

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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

NOTICE OF FILING

TO: See Attached Service List

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

Respectfully submitted,


ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

By 

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

CERTIFICATE OF SERVICE

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



THOMAS H. SHEPHERD

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

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

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

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

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

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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

**RESPONDENT'S SECOND SUPPLEMENTAL RESPONSES TO
PETITIONER'S INTERROGATORIES TO RESPONDENT**

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

GENERAL OBJECTIONS TO INTERROGATORIES

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

1. Respondent has not completed its investigation and discovery in this proceeding, nor its preparation for a hearing. Accordingly, all responses below are based only upon such information and documents that are presently available and specifically known to Respondent.

As discovery progresses, Respondent reserves the right to supplement its responses to Petitioner's Interrogatories to Respondent ("Interrogatories").

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

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

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

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

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

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

* * *

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

INTERROGATORIES

Interrogatory No. 1:

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

ANSWER:

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

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

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

Bob Smet
Permit Engineer
Illinois EPA Bureau of Air
Construction Unit, Permit Section
1021 North Grand Avenue East
Springfield, Illinois 62794-9276
(217) 785-9250

Rob Kaleel
Manager

Illinois EPA Bureau of Air
Division of Air Pollution Control
Air Quality Planning Section
1021 North Grand Avenue East
Springfield, Illinois 62794-9276
(217) 524-4343

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

Interrogatory No. 2:

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

ANSWER:

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

Interrogatory No. 3

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

ANSWER:

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

Interrogatory No. 4

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

ANSWER:

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

Interrogatory No. 5

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

ANSWER:

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

for information that is not relevant to the subject matter involved in the pending proceeding, as being oppressive and unduly broad and burdensome, as being not reasonably limited in time and scope, and as being not reasonably calculated to lead to relevant information. Respondent additionally notes that it has not identified any person in response to Petitioner's Interrogatory No. 4.

Interrogatory No. 6

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

ANSWER

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

Interrogatory No. 7

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

ANSWER

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

Interrogatory No. 8

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

ANSWER

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

Interrogatory No. 9

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

ANSWER

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

Interrogatory No. 10

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

ANSWER

In addition to the general objections to this Interrogatory herein, Respondent specifically objects to this Interrogatory in its entirety, on the grounds that it requires the drawing of legal conclusions and seeks to invade attorneys’ mental impressions. Notwithstanding the general and specific objections to this Interrogatory herein, and without waiving them, to the extent that Petitioner seeks federal guidance documents referred to by the February 22, 2010 letter from

John J. Kim to Katherine D. Hodge, Respondent directs Petitioner to the administrative record filed in this proceeding. Additional federal guidance may have been consulted by various Illinois EPA employees. All federal environmental guidance is equally available to Petitioner off of the United States Environmental Protection Agency's website. Furthermore, Respondent identifies the following federal guidance contained in the Administrative Record previously provided: 0001-0068, 0104-0131, 1440-1462, and 1537-1544.

Interrogatory No. 11

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

ANSWER

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

Interrogatory No. 12

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

ANSWER

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

Interrogatory No. 13

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

ANSWER

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

Interrogatory No. 14

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

ANSWER

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

Interrogatory No. 15

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

ANSWER

Subject to and without waiving its general and specific objections hereto, Respondent states that it has not identified any proceeding, request, or permit application in response to Petitioner's Interrogatory No. 14.

Interrogatory No. 16

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

ANSWER

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

Interrogatory No. 17

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

ANSWER

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

Interrogatory No. 18

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

ANSWER

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

Interrogatory No. 19

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

ANSWER

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

Interrogatory No. 20

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

ANSWER

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

Interrogatory No. 21

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

ANSWER

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

Respectfully submitted,

THE ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY, by

LISA MADIGAN,
Attorney General of the
State of Illinois

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

BY:



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