indivisible with liberty and justice for all."

Speaker Ryan: "Roll call for attendance. Messages from the Senate."

Clerk Leone: "A message from the Senate by Mr. Wright, Secretary. Mr. Speaker, I'm directed to inform the House of Representatives that the Senate has adopted the following Senate Joint Resolution, the adoption of which I'm instructed to ask concurrence of the House of

EXHIBIT

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STATE OF ILLINOIS  
82ND GENERAL ASSEMBLY  
HOUSE OF REPRESENTATIVES  
TRANSCRIPTION DEBATE

64th Legislative Day

June 16, 1981

allows expenditures of \$5,000 or less from contractual services for improvements to real property when a permanent improvement appropriation exists. And what happened, I think, was in the last Session or recently. Anyway we amended the definition of contractual services and as a result several of the state agencies have had a considerable difficulty with the provisions of the amended Act. And so especially the... some of the universities when it got into this situation. So this legislation has its point of origin... to help out the universities or regions, Board of Governors, the Comptroller's office, everybody's for it. It has received overwhelming support in the Senate and both Committees of the House and the Senate and I would encourage an 'aye' vote."

Speaker Peters: "Any discussion? There being none, the question is, 'Shall Senate Bill 270 pass?' Those in favor will signify by voting 'aye', those opposed by voting 'nay'. Mr. Clerk. The voting is open. Have all voted who wish? Have all voted who wish? Take the record, Mr. Clerk. On this question there are 156 voting 'aye', 1 voting 'nay', none voting 'present'. This Bill, having received the Constitutional Majority, is hereby declared passed. Senate Bill 355, Representative Topinka. Read the Bill. Will the Ladies and Gentlemen between the Chair and Representative Topinka please find a seat."

Clerk O'Brien: "Senate Bill 355, a Bill for an Act to give small business equal access to justice, Third Reading of the Bill."

Speaker Peters: "Representative Topinka."

Topinka: "Yes, Mr. Speaker and Ladies and Gentlemen of the House, this basically provides some access for the small businessman to be able to challenge various regulations that may be picayune you or may be just challenge a ball on

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the basis that the state would be willing to compensate him or her should they be successful. It is a good way to provide a check on regulations to make sure they are doing, indeed, what they are supposed to be doing rather than just harassing. Likewise, this gives equal access to justice by the small business person so that they can be compensated if successful. This Bill was amended by a Subcommittee in Judiciary I. It received broad bipartisan support. I think it's a real good little peoples Bill and I would encourage your positive vote."

Speaker Peters: "Any discussion? Representative Vinson."

Vinson: "Thank you, Mr. Speaker and Ladies and Gentlemen of the House. I reluctantly rise to oppose the young Lady's Bill. I arise to oppose it even though the concept is a good concept. The problem is that the burden, the burden of proof that the defendant in the administrative hearing has to sustain in showing that the agency ought to pay for the legal counsel is simply too small a burden. I have proposed legislation and support legislation in civil arena where if there is reckless or woeful or wanton allegations with disregard for the truth, you could recover your legal fees. I believe that a similar kind of concept is appropriate in the administrative arena. The problem is that here, if an agency is simply guilty of the slightest 'cintilla' of negligence they are subject to being charged for the legal fees of the person who is the victim of that negligence. And I believe that that is a real corruption of the legal process. I think that if the Bill were strengthened so that if there were reckless disregard for the truth as a requirement there would be no problem with this Bill but to simply say that the merest act of negligence can subject an agency, and when you say agency you say taxpayer, it's the taxpayers who ultimately pay

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this. To subject the tax payers to that kind of a burden is a mistake. And so, I would oppose the Bill and urge 'no' votes."

Speaker Peters: "Representative Leinenweber."

Leinenweber: "The... I don't think the preceding Gentleman probably missed the Amendment #2 to Senate Bill 355 which was put on in Committee which makes this, I think, an excellent Bill. It eliminates the problem the Gentleman pointed out and that was the original Bill that any time an agency lost they would be forced to pay the attorney's fees and costs of the individual that was charged. It was thought by the Committee that this would be too costly to the taxpayers of the state but that there were cases in which the cost to the person brought before the agency was so great that and the charges so ridiculous that there ought to be instances where a person or a firm would be able to obtain their court costs and attorney's fees. So we limited the Bill to two specific instances. One is, in the contested case where an agency was found guilty of making charges which are found to be untrue and without reasonable cause. Now, this is the law if an agency brought suit in the circuit court. It was felt that in suits before an agency itself that the same standard ought to apply so Section A makes that provision. Section B makes the provision that where a person who is charged by an agency for violating an agency regulation or rule who later is successful in having that rule overturned on the grounds that the agency exceeded its statutory authority or the agencies fail to follow statutory procedures or for other reasons that the rule was found to be invalid. That the person who was brought before the agency on that particular rule ought to recover fees and court costs. It has come to our attention from our constituents that many

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many times they are charged with violating unreasonable rules and regulations. But because of the cost of fighting the matter they have, instead, succumbed and entered into some kind of an agreement with the agency. We thought that this particular provision would give the incentive to individuals who are charged by agencies in trying to weed out these 'picaky unes', small, unreasonable regulations. So, the Committee and the Sponsor felt that in this type of situation attorney's fees were justified also. I think it's a good Bill. It will help the small guy, the businessman who's being harassed by bureaucrats only in those instances where there's true harassment. Not in those instances where there's a legitimate difference of opinion. So, I urge that everyone support the Lady in Senate Bill 355 and let's send this on to the Governor."

Speaker Peters: "Representative Stearney."

Stearney: "Mr. Speaker and Ladies and Gentlemen of the House, I rise in support of this measure and let me remind you that last term we did support legislation of Representative Yourell's which would set up a joint Administrative Committee which would go over and have the authority to revoke proposed rules of the department. The reason we did that is because we felt that the power to institute rules should be with the General Assembly. Now, this here Bill goes on step further because it says that a party that has agreed shall have the right to recover reasonable attorney's fees and the reasonable expenses incurred in certain situations. And namely I remind you and that's when they can prove by going into a court at a later date and having the court rule that the agency exceeded its statutory authority or the agency failed to follow statutory procedure in the adoption of the rule. In those instances the court, in those instances the agreed party

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would have the right to recover its expenses and attorney's fees. I think this Bill is sufficiently circumscribed to provide only recovery in those certain instances and for that reason it is reasonable. It is reasonable and I think we should adopt it. I urge an 'aye' vote on this measure. Thank you."

Speaker Peters: "Representative Pullen."

Pullen: "I'd like to ask the Sponsor a couple of questions, please."

Speaker Peters: "Representative Pullen."

Pullen: "I'd like to ask the Sponsor a couple of questions, please."

Speaker Peters: "She indicates she'll respond."

Pullen: "Representative, are you trying harass the Governor with this Bill?"

Topinka: "No, I'm just trying to keep the little guy from having to buckle under..."

Pullen: "Do you think that contrary to harassing the Governor that this Bill would keep the government from harassing small business?"

Topinka: "I think that might have some bearing on it, yes."

Pullen: "Do you think that this Bill might actually accomplish causing departments and agencies to be more cautious before they move against people?"

Topinka: "Oh, I would certainly hope so."

Pullen: "Thank you for presenting this fine Bill."

Speaker Peters: "Further discussion? Representative Zito."

Zito: "Mr. Speaker, I move the previous question."

Speaker Peters: "The question is, 'Shall the previous question be put?' Those in favor will signify by saying 'aye', those opposed 'nay'. The opinion of the Chair, the 'ayes' have it. Representative Topinka, to close."

Topinka: "Well, Mr. Chairman and Members of the House, I would

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like to thank all the fine people that stood up for this Bill because in general I think they have known reputations for trying to find something that is very sound legally as well as trying to get the will of the people out. It's very difficult when you're just the little guy to have to go up against the state or the Federal Government and the whole faceless mass of bureaucracies. I think would be one way of settling up and keeping the little guy from having to buckle under and I would really encourage an 'aye' vote on this. Thank you."

Speaker Peters: "The question is, 'Shall Senate Bill 355 pass?' Those in favor will signify by voting 'aye', those opposed by voting 'nay'. Mr. Clerk. The voting is open. Have all voted who wish? Have all voted who wish? Representative Leinenweber, you spoke in debate."

Leinenweber: "No, I just wanted to compliment my seatmate. He's working the floor against this Bill."

Speaker Peters: "Representative Collins, to explain his vote. Inexplicable? Your light is on. Have all voted who wish? Another error. Take the record, Mr. Clerk. On this question there are 143 voting 'aye', 10 voting 'no', 5 voting 'present'. This Bill, having received the Constitutional Majority, is hereby declared passed. Senate Bill 404, Representative Rea. Read the Bill, Mr. Clerk."

Clerk O'Brien: "Senate Bill 404, a Bill for an Act to amend Sections of the Civil Administrative Code, Third Reading of the Bill."

Speaker Peters: "Representative Rea."

Rea: "Thank you, Mr. Speaker and Members of the House. Senate Bill 404 is Cosponsored by Representative Ralph Dunn and myself. Senate Bill 404 establishes an office of co-commerce within the Department of Commerce and Community Affairs and directs cooperation with the Illinois Institute

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Speaker Ryan: "The House will be in order and the Members will be in their seats. The Chaplain for today is Reverend Jim Chase from the Pame Evangelical Church located in Moweaqua, Illinois. Reverend Chase."

Reverend Chase: "Let us pray. Heavenly Father, thank You that You are right here with us in this room and I thank You for sending Your Son, the Lord Jesus Christ, to die for us and to pay the penalty for our sin. And I pray for each of the leaders who are in this room today that they would see the necessity of inviting the Lord, Jesus Christ, into their hearts and into their lives as personal Lord and Saviour. Lord, I would also pray that You would give them wisdom in the decisions that they make. I pray that in the name and through the blood of the Lord Jesus Christ that You would build a wall of protection around each of these leaders and their families, their marriages, their children in order that Satan cannot destroy them. I pray that You would also give them wisdom to cast down every law and policy or personal example which would weaken marriages, families or Your moral standards. Lord Jesus I also pray that You would give each one of these people in this room today a real desire to set aside time to read the Bible and to pray every day for You have said in Your word that a leader of people..a ruler of people must have his own copy of God's laws and read from it every day and study it thoroughly. And I pray that You would help each of these men to do just that. Thank You for being here with us. We ask that You would lead us and guide us now as we make decisions, realizing that we are accountable to You, Lord Jesus, not accountable to the voters, but accountable to You, Heavenly Father and that we will give an account to You on Judgment Day. In Jesus' name we pray with Thanksgiving. Amen."

EXHIBIT

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Speaker Daniels: "Any discussion? Being none, the question is, 'Shall Senate Bill 209 pass, the veto of the Governor notwithstanding?'. All those in favor will signify by voting 'aye', opposed by voting 'no'. The voting's open. Have all voted who wish? Have all voted who wish? Have all voted who wish? Take the record. On this question there are 141 'aye', 15 'no' and 6 voting 'present'. This Motion prevails and Senate Bill 209 is hereby declared passed, the veto of the Governor notwithstanding. Senate Bill 355. Read the Motion, Mr. Clerk."

Clerk Leone: "'I move that the House concur with the Senate in the passage of Senate Bill 355, the veto of the Governor notwithstanding', Representative Topinka."

Speaker Daniels: "Representative Topinka."

Topinka: "Mr. Speaker, I would like to propose that we do override the Governor's total veto of House Bill 355. When it first made its appearance here in the House, it was overwhelmingly carried. It was overwhelmingly carried in the Senate mainly because it is what affectionally has been known as the Equal Access to Justice Bill. This particular Bill allows for the small businessman, the individual, to challenge frivolous regulations by State Government and be compensated for fees that are incurred. When the small businessman is ripped out of his or her business and taken to court, it becomes much easier to settle out of court. It becomes much easier just to buckle under. This would allow them now to compete on a parity with the state and would allow us to kind of weed out some of these regulations which currently smother Illinois business and I would ask for a favorable Roll Call in overriding this veto."

Speaker Daniels: "Any discussion? Being none, the question is, 'Shall Senate Bill 355 pass, the veto of the Governor

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notwithstanding?". Representative Katz, the late light."

Katz: "Yes, Mr. Speaker, no one else rising on the Bill, I would like to rise in support of the Governor's veto and set forth some of the concerns that the Governor expressed. Now, the Governor pointed out that in many matters of litigation involving a state agency there may be many matters involved in it. In other words, the state agency, it might be the Fair Employment Practices Agency or what used to be known as the Human Rights Agency, it might be the Pollution Control Board, it might be any number of state agencies, and they may have 15 matters that involve a particular defendant, an employer or someone like that, as this Bill is drawn, if the state agency is sustained in 14 of the 15 allegations that they make yet lose one of the 15, the defendant is entitled to have his lawyers fees paid. Now, that's obviously a very inequitable and unfair situation because it is a rare lawsuit, and I know the lawyers on the floor will appreciate that, it is a rare lawsuit that doesn't have a complaint that is issued against a defendant in which the hearing officer or the administrative law judge does not strike out some part or fail to find some part of the complaint as being without merit. That doesn't mean that he doesn't substantially find against the defendant. It just means the defendant may win one of 20 points and yet the basic charges are proven. In addition to that, the Governor pointed out that it would have a very perverse effect on defendants. Now, you are before a state agency and you want to win, presumably, before the state agency. You want a fair crack at every point, but, in view of this particular piece of legislation, the hearing board of that agency, be it the Human Rights Board or the Pollution Control Board, will not want to give the defendant a break because, if the agency

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board gives the defendant a break on a particular point, then the agency will end up having to pay lawyers fees for that party. And so rather than this being something that's going to give a small businessman a fair shake, it may, in fact, nail the coffin in him because it will make it so that the agency that's hearing it will not want to let him win on one or more of the points because if he wins on one or more points even though he loses on the other, the agency ends up having to pay lots of lawyers fees. And so, even though I am in favor of lawyers and I am in favor of lawyers being paid fees, I am also in favor of protecting the budget of the State of Illinois. I am also in favor of fair is fair and I don't believe that a defendant who wins on one of 20 points and loses on 19 points ought to be able to recover from the state all of his attorneys fees. That doesn't seem fair to me and so, even though the Governor is of the party of my colleague on the other side, I would say that the Governor is very correct in this veto. The concept is okay, but it needs redrafting and I believe that this would be a very fine Bill for the Sponsor to come back with next time with the points cleaned up that the Governor alluded to so well in the veto message. And I would urge that the Governor's veto be supported."

Speaker Daniels: "The Gentleman from Will, Representative Leinenweber."

Leinenweber: "Thank you, Mr. Speaker. In response to the last Gentleman whose opinion I usually find impeccable, I think he is either using a dated draft of Senate Bill 355 or he did not read it correctly. What occurred in the House when we changed Senate Bill... When it was originally introduced or when it came over from the Senate, Senate Bill 355 did, I believe, precisely what the Gentleman said it did and that is that anytime a person won a case before an

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administrative agency, the administrative agency would have to pay attorneys fees. Now, however desirable this might appear on the surface, it was felt by many of us that this was far too costly an experiment to undertake. So a Subcommittee of the House Judiciary Committee was created and the Bill was redrafted. So what we did was provide that in those situations where a litigant does not go into Circuit Court and therefore does not come under the Civil Practice Act, and therefore would not be entitled to seek expenses in attorneys fees under Section 41 of the Civil Practice Act to provide like protection before the administrative agency. Now, if he's brought into court on 15 counts, he loses on 14 and wins on the 15th, this does not provide that the agency has to pay all of his attorneys fees and costs. What it does provide is that if the agency has made untrue allegations without reasonable cause that the expenses and costs in defending against those untrue allegations, not made under reasonable... with reasonable cause, he would be entitled to his fees and costs for that limited purpose. Now, if he's there for 15 different counts and a 16th count is unreasonable and untrue and he has to defend, expend money and he can show how much he spent on that sixteenth cause, then he would be entitled to that small portion of his attorneys fees, but he's not entitled to all of his fees based upon the very clear language of Senate Bill 355. This Bill, I think, does meet the demands of your constituents who, in many instances, have found themselves harassed by unreasonable and illegal rules and regulations. They've had to go to great expense to defend themselves against these regulations and then eventually way down the line a court will find the regulation was void. They spent all that money and all that time trying to defend themselves and they get nothing

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back except a nice citation which says that you're not guilty. Now, I think in those very, very limited circumstances where you actually have administrative arrogance and deviation from their lawful authorities and where they make incorrect, unreasonable allegations in which your constituents have to spend big money defending themselves and in those limited situations they would to be entitled...they ought to be entitled to their expenses. So, I join with the Lady in moving to override the veto of 355."

Speaker Daniels: "The Gentleman from Cook, Representative Epton."

Epton: "Thank you, Mr. Speaker. Ladies and Gentlemen of the House, I know this will come as a great shock to you, but once again I must, for the record, indicate that I have a conflict of interest, not only in this Bill, but on each and every Bill that I vote on and have voted on for the past 14 years. Thank you."

Speaker Daniels: "The Gentleman from Cook, Representative Levin."

Levin: "Would the Sponsor yield?"

Speaker Daniels: "Indicates she will."

Levin: "The way I read this and I just want to clarify for the record. This... I just want to clarify it for the record what my interpretation of this Bill...and tell me if I'm right or wrong. This does not apply to those situations where a public utility, for example, comes in for a rate increase or say a health care service corporation, Blue Cross, comes in for a rate increase. It would not apply to those types of situations. Is that correct?"

Speaker Daniels: "Representative Topinka."

Topinka: "No, I don't think that that's a contested case at that point. That would not apply."

Levin: "So, you're saying it would not apply to those cases."

Topinka: "That's correct."

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Levin: "So, even if the agency, say the Illinois Commerce Commission, denied a rate increase to a utility, and they don't do that very much, but even if they did and subsequently the court reversed them, this would not provide that the Commerce Commission or the Department of Insurance or whoever it was would have to pay the utilities attorneys fees."

Topinka: "That is not a contested case in the way that it is being used in this particular capacity."

Levin: "Okay. Thank you."

Speaker Daniels: "Further discussion? Being none, the Lady from Cook, Representative Topinka, to close."

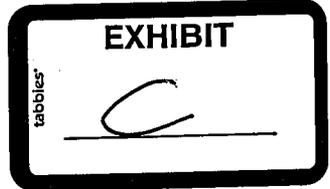
Topinka: "I think we've all addressed ourselves to this issue and it's a very common abuse of practice here. I think we do have to give the small businessman something to go on and not just leave them with this not guilty verdict at the end of the line which much money expended, his business hurt and our business climate hurt in general. So, if you would vote for an override, I think small business in the State of Illinois would be most appreciative."

Speaker Daniels: "The question is, 'Shall Senate Bill 355 pass, the veto of the Governor notwithstanding?'. All those in favor will signify by voting 'aye', opposed by voting 'no'. The voting's open. Have all voted who wish? Take the record. There are 143 'aye', 21 'no' and 4 voting 'present'. The Motion prevails and Senate Bill 355 is declared passed, the veto of the Governor notwithstanding. Senate Bill 384. Read the Motion, Mr. Clerk."

Clerk Leone: "'I move that the House concur with the Senate in the passage of Senate Bill 384, the veto of the Governor notwithstanding', Representative Bianco."

**Electronic Filing - Received, Clerk's Office : 07/12/2013  
EXPENSES RELATED TO THE CIRCUIT COURT ACTION**

	Date	Atty	Description Time	Rate	Time (hrs)	Amount
1	2/24/10	EEW	Analyze suggestions made during telephone conference and review draft complaint (.2); analyze whether to appeal the permanent shutdown finding to the Pollution Control Board or to the Circuit Courts (.4).	\$ 190.00	0.60	\$ 114.00
2	3/1/10	EEW	Analyze memorandum to file writ of common law certiorari, the IEPA's final agency action, and 415 ILCS 5/39-41, and synthesize permit denial to the Pollution Control Board.	\$ 190.00	0.60	\$ 114.00
3	3/25/10	EEW	Analyze Grigoleit Co. v. PCB, 613 N.E.2d 371 (.3); prepare exhibits to attach to Verified Complaint (.2); analyze 5 ILCS 5/40 and 5 ILCS 5/40.2 and corresponding case law in preparation to draft Pollution Control Board appeal (.8); analyze necessary pleading requirements for a declaratory judgment (.3); evaluate Illinois' Administrative Procedure Act and annotations to confirm that the circuit court is the appropriate venue to award attorneys fees (.7); analyze case law where trial courts have properly awarded attorneys fees when administrative rules have been invalidated, including Citizens Organizing Project v. Dept. of Nat'l Resources, 727 N.E.2d 195, Chand v. Patla, 795 N.E.2d 403, and City of Chicago v. South Austin Coalition Commtty., 543 N.E.2d 336 (.7).	\$ 190.00	3.00	\$ 570.00
4	1/5/11	ESH	Analyze regulations and statutes cited by IEPA in motion to dismiss circuit court action, inpreparation for hearing.	\$ 275.00	0.60	\$ 165.00
5	3/24/10	MJM	Correspondence to client regarding status of complaint and request for verification signature.	\$ 285.00	0.10	\$ 28.50
6	3/25/10	MJM	Correspondence to client regarding current version of complaint and request for approvalto file.	\$ 285.00	0.30	\$ 85.50
7	3/25/10	MJM	Correspondence to client regarding filing of complaint.	\$ 285.00	0.10	\$ 28.50
8	7/8/10	MJM	Finalize client status report regarding: 1) circuit court action; 2) IPCB complaint; and 3) long-term cold storage.	\$ 285.00	1.20	\$ 342.00
9	7/22/10	ESH	Prepare status report to client regarding NRDC's motion to intervene in circuit court action.	\$ 275.00	0.90	\$ 247.50



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10	1/20/11	MJM	Correspondence to S. Beemsterboer regarding circuit court dismissal and certiorari writ case; pending IPCB action.	\$ 285.00	0.60	\$ 171.00
				<b>TOTAL:</b>	<b>8.00</b>	<b>\$ 1,866.00</b>

**Electronic Filing - Received, Clerk's Office : 07/12/2013**  
**EXPENSES RELATING TO INTERVENORS' ACTION**

	Date	Atty	Description Time	Rate	Time (hrs)	Amount
1	7/8/10	ESH	Analyze motion (and memorandum in support of motion) to intervene, filed by Natural Resources Defense Council (NRDC) and Sierra Club.			\$ -
2	7/13/10	ESH	Additional legal research regarding NRDC's motion to intervene.	\$ 275.00	0.90	\$ 247.50
3	1/21/11	ESH	Detailed analysis of NRDC's motion to intervene in IPCB proceeding.	\$ 275.00	0.90	\$ 247.50
4	1/21/11	ESH	Extended telephone conference withregarding background to NRDC motion to intervene.	\$ 275.00	0.80	\$ 220.00
5	1/21/11	EEW	Analyze NRDC's motion to intervene and draftattorneys notes regarding response arguments.	\$ 190.00	0.40	\$ 76.00
6	1/21/11	EEW	Research and analyze PCB decisions wheremotions to intervene are denied because movants fail to demonstrate adequate prejudice.	\$ 190.00	1.30	\$ 247.00
7	1/21/11	EEW	Begin drafting response in opposition to motionto intervene, include supporting authority, and begin to discount plaintiff's arguments.	\$ 190.00	2.10	\$ 399.00
8	1/24/11	EEW	Draft six page response motion attackingmovants arguments that they will be materially prejudiced absent intervention and that they will be adversely affected by a final Board order.	\$ 190.00	2.40	\$ 456.00
9	1/25/11	ESH	Additional analysis of NRDC's motion tointervene in IPCB proceeding.	\$ 275.00	0.80	\$ 220.00
10	1/25/11	ESH	Analyze case law regarding standards forintervention.	\$ 275.00	0.80	\$ 220.00
11	1/25/11	EEW	Supplement response motion to include Ms.Harvey's arguments.	\$ 190.00	1.10	\$ 209.00
12	1/26/11	ESH	Analyze IPCB decisions regarding intervention,regarding response to NRDC's motion to intervene in IPCB proceeding.	\$ 275.00	1.70	\$ 467.50
13	1/27/11	ESH	Analyze IPCB and court decisions regarding permissive intervention.	\$ 275.00	1.60	\$ 440.00
14	1/28/11	ESH	Revise draft response opposing NRDC'smotion to intervene in IPCB proceeding.	\$ 275.00	3.40	\$ 935.00
15	1/30/11	ESH	Revise draft response in opposition to NRDC'smotion to intervene in IPCB proceeding.	\$ 275.00	1.70	\$ 467.50
16	1/31/11	ESH	Analyze additional IPCB decisions on intervention.	\$ 275.00	1.20	\$ 330.00
17	1/31/11	ESH	Revise draft response opposing NRDC's motion to intervene in IPCB proceeding.	\$ 275.00	3.90	\$ 1,072.50
18	1/31/11	MJM	Finalize response to NRD motion to intervene. 1.00	\$ 285.00	1.00	\$ 285.00
19	2/1/11	ESH	Analyze IEPA's response to NRDC motion to intervene.	\$ 275.00	0.20	\$ 55.00

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**EXPENSES RELATING TO INTERVENORS' ACTION**

20	2/1/11	ESH	Revise and finalize Chicago Coke's response opposing the NRDC's motion to intervene in IPCB proceeding.	\$ 275.00	4.80	\$ 1,320.00
21	2/3/11	EEW	Analyze filed response brief in opposition to intervention.	\$ 190.00	0.20	\$ 38.00
22	2/9/11	ESH	Analyze NRDC's motion to file a reply in support of its motion to intervene, and evaluate NRDC's proposed reply.	\$ 275.00	0.40	\$ 110.00
23	2/11/11	ESH	Detailed analysis of NRDC's proposed reply in support of attempted intervention.	\$ 275.00	0.60	\$ 165.00
24	2/11/11	ESH	Begin drafting surreply opposing NRDC's attempted intervention in IPCB appeal.	\$ 275.00	0.80	\$ 220.00
25	2/13/11	ESH	Draft response opposing NRDC's motion to file reply in support of motion to intervene.	\$ 275.00	0.40	\$ 110.00
26	2/13/11	ESH	Revise proposed surreply opposing NRDC's motion to intervene.	\$ 275.00	1.10	\$ 302.50
27	2/14/11	ESH	Revise proposed surreply to NRDC's proposed reply.	\$ 275.00	0.80	\$ 220.00
28	2/14/11	ESH	Evaluate IPCB caselaw regarding filing of replies.	\$ 275.00	0.50	\$ 137.50
29	2/15/11	ESH	Analyze caselaw regarding standard for "material prejudice" before the IPCB.	\$ 275.00	1.80	\$ 495.00
30	2/15/11	ESH	Revise Chicago Coke's proposed surreply to NRDC's proposed reply in support of NRDC's motion to intervene.	\$ 275.00	4.60	\$ 1,265.00
31	2/16/11	ESH	Analyze IEPA's motion to file reply to Chicago Coke's response on intervention.	\$ 275.00	0.40	\$ 110.00
32	2/24/11	ESH	Further analyze IEPA's motion for leave to file reply to Chicago Coke's response to NRDC's motion to intervene.	\$ 275.00	0.30	\$ 82.50
33	4/25/11	ESH	Analyze IPCB opinion and order lifting stay and granting NRDC's motion to intervene, subject to conditions.	\$ 275.00	0.60	\$ 165.00
34	4/28/11	ESH	Further analysis of IPCB order granting NRDC's motion to intervene.	\$ 275.00	0.50	\$ 137.50
35	5/12/11	ESH	Analyze dissenting opinion by two IPCB members, believing that NRDC's motion to intervene should not have been granted.	\$ 275.00	0.40	\$ 110.00
36	7/1/11	ESH	Analyze strategy for discovery requests to NRDC.	\$ 275.00	1.20	\$ 330.00
37	7/11/11	ESH	Begin drafting interrogatories to NRDC.	\$ 275.00	0.90	\$ 247.50
38	7/15/11	ESH	Draft document requests to NRDC.	\$ 275.00	1.80	\$ 495.00
39	7/15/11	ESH	Outline requests to admit to NRDC.	\$ 275.00	0.90	\$ 247.50
40	7/18/11	ESH	Revise and finalize interrogatories to NRDC.	\$ 275.00	1.70	\$ 467.50
41	7/18/11	ESH	Prepare requests to admit to NRDC.	\$ 275.00	1.30	\$ 357.50
42	7/18/11	ESH	Revise document requests to NRDC.	\$ 275.00	0.90	\$ 247.50
43	7/19/11	ESH	Initial analysis of NRDC's interrogatories, document requests, and requests to admit to Chicago Coke.	\$ 275.00	0.90	\$ 247.50
44	7/19/11	ESH	Evaluate NRDC's interrogatories, document requests, and requests to admit to IEPA.	\$ 275.00	0.70	\$ 192.50
45	7/19/11	ESH	Consider strategy for responding to discovery, given NRDC's irrelevant discovery requests.	\$ 275.00	0.80	\$ 220.00

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**EXPENSES RELATING TO INTERVENORS' ACTION**

46	7/20/11	ESH	Multiple correspondence with counsel for NRDC regarding service of NRDC's written discovery and requests to admit to Chicago Coke.	\$ 275.00	0.20	\$ 55.00
47	7/20/11	ESH	Detailed evaluation of NRDC's interrogatories, document requests, and requests to admit to Chicago Coke.	\$ 275.00	1.90	\$ 522.50
48	7/28/11	ESH	Outline motion to strike and for protective order regarding NRDC's irrelevant discovery requests regarding PM2.5 and PM10.	\$ 275.00	1.10	\$ 302.50
49	8/8/11	ESH	Draft motion to strike NRDC's discovery to Chicago Coke.	\$ 275.00	0.80	\$ 220.00
50	8/11/11	ESH	Continue drafting motion to strike and for protective order regarding NRDC's discovery requests to Chicago Coke.	\$ 275.00	0.60	\$ 165.00
51	8/12/11	ESH	Revise motion to strike and for protective order regarding NRDC's discovery requests to Chicago Coke.	\$ 275.00	1.10	\$ 302.50
52	8/15/11	ESH	Analyze NRDC's discovery requests to IEPA, focusing on NRDC requests outside the scope of the petition for review.	\$ 275.00	0.70	\$ 192.50
53	8/22/11	ESH	Additional analysis of prior IPCB and court decisions regarding prohibition on discovery requests for motion to strike and for protective order against NRDC.	\$ 275.00	1.70	\$ 467.50
54	8/24/11	ESH	Revise draft responses to NRDC's writtendiscovery.	\$ 275.00	0.60	\$ 165.00
55	8/29/11	ESH	Revise motion to strike and for protective order regarding NRDC's discovery requests.	\$ 275.00	3.10	\$ 852.50
56	8/29/11	ESH	Revise Chicago Coke's draft responses to NRDC's requests to admit, interrogatories, and document requests.	\$ 275.00	0.90	\$ 247.50
57	8/30/11	ESH	Continue drafting motion to strike and for 3.10 protective order regarding NRDC's discovery requests and requests to admit.	\$ 275.00	3.10	\$ 852.50
58	8/31/11	ESH	Revise draft responses and objections to NRDC's requests to admit, interrogatories, and document requests.	\$ 275.00	0.50	\$ 137.50
59	9/7/11	ESH	Finalize responses to NRDC's interrogatories, document requests, and requests to admit.	\$ 275.00	0.50	\$ 137.50
60	9/8/11	ESH	Initial analysis of IEPA's responses to NRDC's interrogatories and document requests.	\$ 275.00	0.40	\$ 110.00
61	9/8/11	ESH	Begin reviewing IEPA's responses to NRDC's requests to admit.	\$ 275.00	0.40	\$ 110.00
62	9/8/11	ESH	Initial evaluation of documents produced by NRDC in responses to Chicago Coke's discovery requests.	\$ 275.00	0.80	\$ 220.00
63	9/13/11	ESH	Multiple correspondence with counsel for NRDC regarding unanswered interrogatory from Chicago Coke to NRDC.	\$ 275.00	0.30	\$ 82.50

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EXPENSES RELATING TO INTERVENORS' ACTION**

64	9/15/11	ESH	Further analysis of documents produced by NRDC in response to Chicago Coke's document request.	\$ 275.00	1.20	\$ 330.00
65	10/21/11	ESH	Evaluate potential defenses to motions for summary judgment by NRDC.	\$ 275.00	0.80	\$ 220.00
66	10/26/11	ESH	Evaluate NRDC's supplemental responses to Chicago Coke's interrogatories.	\$ 275.00	0.50	\$ 137.50
67	10/26/11	ESH	Multiple correspondence with Ms. Alexander(NRDC's counsel) regarding NRDC's supplemental responses.	\$ 275.00	0.40	\$ 110.00
68	10/31/11	ESH	Telephone conference with NRDC attorney regarding preparation for status call with IPCB hearing officer.	\$ 275.00	0.20	\$ 55.00
69	11/2/11	ESH	Multiple correspondence with counsel for NRDC regarding Rule 201K conference regarding discovery disputes.	\$ 275.00	0.30	\$ 82.50
70	11/4/11	ESH	Analyze NRDC's stated legal positions regarding possible motion for summary judgment.	\$ 275.00	0.60	\$ 165.00
71	11/7/11	ESH	Telephone conference with NRDC attorney regarding 201(k) conference regarding discovery disputes.	\$ 275.00	0.10	\$ 27.50
72	11/7/11	ESH	Prepare for 201(k) conference with NRDC regarding objections to NRDC's responses to interrogatories and requests to admit.	\$ 275.00	1.30	\$ 357.50
73	11/7/11	ESH	Correspondence to NRDC attorney regarding discovery dispute.	\$ 275.00	0.60	\$ 165.00
74	11/8/11	ESH	Multiple correspondence with NRDC attorney regarding NRDC's responses to ChicagoCoke's discovery.	\$ 275.00	0.30	\$ 82.50
75	11/9/11	ESH	Prepare for and participate in Rule 201(k) conference with NRDC's attorney regarding Chicago Coke's objections to NRDC's discovery responses.	\$ 275.00	1.20	\$ 330.00
76	12/1/11	ESH	Analyze NRDC pleadings and discovery responses regarding potential cross-motion for summary judgment.	\$ 275.00	0.90	\$ 247.50
77	12/6/11	ESH	Review documents produced by NRDC regarding strategy, whether to file motion to compel.	\$ 275.00	0.90	\$ 247.50
78	12/19/11	ESH	Evaluate NRDC's legal position on Chicago 0.90 Coke's ERCs regarding anticipated motion for summary judgment by NRDC.	\$ 275.00	0.90	\$ 247.50
79	8/17/12	ESH	Multiple correspondence with counsel for NRDC regarding cross-motions for summary judgment.	\$ 275.00	0.20	\$ 55.00
80	8/18/12	ESH	Evaluate NRDC's motion for summary judgment against Chicago Coke.	\$ 275.00	1.30	\$ 357.50
81	8/20/12	ESH	Additional evaluation of NRDC's motion for summary judgment against Chicago Coke regarding potential motion to strike.	\$ 275.00	0.70	\$ 192.50

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EXPENSES RELATING TO INTERVENORS' ACTION**

82	8/21/12	ESH	Continue analyzing NRDC's motion for summary judgment against Chicago Coke, including exhibits.	\$ 275.00	1.20	\$ 330.00
83	8/24/12	ESH	Analyze exhibits to NRDC's motion for summary judgment against Chicago Coke.	\$ 275.00	0.60	\$ 165.00
84	8/29/12	ESH	Additional evaluation of NRDC's motion for summary judgment against Chicago Coke, in preparation for drafting response.	\$ 275.00	0.70	\$ 192.50
85	8/30/12	ESH	Further evaluation of NRDC's motion for summary judgment against Chicago Coke regarding strategy for motion to strike.	\$ 275.00	0.90	\$ 247.50
86	9/4/12	ESH	Review NRDC's motion for summary judgment against Chicago Coke regarding possible motion to strike.	\$ 275.00	0.60	\$ 165.00
87	9/5/12	ESH	Telephone conference with NRDC regarding preparation for status conference.	\$ 275.00	0.10	\$ 27.50
88	9/14/12	ESH	Analyze NRDC's motion for summary judgment regarding preparation of motion to strike arguments beyond scope of the appeal.	\$ 275.00	0.80	\$ 220.00
89	9/15/12	ESH	Draft motion to strike portions of NRDC's motion for summary judgment against Chicago Coke.	\$ 275.00	0.90	\$ 247.50
90	9/16/12	ESH	Revise motion to strike portions of NRDC's motion for summary judgment.	\$ 275.00	0.90	\$ 247.50
91	9/16/12	ESH	Draft response to portions of NRDC's motion for summary judgment (not the subject of the motion to strike).	\$ 275.00	2.20	\$ 605.00
92	9/18/12	ESH	Revise response opposing NRDC's motion for summary judgment.	\$ 275.00	1.60	\$ 440.00
93	9/19/12	ESH	Revise and finalize motion to strike portions of NRDC's motion for summary judgment.	\$ 275.00	0.60	\$ 165.00
94	9/19/12	ESH	Revise and finalize Chicago Coke's response to NRDC's motion for summary judgment.	\$ 275.00	2.10	\$ 577.50
95	9/20/12	ESH	Analyze NRDC's response to Chicago Coke's motion for summary judgment.	\$ 275.00	0.50	\$ 137.50
96	9/21/12	ESH	Further analysis of NRDC's response to Chicago Coke's motion for summary judgment.	\$ 275.00	0.70	\$ 192.50
97	9/25/12	ESH	Evaluate potential motion to strike portions of NRDC's response to Chicago Coke's motion for summary judgment.	\$ 275.00	0.60	\$ 165.00
98	9/28/12	MJM	Examine and analyze NRDC's response to Chicago Coke's motion for summary judgment.	\$ 285.00	1.70	\$ 484.50
99	10/3/12	ESH	Evaluate NRDC's response to Chicago Coke's motion to strike.	\$ 275.00	0.80	\$ 220.00
100	10/12/12	ESH	Further analysis of NRDC's response to Chicago Coke's motion to strike portions of NRDC's motion for summary judgment regarding potential reply.	\$ 275.00	0.80	\$ 220.00
101	10/15/12	ESH	Prepare motion for leave to file reply in support of motion to strike portions of NRDC's motion for summary judgment.	\$ 275.00	0.40	\$ 110.00

**Electronic Filing - Received, Clerk's Office : 07/12/2013**  
**EXPENSES RELATING TO INTERVENORS' ACTION**

102	10/15/12	ESH	Outline reply in support of motion to strike portions of NRDC's motion for summary judgment.	\$ 275.00	1.10	\$ 302.50
103	10/16/12	ESH	Draft reply in support of Chicago Coke's motion to strike portions of NRDC's motion for summary judgment.	\$ 275.00	1.60	\$ 440.00
104	10/17/12	ESH	Prepare motion for leave to file reply in support of Chicago Coke's motion to strike NRDC's motion for summary judgment.	\$ 275.00	0.50	\$ 137.50
105	10/17/12	ESH	Revise and finalize reply in support of motion to strike NRDC's motion for summary judgment.	\$ 275.00	2.20	\$ 605.00
106	12/18/12	ESH	Multiple correspondence with counsel for NRDC regarding status call with IPCB hearing officer.	\$ 275.00	0.20	\$ 55.00
107	1/10/13	ESH	Analyze issues to be addressed in supplemental response to NRDC's motion for summary judgment.	\$ 275.00	1.20	\$ 330.00
108	1/16/13	ESH	Outline supplemental response to NRDC's motion for summary judgment per IPCB order.	\$ 275.00	0.90	\$ 247.50
109	1/17/13	ESH	Multiple correspondence with counsel for NRDC regarding Chicago Coke's supplemental response.	\$ 275.00	0.20	\$ 55.00
110	1/20/13	ESH	Begin drafting supplemental response to NRDC's motion for summary judgment.	\$ 275.00	0.80	\$ 220.00
111	1/25/13	ESH	Continue drafting supplemental response to NRDC's motion for summary judgment.	\$ 275.00	3.80	\$ 1,045.00
112	1/28/13	ESH	Continue drafting supplemental response to NRDC's motion for summary judgment.	\$ 275.00	2.80	\$ 770.00
113	1/29/13	ESH	Revise supplemental response to NRDC's motion for summary judgment.	\$ 275.00	2.80	\$ 770.00
114	1/30/13	ESH	Revise supplemental response to NRDC's motion for summary judgment.	\$ 275.00	1.10	\$ 302.50
115	1/31/13	ESH	Revise and finalize supplemental response to NRDC's motion for summary judgment.	\$ 275.00	3.20	\$ 880.00
116	2/4/13	ESH	Correspondence from NRDC counsel regarding Chicago Coke's supplemental response and NRDC's motion to substitute.	\$ 275.00	0.10	\$ 27.50
				<b>TOTAL:</b>	<b>127.80</b>	<b>\$ 34,534.50</b>

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**ENTRIES SPLIT BETWEEN IEPA ACTION AND INTERVENORS' ACTION**

	Date	Atty	Description Time	Rate	Time (hrs)	Amount
1	6/13/11	ESH	Evaluate issues for written discovery to IEPA and NRDC.	\$ 275.00	0.50	\$ 137.50
2	6/21/11	ESH	Analyze issues for Chicago Coke's written discovery requests to IEPA and NRDC.	\$ 275.00	1.90	\$ 522.50
3	6/22/11	ESH	Review issues raised by IEPA and NRDC regarding drafting of written discovery to IEPA and NRDC.	\$ 275.00	1.80	\$ 495.00
4	7/5/11	ESH	Continue outlining written discovery requests to IEPA and NRDC.	\$ 275.00	1.60	\$ 440.00
5	7/29/11	ESH	Further analysis of written discovery to Chicago Coke from IEPA and from NRDC regarding preparing responses and objections.	\$ 275.00	1.20	\$ 330.00
6	8/3/11	ESH	Additional analysis of documents (including Chicago Coke emissions reports) regarding preparing responses to discovery from IEPA and NRDC.	\$ 275.00	1.60	\$ 440.00
7	8/4/11	ESH	Further analysis of IEPA and NRDC discovery requests to Chicago Coke, and of strategy to limit use of responses.	\$ 275.00	0.90	\$ 247.50
8	8/19/11	ESH	Review documents preparing responses to written discovery from IEPA and NRDC.	\$ 275.00	1.10	\$ 302.50
9	8/23/11	ESH	Additional analysis of Chicago Coke's emission reports and other documents regarding information needed for responses to IEPA and NRDC discovery requests.	\$ 275.00	2.70	\$ 742.50
10	9/14/11	ESH	Continue evaluation of discovery responses from IEPA and NRDC, including analysis of any necessary additional discovery and disputes regarding adequacy of discovery responses.	\$ 275.00	3.10	\$ 852.50

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**ENTRIES SPLIT BETWEEN IEPA ACTION AND INTERVENORS' ACTION**

11	11/9/11	ESH	Evaluate options for motions to compel discovery responses from IEPA and NRDC.	\$ 275.00	0.40	\$ 110.00
12	11/23/11	ESH	Evaluate adequacy of IEPA and NRDC discovery responses for possible Chicago Coke's motion for summary judgment.	\$ 275.00	1.40	\$ 385.00
13	6/22/12	ESH	Evaluate strategy for motion for summary judgment and anticipated motion for summary judgment by IEPA and NRDC.	\$ 275.00	1.70	\$ 467.50
14	10/5/12	ESH	Further analysis of IEPA's and NRDC's responses to Chicago Coke's motions to strike regarding potential reply.	\$ 275.00	0.90	\$ 247.50
15	10/10/12	ESH	Begin drafting motion to file reply in support of Chicago Coke's motion to strike.	\$ 275.00	0.70	\$ 192.50
16	12/29/12	ESH	Evaluate IEPA and NRDC arguments on summary judgment regarding potential outcomes.	\$ 275.00	0.90	\$ 247.50
17	1/7/13	ESH	Review IEPA and NRDC motions for summary judgment, in preparation for preparing supplemental responses per IPCB order.	\$ 275.00	1.20	\$ 330.00
18	1/15/13	ESH	Review IEPA administration record regarding supplemental responses to IEPA and NRDC's motions for summary judgment.	\$ 275.00	2.20	\$ 605.00
				<b>TOTAL:</b>	<b>25.80</b>	<b>\$ 7,095.00</b>

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**NOT ENOUGH INFORMATION TO ASCERTAIN REASONABLENESS**

	Date	Atty	Description Time	Rate	Time (hrs)	Amount
1	11/19/09	EEW	Telephone conference with _____ regarding whether to file a common law writ of certiorari.	\$ 190.00	0.40	\$ 76.00
2	1/5/2010	EEW	Prepare for upcoming telephone conference with _____ regarding the emissions credits by reviewing prior correspondences and memorandums to the file (.3); telephone conference with _____ to pursue final agency action (.3); draft attorney notes summarizing conversation (.1).	\$ 190.00	0.70	\$ 133.00
3	1/13/2010	EEW	Telephone conference with _____ regarding her correspondence to (.2); draft attorneys notes regarding correspondence and plan appropriate future actions (.2).	\$ 190.00	0.40	\$ 76.00
4	1/13/2010	MJM	Prepare for and attend follow-up meeting with _____	\$ 285.00	0.90	\$ 256.50
5	1/15/2010	MJM	Examine letter from _____, regarding ERC credits.	\$ 285.00	0.30	\$ 85.50
6	2/22/10	MJM	Correspondence to/from _____ regarding IEPA decision.	\$ 285.00	0.20	\$ 57.00
7	2/22/10	MJM	Prepare for conference with _____ regarding IEPA final decision.	\$ 285.00	0.50	\$ 142.50
8	2/24/10	MJM	Telephone conference with _____ regarding substance and timing of appeal of denial of credits.	\$ 285.00	0.50	\$ 142.50
9	3/23/10	EEW	Analyze correspondence from _____ and attached exhibits (.4); analyze PCB's opinions and orders and analyze effect, if any, on permanent shutdown language (.5)	\$ 190.00	2.80	\$ 532.00
10	3/25/10	MJM	Various correspondence with _____ regarding complaint.	\$ 285.00	0.30	\$ 85.50
11	4/12/10	MJM	Telephone conference with _____ regarding IEPA response.	\$ 285.00	0.20	\$ 57.00
12	6/10/10	MJM	Examine correspondence regarding proposed order.	\$ 285.00	0.10	\$ 28.50
13	7/7/10	ESH	Extended telephone conference with _____ regarding long-term cold storage (LTCS) status, and regarding factual background of IEPA's refusal to accept Chicago Coke's ETCs.	\$ 275.00	0.50	\$ 137.50

14	9/13/10	MJM	Correspondence to/from _____	\$ 285.00	0.00	\$ -
				<b>TOTAL:</b>	<b>7.80</b>	<b>\$ 1,809.50</b>

Electronic Filing - Received, Clerk's Office : 07/12/2013  
**NOT ENOUGH INFORMATION IN COMMUNICATIONS**  
**WITH CLIENT TO ASCERTAIN REASONABLENESS**

	Date	Atty	Description Time	Rate	Time (hrs)	Amount
1	12/4/09	MJM	Telephone conference with S. Beemsterboer regarding status of IEPA notice regarding Clean Air Act.	\$ 285.00	0.20	\$ 57.00
2	1/8/2010	MJM	Correspondence to client regarding strategy/implementation of actions against IEPA.	\$ 285.00	1.00	\$ 285.00
3	1/13/2010	MJM	Correspondence to client regarding meeting and plan to attack IEPA denial of ERC permit.	\$ 285.00	0.50	\$ 142.50
4	3/25/10	MJM	Examine correspondence from client regarding long-term cold storage issue.	\$ 285.00	0.20	\$ 57.00
5	4/15/10	MJM	Correspondence to client.	\$ 285.00	0.10	\$ 28.50
6	4/15/10	MJM	Examine response from client.	\$ 285.00	0.10	\$ 28.50
7	7/1/10	ESH	Begin drafting status report to client.	\$ 275.00	1.90	\$ 522.50
8	7/7/10	ESH	Continue drafting status report to client.	\$ 275.00	3.50	\$ 962.50
9	7/7/10	MJM	Telephone conference with client regarding USEPA regarding cold storage.	\$ 285.00	0.10	\$ 28.50
10	7/8/10	ESH	Revise draft status report to client.	\$ 275.00	4.90	\$ 1,347.50
11	7/22/10	MJM	Revise/finalize status report to client.	\$ 285.00	0.30	\$ 85.50
12	9/8/10	MJM	Correspondence to S. Beemsterboer regarding IPCB decision in favor of Chicago Coke.	\$ 285.00	0.60	\$ 171.00
13	10/19/10	ESH	Outline status report to client.	\$ 275.00	0.70	\$ 192.50
14	10/19/10	MJM	Telephone conference with S. Beemsterboer regarding case status.	\$ 285.00	0.30	\$ 85.50
15	10/20/10	ESH	Draft status report to client.	\$ 275.00	0.90	\$ 247.50
16	12/14/10	MJM	Telephone conference with S. Beemsterboer regarding status.	\$ 285.00	0.10	\$ 28.50
17	4/28/11	ESH	Draft status report to client.	\$ 275.00	0.80	\$ 220.00
18	5/2/11	MJM	Correspondence to client regarding status update.	\$ 285.00	0.50	\$ 142.50
19	7/22/11	ESH	Begin drafting status letter to client.	\$ 275.00	0.90	\$ 247.50
20	8/1/11	ESH	Draft status letter to client, including recommendations for action and analysis of possible outcome.	\$ 275.00	4.60	\$ 1,265.00
21	8/2/11	ESH	Revise status report to client.	\$ 275.00	0.80	\$ 220.00
22	8/2/11	MJM	Finalize status report to client.	\$ 285.00	0.90	\$ 256.50
23	8/31/11	ESH	Draft correspondence to Mr. Beemsterboer regarding Chicago Coke's draft discovery responses.	\$ 275.00	0.40	\$ 110.00
24	8/31/11	MJM	Finalize discovery answers and forward to Mr. Beemsterboer.	\$ 285.00	0.60	\$ 171.00
25	4/5/12	MJM	Examine request from S. Beemsterboer.	\$ 285.00	0.10	\$ 28.50
26	4/6/12	ESH	Draft status update to client.	\$ 275.00	0.90	\$ 247.50
27	4/6/12	MJM	Draft status report to S. Beemsterboer regarding success on recent motion.	\$ 285.00	0.80	\$ 228.00
28	7/2/12	MJM	Correspondence to S. Beemsterboer regarding discovery status.	\$ 285.00	0.10	\$ 28.50

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**NOT ENOUGH INFORMATION IN COMMUNICATIONS  
 WITH CLIENT TO ASCERTAIN REASONABLENESS**

			Draft status report to client regarding evaluation of potential motion for summary judgment, and recommendations for proceeding (including outline of summary judgment arguments).	\$ 275.00	6.20	\$ 1,705.00
29	7/12/12	ESH				
30	7/13/12	MJM	Finalize status report to S. Beemsterboer.	\$ 285.00	1.00	\$ 285.00
31	9/4/12	MJM	Draft status report to S. Beemsterboer.	\$ 285.00	1.10	\$ 313.50
32	9/7/12	MJM	Examine response from S. Beemsterboer.	\$ 285.00	0.10	\$ 28.50
33	9/28/12	MJM	Draft correspondence to S. Beemsterboer regarding status.	\$ 285.00	0.20	\$ 57.00
34	12/3/12	MJM	Telephone conference with S. Beemsterboer.	\$ 285.00	0.10	\$ 28.50
35	1/4/13	MJM	Correspondence to S. Beemsterboer regarding case status.	\$ 285.00	0.10	\$ 28.50
36	1/8/13	MJM	Telephone conference with S. Beemsterboer.	\$ 285.00	0.10	\$ 28.50
37	1/8/13	MJM	Correspondence to Mr. Beemsterboer regarding meeting.	\$ 285.00	0.10	\$ 28.50
38	2/5/13	MJM	Correspondence to S. Beemsterboer regarding upcoming meeting.	\$ 285.00	0.10	\$ 28.50
39	2/7/13	ESH	Prepare draft correspondence to client regarding status and analysis of case.	\$ 275.00	0.90	\$ 247.50
40	2/8/13	ESH	Revise draft correspondence to Mr. Beemsterboer regarding summary and analysis of the case.	\$ 275.00	3.10	\$ 852.50
41	2/11/13	MJM	Finalize status report to S. Beemsterboer.	\$ 285.00	1.30	\$ 370.50
42	2/15/13	ESH	Prepare for meeting with clients regarding status and strategy	\$ 275.00	2.40	\$ 660.00
43	2/15/13	ESH	Meet with S. Beemsterboer regarding status of appeal and strategy.	\$ 275.00	1.10	\$ 302.50
				<b>TOTAL:</b>	<b>44.70</b>	<b>\$ 12,399.50</b>

	Date	Atty	Description Time	Rate	Time (hrs)	Amount
1	8/12/11	MJM	Correspondence to Mr. Beemsterboer regarding payment of \$1,147.11.	\$ 285.00	0.20	\$ 57.00
2	4/25/13	MJM	Telephone conference with S. Beemsterboer regarding payments to City of Chicago and State of Illinois.	\$ 285.00	0.20	\$ 57.00
3	8/12/11	MJM	Examine payment by bankruptcy trustee.	\$ 285.00	0.10	\$ 28.50
				<b>TOTAL:</b>	<b>0.50</b>	<b>\$ 142.50</b>

**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 the Illinois Environmental Protection Agency's Response to Chicago Coke, Inc.'s Motion to Modify Board Order to Award Costs and Attorney's Fees and caused them to be served this 12<sup>th</sup> day of July, 2013, upon the persons listed on the foregoing Notice of Filing 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.

A handwritten signature in black ink, appearing to read 'T. H. Shepherd', written over a horizontal line.

THOMAS H. SHEPHERD