



3. various permit violations including excess particulate emissions, failure to operate secondary scrubbers, deviation from approved plans without supplemental permit, and failure to modify construction permit;
4. operation of dryers #651 and #661 without permit.

More specifically, the complaint alleges that stack testing on one of the dryers in 1995 indicated actual emissions of 17.1 pounds per hour. The inspector from the Illinois Environmental Protection Agency (Agency) determined that MGP had constructed a major modification without a PSD permit and BACT system. The complaint further alleges that, because MGP has the potential to release PM emissions that exceed 25 tons per year, MGP is a “major stationary source” subject to PSD regulations.

In its answer filed on May 7, 1997, MGP denied committing the alleged violations, and asserted four affirmative defenses. On August 21, 1997, the Board found that only two of these were valid defenses: 1) that due to the discontinuance of its fluidized bed coal boiler in 1994, MGP was no longer a “major stationary source” subject to PSD regulations; and 2) that MGP was in compliance with a compliance commitment agreement, so that the complaint was improper under Section 31(a) of the Environmental Protection Act (Act), as amended and effective August 1, 1996. 415 ILCS 5/31(a).

On March 17, 2005, the parties reported to the hearing officer that settlement negotiations had reached an impasse, and a discovery schedule was established.

### **RELEVANT PROCEDURAL RULES**

Section 101.616 of the Board’s procedural rules entitled “Discovery” provides in pertinent part

For purposes of discovery, the Board may look to the Code of Civil Procedure and the Supreme Court Rules for guidance where the Board’s procedural rules are silent. . .

- a) All relevant information and information calculated to lead to relevant information is discoverable. . . 35 Ill. Adm. Code 101.616(a).

Section 101.620(a) of the Board’s procedural rules entitled “Interrogatories” provides in pertinent part that “unless ordered otherwise by the hearing officer, a party may serve a maximum of 30 written interrogatories, including subparts, on any other party.” 35 Ill. Adm. Code 101.616(a).

### **RESPONDENT’S AMENDED FIRST SET OF INTERROGATORIES**

For administrative economy, this order will not repeat or discuss each of the parties’ arguments in detail. Moreover, as they are irrelevant to this enforcement action, the parties’ arguments regarding MGP’s request for information from the Agency under the Freedom of Information Act are not considered here.

In general, the People object to MGP's amended first set of interrogatories on the grounds that the interrogatories, including subparts, "are too numerous [i.e. exceed the allowable limit of 30 by at least 23]...duplicitous. . . request information that is not relevant and beyond the time period alleged within the complaint, or are so ambiguous as to prevent the People from responding. . .[are] a form of harassment. . . and a broad fishing expedition" that will require the People to review a very large amount of information, causing undue expense in time and effort. (Motion at 4, para. 11). Additionally, the People assert that interrogatory numbers 7, 8, 11, and 19 request information that does not relate to one primary question.

In response, MGP argues that its interrogatories are properly formatted and are within the scope of discovery. As to the "subpart as separate interrogatory" issue, MGP states that the committee comments concerning Supreme Court rule 213 are silent. Looking to the Federal Rules of Civil Procedure, MGP cites consensus in federal case law that interrogatory subparts are counted as part of one interrogatory if the subparts elicit details that are common to the theme of the primary question. (Kendall v. GES Exposition Serv., Inc., 1997 U.S. Dist. Lexis 15827; Swackhammer v. Sprint Corp. PCS, 225 F.R.D. 658, 664-65 (D. Kan. 2004); Banks v. Office of the Senate Sergeant-at-Arms, 222 F.R.D. 7, 10-11 (D. D.C. 2004)). Response at 4-6.

### **Interrogatories 1-6**

The first six interrogatories request information about the individuals who are assisting the People with this case, and witnesses who will testify at hearing. The hearing officer finds that these requests are not unduly burdensome. Each of these interrogatories, including subparts, counts as one request.

### **Interrogatory 7**

The primary question in interrogatory 7 is whether the facility is a "major stationary source." MGP has asserted as an affirmative defense that the shutdown of the fluidized bed coal boiler in 1994 meant that the facility was no longer a major stationary source, thus PSD program requirements were no longer applicable.

Interrogatory 7 asks the People to identify all equipment, processes, operations and fugitive emissions which had the potential to emit more than 25 tons of PM per year from 1989 to present. Each subsection further requests a significant amount of information.

The People assert that the complaint pertains only to the major modification of the two feed dryers constructed in 1993, and argue that information on other equipment and information regarding emissions before the dryers were built is not relevant.

The hearing officer agrees that this interrogatory is overly broad and unduly burdensome as to time period and scope. As the People argue, the subparts of the interrogatory go beyond the subject matter of the initial interrogatory. Moreover, MGP has failed to demonstrate the relevance of the information requested.

### **Interrogatory 8**

Since interrogatory 8 asks no initial question, the hearing officer considers subsection (a) to be the primary question. Subsection (a) requests all information used in the major modification determination, and subsection (c) asks who was involved in the determination. While (a) and (c) are reasonably related, subsections (b) and (d) request information not related to how the determination was made, such as what BACT system would have been applicable to such major modification, and what were the limitations on the maximum capacity to emit PM from such major modification.

The People argue that this interrogatory asks more than a single question. MGP argues that the entire question relates to major modifications. The hearing officer finds that this interrogatory is overly broad because subsections (b) and (d) are not directly related to how the major modification was determined.

### **Interrogatories 9 and 10**

The People requested clarification as to the difference between interrogatories 9 and 10. Despite MGP's explanation that one relates to permit modifications, and the other to permit application modifications, the hearing officer finds that the difference between these questions is unclear.

### **Interrogatory 11**

Interrogatory 11 asks the People to itemize the penalties it seeks, and to state how it arrived at those amounts. MGP further asks about methods for attributing economic benefit accruing to MGP. The hearing officer finds that this interrogatory is not overly broad or unduly burdensome, and qualifies as a single interrogatory. The subparts all sufficiently relate to a single subject matter: penalty calculation.

### **Interrogatory 14**

The People argue that interrogatory 14 counts as two requests: 1) identification of all communications regarding economic and technological feasibility; and 2) a description of the technical feasibility and economically reasonable technology available to control the PM emissions at the facility. The hearing officer finds that these requests are not reasonably related, and must count as two interrogatories. The request for communication about feasibility seeks information quite different than the request for the control data available.

### **Interrogatory 16**

The People argue that interrogatory 16 asks for information about communications concerning BACT analysis which is duplicative of information requested in numbers 8 and 12. The hearing officer finds this interrogatory to be duplicative.

**Interrogatory 18**

Interrogatory 18 seeks all communications relating to the permitting, operation and shutdown of the fluidized bed combustion boiler or any dryers at the facility from 1987 to present.

The People argue that this request is overly broad because it involves two types of equipment—the boilers (also subject of interrogatory 7) and the dryers. Also, the People argue that the request is overly broad because there are other dryers at the facility that are not the subject of this complaint, and the request specifies a time period that is outside and not relevant to the complaint. The hearing officer agrees that this request seeks too much information to be deemed a single interrogatory.

**Interrogatory 19**

Interrogatory 19 asks the People to: 1) describe any and all communications regarding particulate air emission modeling related to the facility; 2) identify all data relating to air emission tests conducted at the facility; 3) identify emission data associated with the facility; and/or 4) identify air particulate modeling related to the facility.

The People argue that the requests for data relating to air emission tests and emission data associated with the facility are not relevant to other parts of the question regarding modeling data. MGP's response clarifies that the interrogatory intended to ask only for the air emission data used in modeling. Accordingly, this request is acceptable as a single interrogatory.

**Interrogatory 20**

Interrogatory 20 requests the time period used for calculation of emission limits “for the project which is the subject of the complaint”, including information about the “look back” period. The People requested further definition of “look back”, and points out that interrogatories 7, 8, and 17 appear to seek information on this issue. MGP did not respond. The hearing officer agrees that this interrogatory is not specific enough to allow the People to answer.

**Interrogatory 21**

Interrogatory 21 asks the People to identify exemptions that were considered by the Agency regarding PM emissions at the facility, and the bases for denial of such exemptions. The People read this to ask for all possible exemptions under the Act. MGP explains that this question only seeks information regarding any exemptions actually considered. With this clarification, the hearing officer agrees with MGP that the interrogatory is not overly broad or unduly burdensome.

**Interrogatory 22**

The People argue that interrogatory 22 is overly broad in its request for all information relating to any PSD permitting for the facility, including air emission evaluations, and effects on

attainment and/or nonattainment classification of the surrounding vicinity. The People suggest that this subject is covered in interrogatories 9, 10, and 17. As MGP did not address this objection, the hearing officer finds this request duplicative.

#### **Interrogatory 24**

The primary question in interrogatory 24 is the Agency's analysis of the facility's "monetary losses." The subparts request a breakdown by the penalty amount requested in settlement negotiations, BACT determination, and the determination of economically reasonable technology. The People requested clarification of the undefined term "monetary losses." As MGP did not address this objection, the hearing officer finds that the People cannot reasonably be expected to answer the interrogatory as posed.

#### **Interrogatory 26**

Interrogatory 26 asks for information regarding the Agency's analysis of MGP's good faith efforts to control PM emissions, including an analysis of MGP's attempts to hold the dryer manufacturer's supplier accountable. Although the People's motion does not state whether such analysis was conducted, the People argue that this question is ambiguous, especially as to what constitutes "good faith efforts". MGP's response did not address this interrogatory.

The hearing officer finds that the People cannot reasonably be expected to answer the interrogatory as posed. Additionally, the hearing officer finds that interrogatory 26 involves two separate subject matters.

#### **Interrogatory 28**

Interrogatory 28 asks for the Agency's analysis of the severity of the PM emissions, economic loss due to unemployment, and economic impact of a shut down of the facility. The hearing officer agrees with the People that these requests are insufficiently related to be considered a single interrogatory.

### **CONCLUSION**

For the reasons enumerated above, the hearing officer strikes MGP's amended first set of interrogatories in its entirety. This leaves to MGP the discretion to hone its interrogatories and to determine which to forego asking. The hearing officer grants MGP 30 days from the date of this order to serve a second amended set of interrogatories, and the People shall have 30 days to respond.

IT IS SO ORDERED.

Carol Webb

---

Carol Webb  
Hearing Officer  
Illinois Pollution Control Board  
1021 North Grand Avenue East  
P.O. Box 19274  
Springfield, Illinois 62794-9274  
217/524-8509  
webbc@ipcb.state.il.us