BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

CHICAGO COKE CO., INC., an Illinois corporation,	)	
Petitioner,	)	PCB 10 -75
v.	)	(Permit Appeal)
THE ILLINOIS ENVIROMENTAL PROTECTION AGENCY,	)	
Respondent.	)	

NOTICE OF FILING

To: (See attached Service List.)

PLEASE TAKE NOTICE that on this 29th day of March 2010, the following were filed with the Illinois Pollution Control Board: **Petitioner's Appearance, Petition for Review and Limited Waiver of Decision Deadline,** which are attached and herewith served upon you.

CHICAGO COKE CO., INC.

By: _____
One of its attorneys

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

CERTIFICATE OF SERVICE

I, the undersigned non-attorney, state that I served a copy of Petitioner's Appearance, Petition for Review and Limited Waiver of Decision Deadline to all counsel of record via U.S. Mail at 330 North Wabash Avenue, Chicago, IL 60611, at or before 5:00 p.m. on March 29, 2010.

Samantha Urbaytis

[x] Under penalties as provided by law pursuant to 735 ILCS 5/1-109, I certify that the statements set forth herein are true and correct.

SERVICE LIST

Chicago Coke Co., Inc., v. The Illinois Environmental Protection Agency

John Therriault, Acting Clerk
Illinois Pollution Control Board
James R. Thompson Center
100 West Randolph Street
Suite 11-500
Chicago, Illinois 60601

Division of Legal Counsel
Illinois Environmental Protection Agency
1021 North Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794-9276

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

CHICAGO COKE CO., INC., an Illinois corporation,	)	
Petitioner,	)	PCB 10 -75
v.	)	(Permit Appeal)
THE ILLINOIS ENVIROMENTAL PROTECTION AGENCY,	)	
Respondent.	)	

APPEARANCE

The undersigned here by submit their appearances on behalf of Petitioner CHICAGO COKE CO., INC.

CHICAGO COKE CO., INC.

By: _____
Michael J. Maher

By: _____
Elizabeth S. Harvey

By: _____
Erin E. Wright

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

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

CHICAGO COKE CO., INC., an Illinois corporation,	)	
Petitioner,	)	PCB 10-75
v.	)	(Permit Appeal)
THE ILLINOIS ENVIROMENTAL PROTECTION AGENCY,	)	
Respondent.	)	

LIMITED WAIVER OF DECISION DEADLINE

Petitioner, CHICAGO COKE CO., INC., by its attorneys Swanson, Martin & Bell, LLP, hereby waives the decision deadline in this appeal to and including January 22, 2011.

CHICAGO COKE CO., INC.

By: _____
One of its attorneys

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

MJM 7012-002

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

CHICAGO COKE CO., INC., an Illinois corporation,	)	
Petitioner,	)	
v.	)	PCB 10 -75 (Permit Appeal)
THE ILLINOIS ENVIROMENTAL PROTECTION AGENCY,	)	
Respondent.	)	

PETITION FOR REVIEW

Petitioner, CHICAGO COKE CO., INC., by its attorneys, SWANSON, MARTIN & BELL, LLP, hereby appeals from respondent the ILLINOIS ENVIRONMENTAL PROTECTION AGENCY's ("Agency") decision determining that Chicago Coke Co., Inc.'s emission reduction credits are not available as emission offsets. This appeal is filed pursuant to Section 40 of the Environmental Protection Act (the "Act"), 415 ILCS 5/40, and Parts 101 and 105 of the Board's procedural rules (35 Ill. Admin. Code Parts 101 and 105).

1. Chicago Coke Co., Inc., ("Chicago Coke") is an Illinois corporation. Chicago Coke operates a coke production facility located at 11400 South Burley Avenue, Chicago, Illinois (the "Facility").

2. Chicago Coke's Facility is located within a non-attainment area.

3. Chicago Coke sought to sell its emission reduction credits ("ERCs") to a buyer located in the same non-attainment area.

4. Chicago Coke submitted three formal, written requests asking the Agency to recognize Chicago Coke's ERCs as emissions offsets under 35 Illinois Administrative Code 203.303. *See* Chicago Coke Co., Inc.'s letter dated August 3, 2007, attached as Exhibit A;

Chicago Coke Co., Inc.'s letter dated July 18, 2008, attached as Exhibit B; *and* Chicago Coke Co., Inc.'s letter dated January 15, 2010, attached as Exhibit C.

5. In its final agency action, the Agency denied the use of Chicago Coke's ERCs as emission offsets. *See* Final Agency Action dated February 22, 2010, attached as Exhibit D.

6. The Agency's basis for denial was never promulgated or adopted by this Board.

7. Chicago Coke has filed a complaint in the Cook County Circuit Court, Chancery Division, for common law writ of certiorari and declaratory judgment. *See* Chicago Coke's Verified Complaint for Petition for Common Law Writ of Certiorari and Declaratory Judgment, attached as Exhibit E.

8. Chicago Coke believes the Circuit Court of Cook County is the appropriate venue to decide this issue. However, out of an abundance of caution due to the 35-day permit appeal deadline, Chicago Coke has filed this petition for review pursuant to Section 40 of the Illinois Environmental Protection Act.

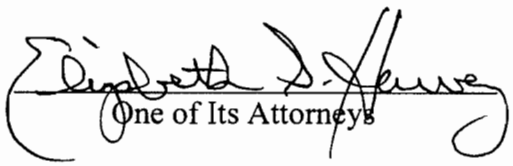
9. Chicago Coke timely files this appeal within 35 days of service of the Agency's decision.

10. Chicago Coke requests that proceedings be stayed until this issue is resolved in the Circuit Court. Chicago Coke has contemporaneously filed a 180 day waiver of decision deadline in this matter.

WHEREFORE, Petitioner, CHICAGO COKE CO., INC., by its attorneys, SWANSON, MARTIN & BELL, LLP, asks the Board to enter an Order overturning the Agency's denial of Chicago Coke's ERCs as emission offsets, and for such other relief as the Board deems appropriate.

Respectfully submitted,

CHICAGO COKE, CO., INC.

By: 
One of Its Attorneys

Dated: March 29, 2010

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

HODGE • DWYER • ZEMAN
ATTORNEYS AT LAW

KATHERINE D. HODGE
E-mail: khodge@hdzlaw.com

August 3, 2007

John J. Kim, Esq.
Managing Attorney
Air Regulatory Unit
Illinois Environmental Protection Agency
1021 North Grand Avenue East
Post Office Box 19276, Mail Code #21
Springfield, Illinois 62794-9276

RE: Chicago Coke Co., Inc.
Emission Reduction Credits
Our File No.: COKE:001

Dear John:

On July 11, 2007, representatives of Chicago Coke Co., Inc. ("Chicago Coke") met with representatives of the Illinois Environmental Protection Agency (the "Meeting") regarding the potential for the sale of certain emission reduction credits (the "ERCs") as offsets to be used by a purchaser of the real property of Chicago Coke, located at 11400 South Burley Avenue, Chicago, Illinois (the "Real Property"). The Illinois EPA expressed certain concerns with the transaction. In particular, the Illinois EPA had concerns with respect to 35 Ill. Admin. Code § 203.303. We have reviewed the Illinois EPA's areas of concern and related documents. Our findings are discussed below.

I. BACKGROUND

Chicago Coke purchased the Real Property in 2002. Chicago Coke acquired the existing Clean Air Act Permit Program ("CAAPP") permit (permit #96030032) associated with the Real Property on July 14, 2003. All appropriate fees have been paid and Chicago Coke continues to hold the valid CAAPP permit. Chicago Coke applied for a construction permit for a pad-up rebuild of the facility on May 3, 2004. Construction Permit No. 04010037 was issued to Chicago Coke on April 28, 2005 for a pad-up rebuild of the facility (the "Construction Permit"). Following issuance of the permit, Chicago Coke secured conditional financing and identified prospective purchasers of coke. The Construction Permit expired on October 28, 2006. Chicago Coke and Chicago Clean Energy, LLC ("CCE") began negotiations regarding a potential sale of the Real Property and certain emission reduction credits ("ERCs") in mid-2006, and are currently

EXHIBIT A
tabbies

in the process of transferring the Real Property from Chicago Coke to CCE. As you are aware, CCE intends to construct a coal gasification plant on the Real Property. In addition to the Real Property, Chicago Coke and CCE wish to transfer ERCs from Chicago Coke to CCE for use as offsets by CCE. Chicago Coke and CCE have entered into a Letter of Intent wherein CCE will purchase 55.9 tons of VOM ERCs, 1067 tons of NO_x ERCs, and 156.9 tons of PM_{10} ERCs (to offset emissions of PM_{10} and as a surrogate for $PM_{2.5}$) as referenced in Attachment 3 of the Construction Permit (the "Attachment"). It is our understanding that the Illinois EPA has made a determination with regard to the accuracy of the emission totals listed in the Attachment and will not revisit these emission totals.

II. SECTION 203.303

The Illinois EPA's concern with the use of PM ERCs from shutdown sources as offsets under the State's New Source Review ("NSR") regulations, pursuant to the recent $PM_{2.5}$ nonattainment designation, is based on Section 203.303(b)(3) which states that offsets:

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

35 Ill. Admin. Code § 203.303. (Emphasis added.)

Section 203.303 includes two separate issues: 1) the timing of any past shutdown; and, 2) whether such shutdown credits may only be used as a replacement source for the shutdown. We address these issues separately below.

A. Timing of the Shutdown

As stated above, Section 203.303 provides that "in the case of a past shutdown of a source or permanent curtailment of production or operating hours, have occurred since April 24, 1979, or the date the area is designated a nonattainment area for the pollutant, whichever is more recent,..." *Id.* In the matter at hand, Chicago Coke clearly did not "shut down" before April 24, 1979. Therefore, the question is whether Chicago Coke "shut down" before April 5, 2005, the date that the $PM_{2.5}$ nonattainment designation became effective. *See* 70 FR 19844.

The shutdown of a source is not defined in the Illinois Environmental Protection Act (the "Act"), the associated Illinois environmental regulations, or in federal regulations regarding new source review. Therefore, it is not completely clear when, or if, Chicago Coke has "shut down." Chicago Coke holds an active CAAPP Permit. Chicago Coke's CAAPP fees are up to date, and Chicago Coke timely applied for a renewal of the permit. The permit allows the operation of coke ovens, a by-products plant, a boiler, and coal/coke handling operations. The coke ovens, by-products plant, and boiler have not operated since early 2002.

However, it is clear that Chicago Coke did not "shut down" in 2002. Again, Chicago Coke applied for, and obtained, the Construction Permit for a pad-up rebuild of the facility. During the hearing regarding the issuance of the Construction Permit, the Illinois EPA stated "[t]his facility is not considered a new major source because the source was not permanently shut down." Chicago Coke Construction Permit Hearing Transcript at p8. *See also* Responsiveness Summary for Public Questions and Comments on the Construction Permit Application from Chicago Coke Company at p24 ("This source is not considered a new major source because the source was not permanently shut down.") *Id.* at 31-32. The Illinois EPA issued the Construction Permit on April 28, 2005.

The Illinois EPA could not have issued the Construction Permit for a pad-up rebuild at Chicago Coke if Chicago Coke had been "shut down" as of the issuance date of the Construction Permit. The Illinois EPA would necessarily have considered Chicago Coke to be a new source and to have permitted it accordingly. Therefore, for purposes of NSR/PSD, the Illinois EPA is on record that Chicago Coke did not "shut down" prior to April 28, 2005.[1] Since any potential shutdown of Chicago Coke occurred after the date that the area including Chicago Coke was designated to be a nonattainment area for $PM_{2.5}$, and for every pollutant of concern, the first factor in Section 203.303 is clearly satisfied.

B. Replacement Source

Section 203.303 also provides that "until the United States Environmental Protection Agency ("USEPA") has approved the attainment demonstration and state trading or marketing rules for the relevant pollutant, the proposed new or modified source must be a replacement for the shutdown or curtailment." 35 Ill. Admin. Code § 203.303. USEPA has not approved a $PM_{2.5}$ demonstration for Illinois. However, the area surrounding and including Chicago Coke (the "Lake Calumet Area") was designated as a nonattainment area for PM_{10} in 1990. *See* Maintenance Plan for Particulate Matter less than 10 Microns (PM10) for the Lake Calumet Moderate Nonattainment Area in Cook County, Illinois (Draft), Illinois EPA, June 25, 2005, at p3 and 5. "[US]EPA fully approved the Lake Calumet PM-10 nonattainment area SIP on July 14, 1999 (64 FR 37847). With this approval, Illinois had fulfilled all Clean Air Act

[1] It must be noted that the Construction Permit and a subsequent amendment did not expire until October 28, 2006, and it is likely that Chicago Coke did not, or will not, "shut down" for the purposes of NSR/PSD until sometime following that date.

requirements for Part D plans for the Lake Calumet moderate PM-10 nonattainment area."[2] 70 FR 55545, 55547. The Lake Calumet Area was redesignated as attainment for PM_{10} effective November 21, 2005. *See* 70 FR 55545. In discussing the redesignation and its effects on NSR/PSD, the USEPA stated as follows:

> The requirements of the Part D--New Source Review (NSR) permit program will be replaced by the Part C--Prevention of Significant Deterioration (PSD) program for major new sources of PM-10 once the area has been redesignated. Because the PSD program was delegated to the State of Illinois on February 28, 1980, and amended on November 17, 1981, it will become fully effective immediately upon redesignation. However, because this area is included within the Chicago PM[2.5] nonattainment area, the requirements of the Part D NSR permit program will also continue to apply to new or modified sources of particulate matter, with the exception that PM[2.5] will now be the indicator for particulate matter rather than PM-10.

70 FR 55545, 55547. (Emphasis added.)

In addition, the USEPA generally allows States to use an existing PM_{10} major NSR permitting program as an interim measure until a $PM_{2.5}$ program can be implemented. The USEPA recently reiterated its position on this issue and stated:

> Our current guidance permits States to implement a PM[10] nonattainment major NSR program as a surrogate to address the requirements of nonattainment major NSR for the PM[2.5] NAAQS. A State's surrogate major NSR program in PM[2.5] nonattainment areas may consist of either the implementation of the State's SIP-approved nonattainment major NSR program for PM[10] or implementation of a major NSR program for PM[10] under the authority in 40 CFR Part 51, Appendix S. Appendix S generally applies where a State lacks a nonattainment major NSR program covering a particular pollutant.

70 FR 65984, 66045.

Illinois has a SIP-approved nonattainment major NSR program for PM_{10} for the Lake Calumet Area and the authority to use the PM_{10} program for $PM_{2.5}$ permitting at this time. Pursuant to the redesignation of the Lake Calumet Area to attainment, the USEPA mandated that requirements of the Part D NSR permit program would continue to apply to new or modified

---

[2] Also, *see generally*, 35 Ill. Admin. Code Part 203 (providing general requirements for new sources and providing specifically that, "[i]n any nonattainment area, no person shall cause or allow the construction of a new major stationary source or major modification that is major for the pollutant for which the area is designated a nonattainment area, except as in compliance with this Part for that pollutant.") 35 Ill. Admin. Code 203.201.

sources of $PM_{2.5}$. Therefore, NSR permits for $PM_{2.5}$ in Illinois will be legally issued pursuant to federal directive and guidance under Illinois' approved attainment demonstration for PM_{10}. Since any permit related to the matter at hand will be issued under an approved attainment demonstration, the replacement requirement of Section 203.303 is not applicable here.

C. Additional Information Regarding Replacement Sources

Section 203.303 became effective on April 30, 1993, and was "submitted to USEPA on June 21, 1993" for consideration for inclusion in the State Implementation Plan. 59 FR 48839, 48840. The USEPA accepted the language as consistent with the federal rule.

One month later, on July 21, 1993, USEPA issued a guidance document (July 21, 1993, Memorandum from John S. Seitz, Director, Office of Air Quality Planning and Standards (MD-10) regarding Use of Shutdown Credits for Offsets ("Seitz Memo")), wherein USEPA changed its position with regard to the use of ERCs from shutdowns. Prior to the Seitz Memo, USEPA maintained that 40 CFR § 51.165(a)(3)(ii)(C)(2) required that "where a State lacks an approved attainment demonstration, emissions reductions from shutdowns or curtailments cannot be used as new source offsets unless the shutdown or curtailment occurs on or after the date a new source permit application is filed." Seitz Memo at 1. However, "a concern raised is that because the Clean Air Act Amendments of 1990 ("1990 Amendments") have created new schedules for submitting attainment demonstrations, the existing NSR rules restricting the use of so-called "prior shutdown credits" may be read as unnecessarily hindering a State's ability to establish a viable offset banking program for several years." *Id.* at 1. USEPA eventually concluded that, since attainment demonstrations were not even due at the time, "States should be able to follow, during the interim period between the present and the date when EPA acts to approve - - or disapprove an attainment demonstration that is due, the shutdown requirements applicable to areas with attainment demonstrations." *Id.* at 1. The Guidance also allows States to "interpret their own regulations. . . in accordance with this policy." Seitz Memo at 2.

Thereafter, USEPA proposed major reform to the NSR rules in 1996. *See* 61 FR 38249. While the specific rule in question here has not been finalized, it is clear that USEPA stands behind the positions taken in the Seitz Memo. In the proposed NSR reform, USEPA discussed the Guidance by stating that "the EPA took the position that such credits may be used as offsets until the EPA acts to approve or disapprove an attainment demonstration that is due." 61 FR 38249, 38313 (July 23, 1996). USEPA also stated that "EPA is proposing to adopt the policies reflected in the July 21, 1993 policy statement as regulatory changes. The EPA continues to adhere to its view in the July 31, 1993 policy statement that the 1990 Amendments' provisions for ozone nonattainment areas justify use of prior shutdown and curtailment credits as offsets in the interim period before the EPA approves or disapproves any required attainment demonstration. The EPA believes that the safeguards in the new requirements of the 1990 Amendments provide adequate assurance of progress toward attainment so that restrictions on the use of prior shutdown or curtailment credits is not necessary." *Id.* Among the reasons stated

for making the change to the shutdown ERC policy were that "EPA believes the interim period prior to approval or disapproval of attainment demonstrations for ozone nonattainment areas will continue after the promulgation of this final rule" and "areas may be designated as new ozone nonattainment areas in the future that will have future attainment dates, and if designated moderate or above will have future dates for submission of an attainment demonstration. *Id.* at 38312.

In summary, Illinois' rule requires that only replacement sources can use shutdown credits before USEPA has approved the appropriate attainment demonstration. USEPA has not approved an Illinois $PM_{2.5}$ or 8-hr. ozone attainment demonstration. However, standing USEPA guidance and federal register preamble discussion regarding this issue indicate that the rules applicable in areas having existing USEPA approved attainment demonstrations should apply until USEPA approves or disapproves any newly required attainment demonstration. Notably, areas with existing USEPA approved attainment demonstrations are not required to restrict the use of shutdown credits to replacement sources. Further, states are allowed to interpret their own rules in accordance with the guidance. Under the Guidance, Illinois may interpret its rule, in the interim before USEPA has approved its attainment demonstration, to read as if such a demonstration has been approved. We understand that the Illinois EPA has in the past interpreted its rules, in matters such as this, in a manner that did not restrict the use of shutdown credits to replacement sources. Therefore, shutdown ERCs may be used by any appropriate source, not merely by replacement sources.

III. 5-YEAR EXPIRATION PERIOD FOR ERCs

As you are aware, the Act and related Illinois regulations do not specifically mandate that ERCs may only be generated from shutdowns that occurred within the past five years. However, it has been indicated that the Illinois EPA has such a policy. In the matter at hand, for purposes of NSR/PSD, Chicago Coke could not have been shut down before April 25, 2005, the date that Construction Permit was issued. Therefore, the earliest that any 5-year expiration period could end would be April 28, 2010.[3]

A brief review of the expiration period for other states indicates that established ERCs are good for 10 years in Pennsylvania, New Jersey, and Massachusetts; 7 years in Colorado; 5 years in Texas, Michigan, and Washington; and, do not expire in Georgia. Each of these states has either a trading or an official banking/ERC recognition program.

There appears to be one federal guidance document that has addressed the expiration issue directly. That guidance document states:

11. Is there a time frame for offset expiration?

[3] However, it is likely that Chicago Coke could not be considered to be "shut down" during the period that it held the validly issued Construction Permit.

> In general, offsets can continue to exist as long as they are accounted for in each subsequent emissions inventory. They expire if they are used, or relied upon, in issuing a permit for a major stationary source or major modification in a nonattainment area, or are used in a demonstration of reasonable further progress.
>
> The State may include an expiration date in its SIP to ensure effective management of the offsets. For example, TACB's proposed banking rule would require each individually banked offset to expire 5 years after the date the reduction occurs, if it is not used. The rule also provides that a particular banked reduction will depreciate by 3% each year that it remains in the bank. EPA is supportive of the approach Texas has taken in its proposed banking rule to limit the lifetime of the offsets and to allow for an annual depreciation.

Stanley Meiburg, Director, Air, Pesticides and Toxics Division (6T), Interim Guidance on New Source Review (NSR) Questions Raised in Letters Dated September 9 and 24, 1992. November 19, 1992.

Therefore, there is apparently no absolute time limit or specific expiration period for generating or using ERCs. Further, since Illinois does not include any timeframe in its SIP, it need not use five years, or any other time limitation when determining whether an ERC generated from a shutdown may expire. However, even if the Illinois EPA should determine that a 5-year expiration period must be adhered to, the ERCs at issue here were not generated from a shutdown that occurred more than five years ago.

IV. USE OF CHICAGO COKE'S EMISSIONS IN AN ATTAINMENT PLAN OR FOR RFP

There does not appear to be any federal guidance regarding the use of properly permitted emissions from a source that is not currently operating for the purposes of an attainment plan or for reasonable further progress. However, there is guidance regarding shutdowns that may properly be used during the redesignation of an area to attainment. While we recognize that such guidance is not directly on point, the goal of any attainment plan or any demonstration of reasonable further progress is to ensure that a specific geographic area is moving toward an eventual redesignation of such area to attainment. In fact, the "term 'reasonable further progress' means such annual incremental reductions in emissions of the relevant air pollutant as are required by this part or may reasonably be required by the Administrator for the purpose of ensuring attainment of the applicable national ambient air quality standard by the applicable date." 42 USCS § 7501. (Emphasis added.)

Redesignation is achieved as a response to a request for redesignation. Permanent and enforceable emissions reductions from shutdown sources may be included in such a redesignation request. However, "[e]mission reductions from source shutdowns can be considered permanent and enforceable to the extent that those shutdowns have been reflected in the SIP and all applicable permits have been modified accordingly." 67 FR 36124, 36129-36130.

Further, a SIP must include "enforceable emission limitations and other control measures, means, or techniques..." 42 USCS § 7410. In the matter at hand, any emission reductions that the Illinois EPA believes may have occurred at Chicago Coke are not permanent or enforceable. Chicago Coke maintains its CAAPP permit. Chicago Coke could operate its plant, particularly its boiler, at any time. Therefore, any reductions that the Illinois EPA may claim for a shutdown of any source that still holds an active permit would not be applicable toward redesignation of a nonattainment area.

V. 2005 INVENTORY

The 2005 emissions inventory indicates that Chicago Coke had minimal emissions of VOM and a few tons of emissions of PM/PM_{10}/$PM_{2.5}$, but no other emissions. As discussed at the Meeting, it is our understanding that the 2005 inventory reflects "actual" emissions from the year 2005. A recent federal guidance document indicates that ERCs may be generated by a source when the underlying emissions are no longer in the state emissions inventory. In the matter addressed by the guidance, a facility shut down a unit before a certain NESHAP was implemented. The source requested credit for the full amount of the actual emissions from the unit rather than the amount of emissions that would have occurred if the unit had shut down after the implementation of the NESHAP. Stephen Rothblatt of Region V stated "Sonoco Flexible Packaging (Sonoco) shutdown its Tower 7 coating line in 2005, resulting in an estimated emission reduction of 507 tons per year of volatile organic compounds (primarily Toluene). It is our understanding that the Tower 7 coating line has been permanently shut down and removed from the emissions inventory as a source of emissions at the Sonoco facility." Letter from Stephen Rothblatt, Director, Air and Radiation Division, to Mr. Paul Dubenetzky, Assistant Commissioner, Office of Air Quality, Indiana Department of Environmental Management, February 14, 2006.

There, even though the unit had been removed from the emissions inventory, Mr. Rothblatt stated, "we find that all of the actual emission reductions should be available and creditable because the reductions resulting from the shutdown of the Tower 7 coating line were not 'required by the Act'." *Id.* Therefore, even though the 2005 Illinois inventory does not include emissions for many of Chicago Coke's emission units, the lack of emissions in the inventory should not be an impediment to Chicago Coke's ability to generate ERCs.

VI. CONCLUSION

The Illinois EPA has recognized that Chicago Coke had not shut down as of April 28, 2005. Since Chicago Coke did not shut down before the Chicago Area was designated as a nonattainment area for any pollutant, the first clause of Section 203.303 is inapplicable. The second clause of Section 203.303 is also inapplicable because the USEPA has approved the attainment demonstration under which permitting in the matter at hand will be accomplished. Further, Section 203.303 was promulgated to comply with federal intentions which have since been altered by federal guidance and by rule. Chicago Coke has an active CAAPP permit. The Illinois EPA continues to bill Chicago Coke for Title V fees and Chicago Coke continues to pay such fees. Any use of the emissions of Chicago Coke for an attainment demonstration or for RFP would not be permanent or enforceable so long as Chicago Coke maintains its CAAPP permit. For these reasons, and for the reasons discussed herein, Chicago Coke respectfully requests that the Illinois EPA acknowledge its ability to create ERCs based on the potential shutdown of its facility. As you are aware, this matter involves several transactions. A timely response would be greatly appreciated.

Sincerely,

Katherine D. Hodge

KDH:GWN:had

COKE-001\Corr\John J. Kim Ltr - Offsets July 2007

HODGE · DWYER · ZEMAN
ATTORNEYS AT LAW
KATHERINE D. HODGE
E-Mail: khodge@hdzlaw.com

July 18, 2008

VIA ELECTRONIC MAIL
(Original via U.S. Mail)

John J. Kim, Esq.
Managing Attorney
Air Regulatory Unit
Illinois Environmental Protection Agency
1021 North Grand Avenue East
Post Office Box 19276, Mail Code #21
Springfield, Illinois 62784-9276

RE: Emissions Reduction Credits
Chicago Coke Co., Inc
Facility I.D. No. 031600 AMC
Our File No. – COKE:001

Dear John:

This letter is to follow up on our prior discussions regarding the above-referenced matter. By way of background, in mid-2006, Chicago Coke Co., Inc. ("Chicago Coke") began negotiations with Chicago Clean Energy, LLC ("CCE") regarding the transfer of emission reduction credits ("ERCs") to be used as emissions offsets for a project under development by CCE. CCE intends to construct a coal gasification plant to be located at 11400 South Burley Avenue, Chicago, Illinois, the site of the Chicago Coke facility. Chicago Coke and CCE entered into a Letter of Intent wherein CCE will purchase 55.9 tons of VOM ERCs, 1067 tons of NO_x ERCs, and 156.9 tons of PM_{10} ERCs (to offset emissions of PM_{10} and as a surrogate for $PM_{2.5}$), all based upon the emissions baseline established by the Illinois Environmental Protection Agency ("Illinois EPA") in the construction permit issued to Chicago Coke for the pad-up rebuild of the coke battery on April 28, 2005.

As you may recall, we met with you and other Illinois EPA representatives, as well as CCE representatives, on June 1, 2007 to discuss the contemplated CCE project. At that time, the Illinois EPA indicated that it would be willing to consider recognition of the Chicago Coke ERCs for use by CCE. Thereafter, in a meeting between Chicago Coke and Illinois EPA (but not CCE) on July 11, 2007, the Illinois EPA expressed certain concerns with recognition of the

EXHIBIT B

3150 ROLAND AVENUE ▲ POST OFFICE BOX 5776 ▲ SPRINGFIELD, ILLINOIS 62705-5776
TELEPHONE 217-523-4900 ▲ FACSIMILE 217-523-4948

ERCs. By letter dated August 3, 2007, we addressed all these concerns and asked that the Illinois EPA acknowledge its ability to recognize ERCs based on the potential shutdown of the Chicago Coke facility. (A copy of my August 3, 2007 letter is attached.) As you know, subsequent to that meeting, you informed us during a telephone conversation that, notwithstanding the information provided in our letter of August 3, 2007, the Illinois EPA "is not inclined to recognize these emission reduction credits."

Thereafter, at an impromptu meeting held on January 17, 2008, Bureau Chief Laurel Kroack stated that the Illinois EPA would not recognize the ERCs because "the Agency has always had a policy that ERCs may only be generated from shutdowns that occurred within the past five years." In response, I reiterated the fact that the facility could not have been shut down before April 28, 2005, which was the date of the construction permit for the pad-up rebuild of the coke battery, so there would be no violation of the so-called "five-year policy." (See my August 3, 2007 letter for more details.) In addition, I expressed my concern regarding the arbitrary nature of this determination since it was based, not on law or regulation, but upon a mistaken understanding regarding prior Illinois EPA "policy." After some discussion, Ms. Kroack agreed that she would be willing to reconsider her determination in this matter if presented with information demonstrating that Illinois EPA has recognized ERCs from shutdowns in permit(s) issued more than five years beyond the shutdown (that generated the credits). Julie Armitage and Chris Romaine also were present at the January 17, 2008 meeting.

As we have discussed, a review of permits issued by the Illinois EPA that contain requirements for "offsets," and of related documents obtained from Bureau of Air records, reveal that Illinois EPA has, in fact, recognized ERCs from shutdowns in permits issued more than five years beyond the shutdowns. Please see attached to this letter a table that provides a list of permits issued by Illinois EPA that include requirements for emission offsets. Also shown on this table is information concerning the bases for the offsets and the dates of shutdowns (where that information is available). In particular, you will see that Illinois EPA has recognized ERCs from a shutdown at Viskase's Bedford Park facility that occurred in September, 1998 in several permits, all of which were issued more than five years beyond September, 1998, i.e., August 24, 2005 (Air Products), August 24, 2005 (ExxonMobil), and August 4, 2004 (SCA Tissue North America). In addition, you will see that Illinois EPA recognized ERCs from a shutdown at Sara Lee's Aurora facility (formerly owned and operated by Metz Baking Company) that occurred in 1996; this recognition was made in a permit issued to ExxonMobil on August 19, 2003.

These permits demonstrate that the Illinois EPA does not have a policy that ERCs may only be generated from shutdowns that occurred within the past five years. Moreover, these permits demonstrate that the Illinois EPA's initial determination to deny recognition of the Chicago Coke ERCs is arbitrary, capricious, and without authority. Thus, in accordance with Ms. Kroack's commitment in our January 17, 2008 meeting, I understand that the Illinois EPA will be reconsidering this determination. As you may know, CCE intends to submit its

application for a construction permit for its coal gasification plant in the very future. So, your timely response would be greatly appreciated. Please feel free to contact me with any questions.

Sincerely,

Katherine D. Hodge

KDH:ljl
attachments
pc: Mr. Simon Beemsterboer (via U.S. Mail; w/attachments)
Mr. Alan Beensterboer (via U.S. Mail; w/attachments)

COKE:001/Corr/John J. Kim Ltr2 – ERCs

HODGE DWYER & DRIVER

KATHERINE D. HODGE
E-mail: khodge@hddattorneys.com

January 15, 2010

VIA ELECTRONIC MAIL
(Original via U.S. Mail)

John J. Kim, Esq.
Chief Legal Counsel
Illinois Environmental Protection Agency
1021 North Grand Avenue East
Post Office Box 19276, Mail Code #21
Springfield, Illinois 62784-9276

RE: Emissions Reduction Credits
Chicago Coke Co., Inc
Facility I.D. No. 031600 AMC
Our File No. – COKE:001

Dear John:

This letter is to follow up on our discussions regarding the above-referenced matter. As you know, on behalf of Chicago Coke Co., Inc. ("Chicago Coke"), I have made repeated requests to the Illinois Environmental Protection Agency ("Illinois EPA") for recognition that certain Emission Reduction Credits ("ERCs") held by Chicago Coke are available for use as emission offsets for the permitting of major new sources and/or major modifications in the Chicago area. My prior correspondence to you in this matter is attached and incorporated herein by reference.

The Illinois EPA has refused to recognize that the ERCs held by Chicago Coke are available for use as emission offsets, citing orally to various (and apparently changing) reasons, none of which reasons are supported by law and/or regulation. Please see the attached letter, dated August 3, 2007, which addressed the initial concerns articulated by the Illinois EPA, and the attached letter, dated July 18, 2008, which addressed the Illinois EPA's apparent reason at this time, i.e., its mistaken reliance upon the so-called "five-year policy." Moreover, it is my understanding that representatives of the Illinois EPA have made representations, on multiple occasions, to potential buyers of the ERCs held by Chicago Coke, that these ERCs are not

EXHIBIT C

3150 ROLAND AVENUE ▲ POST OFFICE BOX 5776 ▲ SPRINGFIELD, ILLINOIS 62705-5776
TELEPHONE 217-523-4900 ▲ FACSIMILE 217-523-4948 ▲ WWW.HDDATTORNEYS.COM

available for use as emission offsets. Finally, the Illinois EPA has not provided any written response to Chicago Coke in this matter.

Based upon all of the above, by this letter, I am requesting that the Illinois EPA issue a final decision, in writing, responding to my request for recognition that certain ERCs held by Chicago Coke are available for use as emission offsets for the permitting of major new sources and/or major modifications in the Chicago area. Since my initial request was made nearly three years ago, I would appreciate prompt action by the Illinois EPA to issue the requested final decision. Please feel free to contact me if you have any questions.

Sincerely,

Katherine D. Hodge

KDH:amb
attachments
pc: Mr. Simon Beemsterboer (via U.S. Mail; w/attachments)
Mr. Alan Beemsterboer (via U.S. Mail; w/attachments)

COKE:001/Corr/John J. Kim Ltr3 – ERCs

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

1021 North Grand Avenue East, P.O. Box 19276, Springfield, Illinois 62794-9276 • (217) 782-2829
James R. Thompson Center, 100 West Randolph, Suite 11-300, Chicago, IL 60601 • (312) 814-6026

PAT QUINN, GOVERNOR DOUGLAS P. SCOTT, DIRECTOR

(217) 782-5544
(217) 782-9143 (TDD)

February 22, 2010

Katherine D. Hodge
Hodge Dwyer & Driver
3150 Roland Avenue
P.O. Box 5776
Springfield, Illinois 62705

Re: Chicago Coke Co., Inc.
Emission Reduction Credits

Dear Kathy:

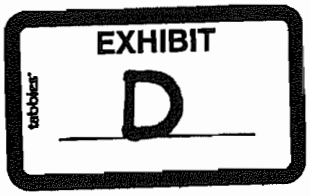
Thank you for your letter dated January 15, 2010. You asked that the Illinois Environmental Protection Agency ("Illinois EPA") respond as to our final decision on whether certain Emission Reduction Credits ("ERCs") claimed by Chicago Coke Co., Inc. ("Chicago Coke"), are available for use as emission offsets for the permitting of major new sources and/or major modifications in the Chicago area.

Based on a discussion I had with Laurel Kroack, Bureau Chief for the Illinois EPA's Bureau of Air, I can confirm for you that the Illinois EPA's final decision on this issue remains the same as was previously conveyed to you. That is, the Illinois EPA does not find that the ERCs claimed are available as offsets, since it is our position that the Chicago Coke facility is permanently shutdown. Pursuant to applicable federal guidance, the ERCs are thus not available for use as you described.

I hope this makes clear the Illinois EPA's position on this issue. If not, or if you have any further questions, please do not hesitate to contact me. Thank you.

Sincerely,

John J. Kim
Chief Legal Counsel



Rockford • 4302 N. Main St., Rockford, IL 61103 • (815) 987-7760
Elgin • 595 S. State, Elgin, IL 60123 • (847) 608-3131
Bureau of Land – Peoria • 7620 N. University St., Peoria, IL 61614 • (309) 693-5462
Collinsville • 2009 Mall Street, Collinsville, IL 62234 • (618) 346-5120
Des Plaines • 9511 W. Harrison St., Des Plaines, IL 60016 • (847) 294-4000
Peoria • 5415 N. University St., Peoria, IL 61614 • (309) 693-5463
Champaign • 2125 S. First St., Champaign, IL 61820 • (217) 278-5800
Marion • 2309 W. Main St., Suite 116, Marion, IL 62959 • (618) 993-7200

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION

Chicago Coke Co., Inc., an Illinois corporation, Plaintiff, v. DOUGLES P. SCOTT, Director of the Illinois Environmental Protection Agency, and THE ILLINOIS ENVIROMENTAL PROTECTION AGENCY, an Agency of the State of Illinois, Defendants.	)	No. 10CH12662

VERIFIED COMPLAINT FOR PETITION FOR COMMON LAW WRIT OF CERTIORARI AND DECLARATORY JUDGMENT

NOW COMES Plaintiff, CHICAGO COKE CO., INC. ("Chicago Coke"), an Illinois corporation, by its attorneys, SWANSON, MARTIN & BELL, LLP, and for its Verified Complaint for Petition for Common Law Writ of Certiorari and Declaratory Judgment against Defendants, DOUGLAS P. SCOTT, Director of the Illinois Environmental Protection Agency, and THE ILLINOIS ENVIRONMENTAL PROTECTION AGENCY, an Agency of the State of Illinois, states as follows:

PARTIES

1. Plaintiff, Chicago Coke Co., Inc., is an Illinois corporation. Chicago Coke operates its principal place of business at 11400 South Burley Avenue, Chicago, Illinois ("the Facility").

2. Defendant, Illinois Environmental Protection Agency ("Illinois EPA"), is an Agency of the State of Illinois, created pursuant to Section 4 of the Illinois Environmental Protection Act. *See* 415 ILCS 5/4. Defendant, Douglas P. Scott, is the Director of the Illinois EPA.

COUNT I – DECLARATORY JUDGMENT

3. The Illinois Pollution Control Board adopted regulations for major sources of air pollution located in areas that do not meet national air standards set by the Clean Air Act. These areas are known as "non-attainment areas." *See* 42 U.S.C. § 7407(d)(1)(A)(i); *see also* 35 Ill. Admin. Code § 203.301, *et seq*. Before any new or modified major source of pollution can be constructed in a non-attainment area, the new or modified major source must obtain "emission offsets" for the amount of pollution it is expected to generate.

4. Illinois regulations recognize that emission offsets can be sold between companies in non-attainment areas. *See* 35 Ill. Admin. Code § 203.303(a).

5. Illinois EPA evaluates and approves emission offsets. 35 Ill. Admin. Code §§ 203.302 and 203.303.

6. Chicago Coke's Facility is located within a non-attainment area.

7. Chicago Coke sought to sell its emission reduction credits ("ERCs") to a buyer located in the same non-attainment area.

8. Chicago Coke's ERCs constitute a property right for purposes of this action.

9. Chicago Coke submitted three formal, written requests asking Illinois EPA to recognize Chicago Coke's ERCs as emissions offsets under Illinois Administrative Code § 203.303. *See* Chicago Coke Co., Inc.'s letter dated August 3, 2007, attached as Exhibit A; Chicago Coke Co., Inc.'s letter dated July18, 2008, attached as Exhibit B; *and* Chicago Coke Co., Inc.'s letter dated January 15, 2010, attached as Exhibit C.

10. In response, Illinois EPA invented a fictitious "regulation" which it used as a basis to deny Chicago Coke's ERCs.

11. Under Illinois EPA's fictitious "regulation," a facility that is permanently shut down cannot use ERCs as emission offsets for new sources and/or major modifications. *See* Final Agency Action dated February 22, 2010, attached hereto as Exhibit D.

12. Contrary to Illinois EPA's application of the fictitious "regulation" to Plaintiff, Illinois EPA has issued permits based on ERCs from at least five permanently shut down facilities. *See* Offsets Chart, attached as Exhibit E.

13. Illinois EPA is enforcing a fictitious regulation against Chicago Coke.

14. Illinois EPA's purported "regulation" was never promulgated pursuant to the Illinois Administrative Procedure Act. 5 ILCS 100/5-5 *et seq.*

15. An actual controversy exists between Plaintiff and the Defendants. Pursuant to Section 2-701 of the Illinois Code of Civil Procedure (735 ILCS 5/2-701), this Court is vested with the power and responsibility to make a binding declaration of rights regarding Plaintiff's ERCs as offsets, and to award Plaintiff such other and further relief as it may deem just and equitable.

WHEREFORE, for the above and foregoing reasons, Plaintiff, CHICAGO COKE CO., INC., moves this Court to enter an order declaring that Illinois EPA has exceeded its statutory authority by attempting to enforce a fictitious regulation that was never promulgated pursuant to the Administrative Procedure Act.

COUNT II – PETITION FOR COMMON LAW WRIT OF CERTIORARI

1-15. Plaintiff re-alleges and incorporates herein by reference paragraphs 1-15 of Count I as paragraphs 1-15 of this Count II.

16. Plaintiff is unaware of any method of review or remedy for Illinois EPA's denying plaintiff's ERC credits as offsets by applying a fictitious and unpromulgated regulation, except via issuance of a writ by this Court.

WHEREFORE, Plaintiff, CHICAGO COKE, INC., prays for issuance of a writ of certiorari directed to Defendants to certify and to produce in this Court the record of Illinois EPA's determination that the Chicago Coke Facility is permanently shut down, and that Chicago Coke's ERCs cannot be utilized as emission offsets, and that upon review thereof, Illinois EPA's determination be vacated, annulled, and reversed.

COUNT III – DECLARATORY JUDGMENT THAT ILLINOIS EPA HAS EXCEEDED ITS STATUTORY AUTHORITY

1-16. Plaintiff re-alleges and incorporates herein by reference paragraphs 1-16 of Counts I and II as paragraphs 1-16 of this Count III.

17. The Illinois Administrative Procedure Act provides that when a party has an administrative rule invalidated by a court for any reason, including when the agency exceeds its statutory authority, the court shall award the party bringing the action the reasonable expenses of litigation, including reasonable attorney's fees. 5 ILCS 100/10-55(c).

18. Under the Illinois Administrative Procedure Act, "rule" means an agency statement of general applicability that implements, applies, interprets, or prescribes law or policy. 5 ILCS 100/1-70.

19. An actual controversy exists between Plaintiff and the Defendants, and pursuant to Section 2-701 of the Illinois Code of Civil Procedure (735 ILCS 5/2-701), this Court is vested with the power and responsibility to make a binding declaration of right, and to award Plaintiff such other and further relief as it may deem just and equitable.

WHEREFORE, for the above and foregoing reasons, Plaintiff, CHICAGO COKE CO., INC., moves this Court to enter an order declaring that:

a. Illinois EPA's purported administrative rule that "permanent shut-down" of a facility defeats ERCs for use as emission offsets is not authorized by federal or state law or regulation, and is unreasonably inconsistent with the actions of Illinois EPA in other matters involving recognition of emission reduction credits.

b. That, pursuant to Section 10-55 of the Illinois Administrative Procedure Act (5 ILCS 100/10-55), the Court award to Chicago Coke Co., Inc. the reasonable expenses of this litigation, including reasonable attorney's fees, incurred in bringing the present action for declaratory judgment, together with reasonable prejudgment and post-judgment interest on all sums due.

Respectfully submitted,

SWANSON, MARTIN & BELL, LLP

By: _____
One of Its Attorneys

Dated: March 26, 2010

Michael J. Maher
Erin E. Wright
SWANSON, MARTIN & BELL, LLP
330 North Wabash Avenue
Suite 3300
Chicago, Illinois 60611
(312) 321-9100
Firm I.D. No. 29558

VERIFICATION

I, Simon Beemsterboer, have reviewed Plaintiff Chicago Coke Co., Inc.'s Verified Complaint for Declaratory Judgment and Petition for Common Law Writ of Certiorari, and state that such allegations are true and correct based on information presently available to me. Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the statements in this Verification are true and accurate.

Simon Beemsterboer

Subscribed and Sworn to before me
this 24 day of March, 2010

Notary Public

OFFICIAL SEAL
SHERI L. CZERWINSKI
Notary Public - State of Illinois
My Commission Expires Dec 20, 2010

My commission expires: Dec 20, 2010

EXHIBIT A

HODGE ▾ DWYER ▾ ZEMAN
ATTORNEYS AT LAW

KATHERINE D. HODGE
E-mail: khodge@hdzlaw.com

August 3, 2007

John J. Kim, Esq.
Managing Attorney
Air Regulatory Unit
Illinois Environmental Protection Agency
1021 North Grand Avenue East
Post Office Box 19276, Mail Code #21
Springfield, Illinois 62794-9276

RE: Chicago Coke Co., Inc.
Emission Reduction Credits
Our File No.: COKE:001

Dear John:

On July 11, 2007, representatives of Chicago Coke Co., Inc. ("Chicago Coke") met with representatives of the Illinois Environmental Protection Agency (the "Meeting") regarding the potential for the sale of certain emission reduction credits (the "ERCs") as offsets to be used by a purchaser of the real property of Chicago Coke, located at 11400 South Burley Avenue, Chicago, Illinois (the "Real Property"). The Illinois EPA expressed certain concerns with the transaction. In particular, the Illinois EPA had concerns with respect to 35 Ill. Admin. Code § 203.303. We have reviewed the Illinois EPA's areas of concern and related documents. Our findings are discussed below.

I. BACKGROUND

Chicago Coke purchased the Real Property in 2002. Chicago Coke acquired the existing Clean Air Act Permit Program ("CAAPP") permit (permit #96030032) associated with the Real Property on July 14, 2003. All appropriate fees have been paid and Chicago Coke continues to hold the valid CAAPP permit. Chicago Coke applied for a construction permit for a pad-up rebuild of the facility on May 3, 2004. Construction Permit No. 04010037 was issued to Chicago Coke on April 28, 2005 for a pad-up rebuild of the facility (the "Construction Permit"). Following issuance of the permit, Chicago Coke secured conditional financing and identified prospective purchasers of coke. The Construction Permit expired on October 28, 2006. Chicago Coke and Chicago Clean Energy, LLC ("CCE") began negotiations regarding a potential sale of the Real Property and certain emission reduction credits ("ERCs") in mid-2006, and are currently

3150 ROLAND AVENUE ▲ POST OFFICE BOX 5776 ▲ SPRINGFIELD, ILLINOIS 62705-5776
TELEPHONE 217-523-4900 ▲ FACSIMILE 217-523-4948

in the process of transferring the Real Property from Chicago Coke to CCE. As you are aware, CCE intends to construct a coal gasification plant on the Real Property. In addition to the Real Property, Chicago Coke and CCE wish to transfer ERCs from Chicago Coke to CCE for use as offsets by CCE. Chicago Coke and CCE have entered into a Letter of Intent wherein CCE will purchase 55.9 tons of VOM ERCs, 1067 tons of NO_x ERCs, and 156.9 tons of PM_{10} ERCs (to offset emissions of PM_{10} and as a surrogate for $PM_{2.5}$) as referenced in Attachment 3 of the Construction Permit (the "Attachment"). It is our understanding that the Illinois EPA has made a determination with regard to the accuracy of the emission totals listed in the Attachment and will not revisit these emission totals.

II. SECTION 203.303

The Illinois EPA's concern with the use of PM ERCs from shutdown sources as offsets under the State's New Source Review ("NSR") regulations, pursuant to the recent $PM_{2.5}$ nonattainment designation, is based on Section 203.303(b)(3) which states that offsets:

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

35 Ill. Admin. Code § 203.303. (Emphasis added.)

Section 203.303 includes two separate issues: 1) the timing of any past shutdown; and, 2) whether such shutdown credits may only be used as a replacement source for the shutdown. We address these issues separately below.

A. Timing of the Shutdown

As stated above, Section 203.303 provides that "in the case of a past shutdown of a source or permanent curtailment of production or operating hours, have occurred since April 24, 1979, or the date the area is designated a nonattainment area for the pollutant, whichever is more recent,..." *Id.* In the matter at hand, Chicago Coke clearly did not "shut down" before April 24, 1979. Therefore, the question is whether Chicago Coke "shut down" before April 5, 2005, the date that the $PM_{2.5}$ nonattainment designation became effective. *See* 70 FR 19844.

The shutdown of a source is not defined in the Illinois Environmental Protection Act (the "Act"), the associated Illinois environmental regulations, or in federal regulations regarding new source review. Therefore, it is not completely clear when, or if, Chicago Coke has "shut down." Chicago Coke holds an active CAAPP Permit. Chicago Coke's CAAPP fees are up to date, and Chicago Coke timely applied for a renewal of the permit. The permit allows the operation of coke ovens, a by-products plant, a boiler, and coal/coke handling operations. The coke ovens, by-products plant, and boiler have not operated since early 2002.

However, it is clear that Chicago Coke did not "shut down" in 2002. Again, Chicago Coke applied for, and obtained, the Construction Permit for a pad-up rebuild of the facility. During the hearing regarding the issuance of the Construction Permit, the Illinois EPA stated "[t]his facility is not considered a new major source because the source was not permanently shut down." Chicago Coke Construction Permit Hearing Transcript at p8. *See also* Responsiveness Summary for Public Questions and Comments on the Construction Permit Application from Chicago Coke Company at p24 ("This source is not considered a new major source because the source was not permanently shut down.") *Id.* at 31-32. The Illinois EPA issued the Construction Permit on April 28, 2005.

The Illinois EPA could not have issued the Construction Permit for a pad-up rebuild at Chicago Coke if Chicago Coke had been "shut down" as of the issuance date of the Construction Permit. The Illinois EPA would necessarily have considered Chicago Coke to be a new source and to have permitted it accordingly. Therefore, for purposes of NSR/PSD, the Illinois EPA is on record that Chicago Coke did not "shut down" prior to April 28, 2005.[1] Since any potential shutdown of Chicago Coke occurred after the date that the area including Chicago Coke was designated to be a nonattainment area for $PM_{2.5}$, and for every pollutant of concern, the first factor in Section 203.303 is clearly satisfied.

B. Replacement Source

Section 203.303 also provides that "until the United States Environmental Protection Agency ("USEPA") has approved the attainment demonstration and state trading or marketing rules for the relevant pollutant, the proposed new or modified source must be a replacement for the shutdown or curtailment." 35 Ill. Admin. Code § 203.303. USEPA has not approved a $PM_{2.5}$ demonstration for Illinois. However, the area surrounding and including Chicago Coke (the "Lake Calumet Area") was designated as a nonattainment area for PM_{10} in 1990. *See* Maintenance Plan for Particulate Matter less than 10 Microns (PM10) for the Lake Calumet Moderate Nonattainment Area in Cook County, Illinois (Draft), Illinois EPA, June 25, 2005, at p3 and 5. "[US]EPA fully approved the Lake Calumet PM-10 nonattainment area SIP on July 14, 1999 (64 FR 37847). With this approval, Illinois had fulfilled all Clean Air Act

[1] It must be noted that the Construction Permit and a subsequent amendment did not expire until October 28, 2006, and it is likely that Chicago Coke did not, or will not, "shut down" for the purposes of NSR/PSD until sometime following that date.

requirements for Part D plans for the Lake Calumet moderate PM-10 nonattainment area."[2] 70 FR 55545, 55547. The Lake Calumet Area was redesignated as attainment for PM_{10} effective November 21, 2005. *See* 70 FR 55545. In discussing the redesignation and its effects on NSR/PSD, the USEPA stated as follows:

> The requirements of the Part D--New Source Review (NSR) permit program will be replaced by the Part C--Prevention of Significant Deterioration (PSD) program for major new sources of PM-10 once the area has been redesignated. Because the PSD program was delegated to the State of Illinois on February 28, 1980, and amended on November 17, 1981, it will become fully effective immediately upon redesignation. However, because this area is included within the Chicago PM[2.5] nonattainment area, the requirements of the Part D NSR permit program will also continue to apply to new or modified sources of particulate matter, with the exception that PM[2.5] will now be the indicator for particulate matter rather than PM-10.

70 FR 55545, 55547. (Emphasis added.)

In addition, the USEPA generally allows States to use an existing PM_{10} major NSR permitting program as an interim measure until a $PM_{2.5}$ program can be implemented. The USEPA recently reiterated its position on this issue and stated:

> Our current guidance permits States to implement a PM[10] nonattainment major NSR program as a surrogate to address the requirements of nonattainment major NSR for the PM[2.5] NAAQS. A State's surrogate major NSR program in PM[2.5] nonattainment areas may consist of either the implementation of the State's SIP-approved nonattainment major NSR program for PM[10] or implementation of a major NSR program for PM[10] under the authority in 40 CFR Part 51, Appendix S. Appendix S generally applies where a State lacks a nonattainment major NSR program covering a particular pollutant.

70 FR 65984, 66045.

Illinois has a SIP-approved nonattainment major NSR program for PM_{10} for the Lake Calumet Area and the authority to use the PM_{10} program for $PM_{2.5}$ permitting at this time. Pursuant to the redesignation of the Lake Calumet Area to attainment, the USEPA mandated that requirements of the Part D NSR permit program would continue to apply to new or modified

---

[2] Also, *see generally*, 35 Ill. Admin. Code Part 203 (providing general requirements for new sources and providing specifically that, "[i]n any nonattainment area, no person shall cause or allow the construction of a new major stationary source or major modification that is major for the pollutant for which the area is designated a nonattainment area, except as in compliance with this Part for that pollutant.") 35 Ill. Admin. Code 203.201.

sources of $PM_{2.5}$. Therefore, NSR permits for $PM_{2.5}$ in Illinois will be legally issued pursuant to federal directive and guidance under Illinois' approved attainment demonstration for PM_{10}. Since any permit related to the matter at hand will be issued under an approved attainment demonstration, the replacement requirement of Section 203.303 is not applicable here.

C. Additional Information Regarding Replacement Sources

Section 203.303 became effective on April 30, 1993, and was "submitted to USEPA on June 21, 1993" for consideration for inclusion in the State Implementation Plan. 59 FR 48839, 48840. The USEPA accepted the language as consistent with the federal rule.

One month later, on July 21, 1993, USEPA issued a guidance document (July 21, 1993, Memorandum from John S. Seitz, Director, Office of Air Quality Planning and Standards (MD-10) regarding Use of Shutdown Credits for Offsets ("Seitz Memo")), wherein USEPA changed its position with regard to the use of ERCs from shutdowns. Prior to the Seitz Memo, USEPA maintained that 40 CFR § 51.165(a)(3)(ii)(C)(2) required that "where a State lacks an approved attainment demonstration, emissions reductions from shutdowns or curtailments cannot be used as new source offsets unless the shutdown or curtailment occurs on or after the date a new source permit application is filed." Seitz Memo at 1. However, "a concern raised is that because the Clean Air Act Amendments of 1990 ("1990 Amendments") have created new schedules for submitting attainment demonstrations, the existing NSR rules restricting the use of so-called "prior shutdown credits" may be read as unnecessarily hindering a State's ability to establish a viable offset banking program for several years." *Id.* at 1. USEPA eventually concluded that, since attainment demonstrations were not even due at the time, "States should be able to follow, during the interim period between the present and the date when EPA acts to approve - - or disapprove an attainment demonstration that is due, the shutdown requirements applicable to areas with attainment demonstrations." *Id.* at 1. The Guidance also allows States to "interpret their own regulations. . . in accordance with this policy." Seitz Memo at 2.

Thereafter, USEPA proposed major reform to the NSR rules in 1996. *See* 61 FR 38249. While the specific rule in question here has not been finalized, it is clear that USEPA stands behind the positions taken in the Seitz Memo. In the proposed NSR reform, USEPA discussed the Guidance by stating that "the EPA took the position that such credits may be used as offsets until the EPA acts to approve or disapprove an attainment demonstration that is due." 61 FR 38249, 38313 (July 23, 1996). USEPA also stated that "EPA is proposing to adopt the policies reflected in the July 21, 1993 policy statement as regulatory changes. The EPA continues to adhere to its view in the July 31, 1993 policy statement that the 1990 Amendments' provisions for ozone nonattainment areas justify use of prior shutdown and curtailment credits as offsets in the interim period before the EPA approves or disapproves any required attainment demonstration. The EPA believes that the safeguards in the new requirements of the 1990 Amendments provide adequate assurance of progress toward attainment so that restrictions on the use of prior shutdown or curtailment credits is not necessary." *Id.* Among the reasons stated

for making the change to the shutdown ERC policy were that "EPA believes the interim period prior to approval or disapproval of attainment demonstrations for ozone nonattainment areas will continue after the promulgation of this final rule" and "areas may be designated as new ozone nonattainment areas in the future that will have future attainment dates, and if designated moderate or above will have future dates for submission of an attainment demonstration. *Id.* at 38312.

In summary, Illinois' rule requires that only replacement sources can use shutdown credits before USEPA has approved the appropriate attainment demonstration. USEPA has not approved an Illinois $PM_{2.5}$ or 8-hr. ozone attainment demonstration. However, standing USEPA guidance and federal register preamble discussion regarding this issue indicate that the rules applicable in areas having existing USEPA approved attainment demonstrations should apply until USEPA approves or disapproves any newly required attainment demonstration. Notably, areas with existing USEPA approved attainment demonstrations are not required to restrict the use of shutdown credits to replacement sources. Further, states are allowed to interpret their own rules in accordance with the guidance. Under the Guidance, Illinois may interpret its rule, in the interim before USEPA has approved its attainment demonstration, to read as if such a demonstration has been approved. We understand that the Illinois EPA has in the past interpreted its rules, in matters such as this, in a manner that did not restrict the use of shutdown credits to replacement sources. Therefore, shutdown ERCs may be used by any appropriate source, not merely by replacement sources.

III. 5-YEAR EXPIRATION PERIOD FOR ERCs

As you are aware, the Act and related Illinois regulations do not specifically mandate that ERCs may only be generated from shutdowns that occurred within the past five years. However, it has been indicated that the Illinois EPA has such a policy. In the matter at hand, for purposes of NSR/PSD, Chicago Coke could not have been shut down before April 25, 2005, the date that Construction Permit was issued. Therefore, the earliest that any 5-year expiration period could end would be April 28, 2010.[3]

A brief review of the expiration period for other states indicates that established ERCs are good for 10 years in Pennsylvania, New Jersey, and Massachusetts; 7 years in Colorado; 5 years in Texas, Michigan, and Washington; and, do not expire in Georgia. Each of these states has either a trading or an official banking/ERC recognition program.

There appears to be one federal guidance document that has addressed the expiration issue directly. That guidance document states:

11. Is there a time frame for offset expiration?

[3] However, it is likely that Chicago Coke could not be considered to be "shut down" during the period that it held the validly issued Construction Permit.

> In general, offsets can continue to exist as long as they are accounted for in each subsequent emissions inventory. They expire if they are used, or relied upon, in issuing a permit for a major stationary source or major modification in a nonattainment area, or are used in a demonstration of reasonable further progress.
>
> The State may include an expiration date in its SIP to ensure effective management of the offsets. For example, TACB's proposed banking rule would require each individually banked offset to expire 5 years after the date the reduction occurs, if it is not used. The rule also provides that a particular banked reduction will depreciate by 3% each year that it remains in the bank. EPA is supportive of the approach Texas has taken in its proposed banking rule to limit the lifetime of the offsets and to allow for an annual depreciation.

Stanley Meiburg, Director, Air, Pesticides and Toxics Division (6T), Interim Guidance on New Source Review (NSR) Questions Raised in Letters Dated September 9 and 24, 1992. November 19, 1992.

Therefore, there is apparently no absolute time limit or specific expiration period for generating or using ERCs. Further, since Illinois does not include any timeframe in its SIP, it need not use five years, or any other time limitation when determining whether an ERC generated from a shutdown may expire. However, even if the Illinois EPA should determine that a 5-year expiration period must be adhered to, the ERCs at issue here were not generated from a shutdown that occurred more than five years ago.

IV. USE OF CHICAGO COKE'S EMISSIONS IN AN ATTAINMENT PLAN OR FOR RFP

There does not appear to be any federal guidance regarding the use of properly permitted emissions from a source that is not currently operating for the purposes of an attainment plan or for reasonable further progress. However, there is guidance regarding shutdowns that may properly be used during the redesignation of an area to attainment. While we recognize that such guidance is not directly on point, the goal of any attainment plan or any demonstration of reasonable further progress is to ensure that a specific geographic area is moving toward an eventual redesignation of such area to attainment. In fact, the "term 'reasonable further progress' means such annual incremental reductions in emissions of the relevant air pollutant as are required by this part or may reasonably be required by the Administrator for the purpose of ensuring attainment of the applicable national ambient air quality standard by the applicable date." 42 USCS § 7501. (Emphasis added.)

Redesignation is achieved as a response to a request for redesignation. Permanent and enforceable emissions reductions from shutdown sources may be included in such a redesignation request. However, "[e]mission reductions from source shutdowns can be considered permanent and enforceable to the extent that those shutdowns have been reflected in the SIP and all applicable permits have been modified accordingly." 67 FR 36124, 36129-36130.

Further, a SIP must include "enforceable emission limitations and other control measures, means, or techniques..." 42 USCS § 7410. In the matter at hand, any emission reductions that the Illinois EPA believes may have occurred at Chicago Coke are not permanent or enforceable. Chicago Coke maintains its CAAPP permit. Chicago Coke could operate its plant, particularly its boiler, at any time. Therefore, any reductions that the Illinois EPA may claim for a shutdown of any source that still holds an active permit would not be applicable toward redesignation of a nonattainment area.

V. 2005 INVENTORY

The 2005 emissions inventory indicates that Chicago Coke had minimal emissions of VOM and a few tons of emissions of PM/PM_{10}/$PM_{2.5}$, but no other emissions. As discussed at the Meeting, it is our understanding that the 2005 inventory reflects "actual" emissions from the year 2005. A recent federal guidance document indicates that ERCs may be generated by a source when the underlying emissions are no longer in the state emissions inventory. In the matter addressed by the guidance, a facility shut down a unit before a certain NESHAP was implemented. The source requested credit for the full amount of the actual emissions from the unit rather than the amount of emissions that would have occurred if the unit had shut down after the implementation of the NESHAP. Stephen Rothblatt of Region V stated "Sonoco Flexible Packaging (Sonoco) shutdown its Tower 7 coating line in 2005, resulting in an estimated emission reduction of 507 tons per year of volatile organic compounds (primarily Toluene). It is our understanding that the Tower 7 coating line has been permanently shut down and removed from the emissions inventory as a source of emissions at the Sonoco facility." Letter from Stephen Rothblatt, Director, Air and Radiation Division, to Mr. Paul Dubenetzky, Assistant Commissioner, Office of Air Quality, Indiana Department of Environmental Management, February 14, 2006.

There, even though the unit had been removed from the emissions inventory, Mr. Rothblatt stated, "we find that all of the actual emission reductions should be available and creditable because the reductions resulting from the shutdown of the Tower 7 coating line were not 'required by the Act'." *Id.* Therefore, even though the 2005 Illinois inventory does not include emissions for many of Chicago Coke's emission units, the lack of emissions in the inventory should not be an impediment to Chicago Coke's ability to generate ERCs.

VI. CONCLUSION

The Illinois EPA has recognized that Chicago Coke had not shut down as of April 28, 2005. Since Chicago Coke did not shut down before the Chicago Area was designated as a nonattainment area for any pollutant, the first clause of Section 203.303 is inapplicable. The second clause of Section 203.303 is also inapplicable because the USEPA has approved the attainment demonstration under which permitting in the matter at hand will be accomplished. Further, Section 203.303 was promulgated to comply with federal intentions which have since been altered by federal guidance and by rule. Chicago Coke has an active CAAPP permit. The Illinois EPA continues to bill Chicago Coke for Title V fees and Chicago Coke continues to pay such fees. Any use of the emissions of Chicago Coke for an attainment demonstration or for RFP would not be permanent or enforceable so long as Chicago Coke maintains its CAAPP permit. For these reasons, and for the reasons discussed herein, Chicago Coke respectfully requests that the Illinois EPA acknowledge its ability to create ERCs based on the potential shutdown of its facility. As you are aware, this matter involves several transactions. A timely response would be greatly appreciated.

Sincerely,

Katherine D. Hodge

KDH:GWN:had

COKE-001\Corr\John J. Kim Ltr - Offsets July 2007

EXHIBIT B

HODGE · DWYER · ZEMAN
ATTORNEYS AT LAW
KATHERINE D. HODGE
E-Mail: khodge@hdzlaw.com

July 18, 2008

VIA ELECTRONIC MAIL
(Original via U.S. Mail)

John J. Kim, Esq.
Managing Attorney
Air Regulatory Unit
Illinois Environmental Protection Agency
1021 North Grand Avenue East
Post Office Box 19276, Mail Code #21
Springfield, Illinois 62784-9276

RE: Emissions Reduction Credits
Chicago Coke Co., Inc
Facility I.D. No. 031600 AMC
Our File No. – COKE:001

Dear John:

This letter is to follow up on our prior discussions regarding the above-referenced matter. By way of background, in mid-2006, Chicago Coke Co., Inc. ("Chicago Coke") began negotiations with Chicago Clean Energy, LLC ("CCE") regarding the transfer of emission reduction credits ("ERCs") to be used as emissions offsets for a project under development by CCE. CCE intends to construct a coal gasification plant to be located at 11400 South Burley Avenue, Chicago, Illinois, the site of the Chicago Coke facility. Chicago Coke and CCE entered into a Letter of Intent wherein CCE will purchase 55.9 tons of VOM ERCs, 1067 tons of NO_x ERCs, and 156.9 tons of PM_{10} ERCs (to offset emissions of PM_{10} and as a surrogate for $PM_{2.5}$), all based upon the emissions baseline established by the Illinois Environmental Protection Agency ("Illinois EPA") in the construction permit issued to Chicago Coke for the pad-up rebuild of the coke battery on April 28, 2005.

As you may recall, we met with you and other Illinois EPA representatives, as well as CCE representatives, on June 1, 2007 to discuss the contemplated CCE project. At that time, the Illinois EPA indicated that it would be willing to consider recognition of the Chicago Coke ERCs for use by CCE. Thereafter, in a meeting between Chicago Coke and Illinois EPA (but not CCE) on July 11, 2007, the Illinois EPA expressed certain concerns with recognition of the

3150 ROLAND AVENUE ▲ POST OFFICE BOX 5776 ▲ SPRINGFIELD, ILLINOIS 62705-5776
TELEPHONE 217-523-4900 ▲ FACSIMILE 217-523-4948

ERCs. By letter dated August 3, 2007, we addressed all these concerns and asked that the Illinois EPA acknowledge its ability to recognize ERCs based on the potential shutdown of the Chicago Coke facility. (A copy of my August 3, 2007 letter is attached.) As you know, subsequent to that meeting, you informed us during a telephone conversation that, notwithstanding the information provided in our letter of August 3, 2007, the Illinois EPA "is not inclined to recognize these emission reduction credits."

Thereafter, at an impromptu meeting held on January 17, 2008, Bureau Chief Laurel Kroack stated that the Illinois EPA would not recognize the ERCs because "the Agency has always had a policy that ERCs may only be generated from shutdowns that occurred within the past five years." In response, I reiterated the fact that the facility could not have been shut down before April 28, 2005, which was the date of the construction permit for the pad-up rebuild of the coke battery, so there would be no violation of the so-called "five-year policy." (See my August 3, 2007 letter for more details.) In addition, I expressed my concern regarding the arbitrary nature of this determination since it was based, not on law or regulation, but upon a mistaken understanding regarding prior Illinois EPA "policy." After some discussion, Ms. Kroack agreed that she would be willing to reconsider her determination in this matter if presented with information demonstrating that Illinois EPA has recognized ERCs from shutdowns in permit(s) issued more than five years beyond the shutdown (that generated the credits). Julie Armitage and Chris Romaine also were present at the January 17, 2008 meeting.

As we have discussed, a review of permits issued by the Illinois EPA that contain requirements for "offsets," and of related documents obtained from Bureau of Air records, reveal that Illinois EPA has, in fact, recognized ERCs from shutdowns in permits issued more than five years beyond the shutdowns. Please see attached to this letter a table that provides a list of permits issued by Illinois EPA that include requirements for emission offsets. Also shown on this table is information concerning the bases for the offsets and the dates of shutdowns (where that information is available). In particular, you will see that Illinois EPA has recognized ERCs from a shutdown at Viskase's Bedford Park facility that occurred in September, 1998 in several permits, all of which were issued more than five years beyond September, 1998, i.e., August 24, 2005 (Air Products), August 24, 2005 (ExxonMobil), and August 4, 2004 (SCA Tissue North America). In addition, you will see that Illinois EPA recognized ERCs from a shutdown at Sara Lee's Aurora facility (formerly owned and operated by Metz Baking Company) that occurred in 1996; this recognition was made in a permit issued to ExxonMobil on August 19, 2003.

These permits demonstrate that the Illinois EPA does not have a policy that ERCs may only be generated from shutdowns that occurred within the past five years. Moreover, these permits demonstrate that the Illinois EPA's initial determination to deny recognition of the Chicago Coke ERCs is arbitrary, capricious, and without authority. Thus, in accordance with Ms. Kroack's commitment in our January 17, 2008 meeting, I understand that the Illinois EPA will be reconsidering this determination. As you may know, CCE intends to submit its

application for a construction permit for its coal gasification plant in the very future. So, your timely response would be greatly appreciated. Please feel free to contact me with any questions.

Sincerely,

Katherine D. Hodge

KDH:ljl
attachments
pc: Mr. Simon Beemsterboer (via U.S. Mail; w/attachments)
Mr. Alan Beensterboer (via U.S. Mail; w/attachments)

COKE:001/Corr/John J. Kim Ltr2 – ERCs

EXHIBIT C

HODGE DWYER & DRIVER

KATHERINE D. HODGE
E-mail: khodge@hddattorneys.com

January 15, 2010

VIA ELECTRONIC MAIL
(Original via U.S. Mail)

John J. Kim, Esq.
Chief Legal Counsel
Illinois Environmental Protection Agency
1021 North Grand Avenue East
Post Office Box 19276, Mail Code #21
Springfield, Illinois 62784-9276

RE: Emissions Reduction Credits
Chicago Coke Co., Inc
Facility I.D. No. 031600 AMC
Our File No. – COKE:001

Dear John:

This letter is to follow up on our discussions regarding the above-referenced matter. As you know, on behalf of Chicago Coke Co., Inc. ("Chicago Coke"), I have made repeated requests to the Illinois Environmental Protection Agency ("Illinois EPA") for recognition that certain Emission Reduction Credits ("ERCs") held by Chicago Coke are available for use as emission offsets for the permitting of major new sources and/or major modifications in the Chicago area. My prior correspondence to you in this matter is attached and incorporated herein by reference.

The Illinois EPA has refused to recognize that the ERCs held by Chicago Coke are available for use as emission offsets, citing orally to various (and apparently changing) reasons, none of which reasons are supported by law and/or regulation. Please see the attached letter, dated August 3, 2007, which addressed the initial concerns articulated by the Illinois EPA, and the attached letter, dated July 18, 2008, which addressed the Illinois EPA's apparent reason at this time, i.e., its mistaken reliance upon the so-called "five-year policy." Moreover, it is my understanding that representatives of the Illinois EPA have made representations, on multiple occasions, to potential buyers of the ERCs held by Chicago Coke, that these ERCs are not

3150 ROLAND AVENUE ▲ POST OFFICE BOX 5776 ▲ SPRINGFIELD, ILLINOIS 62705-5776
TELEPHONE 217-523-4900 ▲ FACSIMILE 217-523-4948 ▲ WWW.HDDATTORNEYS.COM

available for use as emission offsets. Finally, the Illinois EPA has not provided any written response to Chicago Coke in this matter.

Based upon all of the above, by this letter, I am requesting that the Illinois EPA issue a final decision, in writing, responding to my request for recognition that certain ERCs held by Chicago Coke are available for use as emission offsets for the permitting of major new sources and/or major modifications in the Chicago area. Since my initial request was made nearly three years ago, I would appreciate prompt action by the Illinois EPA to issue the requested final decision. Please feel free to contact me if you have any questions.

Sincerely,

Katherine D. Hodge

KDH:amb
attachments
pc: Mr. Simon Beemsterboer (via U.S. Mail; w/attachments)
Mr. Alan Beemsterboer (via U.S. Mail; w/attachments)

COKE:001/Corr/John J. Kim Ltr3 – ERCs

EXHIBIT D

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

1021 North Grand Avenue East, P.O. Box 19276, Springfield, Illinois 62794-9276 • (217) 782-2829
James R. Thompson Center, 100 West Randolph, Suite 11-300, Chicago, IL 60601 • (312) 814-6026

PAT QUINN, GOVERNOR DOUGLAS P. SCOTT, DIRECTOR

(217) 782-5544
(217) 782-9143 (TDD)

February 22, 2010

Katherine D. Hodge
Hodge Dwyer & Driver
3150 Roland Avenue
P.O. Box 5776
Springfield, Illinois 62705

Re: Chicago Coke Co., Inc.
Emission Reduction Credits

Dear Kathy:

Thank you for your letter dated January 15, 2010. You asked that the Illinois Environmental Protection Agency ("Illinois EPA") respond as to our final decision on whether certain Emission Reduction Credits ("ERCs") claimed by Chicago Coke Co., Inc. ("Chicago Coke"), are available for use as emission offsets for the permitting of major new sources and/or major modifications in the Chicago area.

Based on a discussion I had with Laurel Kroack, Bureau Chief for the Illinois EPA's Bureau of Air, I can confirm for you that the Illinois EPA's final decision on this issue remains the same as was previously conveyed to you. That is, the Illinois EPA does not find that the ERCs claimed are available as offsets, since it is our position that the Chicago Coke facility is permanently shutdown. Pursuant to applicable federal guidance, the ERCs are thus not available for use as you described.

I hope this makes clear the Illinois EPA's position on this issue. If not, or if you have any further questions, please do not hesitate to contact me. Thank you.

Sincerely,

John J. Kim
Chief Legal Counsel

[redacted]

EXHIBIT E

Permits Issued by the Illinois Environmental Protection Agency that Contain Requirements for Emissions Offsets

Permittee	Application No.	Facility ID No.	Permit Issuance Date	Offsets TPY	VOM or PM	Offsets from	ID No.	Basis for Offsets	Date of Shutdown
A. Finkl & Sons Co.	07060075	031600GUC	06/23/06	347.00	NOx	Finkl plant (74.8) ADM (74.0) Corn Products (198.2)	 031600ATR 	shutdown/redesting Finkl plant shutdown of ADM Boiler 10 Project at Corn Products (shutdown of boilers 1, 2, 3, 4 & 5)	
Air Products & Chemicals, Inc.	05020053	197800ACA	08/24/05[1]	23.00	VOM	Visteon or ASF Keystone	031012ABQ	permanent shutdown of facility permanent shutdown of facility	09/1998 01/2002
Brown Printing Company	07060012	111060ABU	12/23/02	75.40	VOM	Burrell-Leder Bellach Handy Button Hargro	031288AGR 031188AFR 031600CPO	process change (22.9 tpy) process change (32.0 tpy) shutdown of printing (20.5 tpy)	 IEPA reports no file
ConocoPhillips Company	06110049	119050AAN	07/19/07	440.10	VOM	JW Aluminum	St. Louis, MO	reduction in VOM emissions	
ConocoPhillips Company	06060062	119050AAN	07/19/07	440.10	VOM	JW Aluminum	St. Louis, MO	reduction in VOM emissions	
ExxonMobil Oil Corporation	03050050	197800AAA	06/19/03	5.00	VOM	Sara Lee	099005AEX	permanent shutdown of facility	1998
ExxonMobil Oil Corporation	03110060	197800AAA	08/24/05	23.00	VOM	Visteon or ASF Keystone	031012ABQ Hammond, IN	permanent shutdown of facility permanent shutdown of facility	09/1998 01/2002
ExxonMobil Oil Corporation	05030076	197800AAA	10/06/05[2]	753.00 100.00	NOx PM10	Midwest Generation	063806AAF	permanent shutdown of facility	2004
Indeck-Elwood LLC	02030060	1970035AAJ	10/10/03	140.40	VOM	Minnesota Mining & Manufacturing (3M)	031012AAR	shutdown of coating line 6H	1998, 1999, or 2000[3]
Quebecor World – Chicago Division	0090023	031440AAB	03/14/01	42.77	VOM	Bradley Printing Rock-Tenn Company	031063ABH 031600CMQ	shutdown of source owned by World Color Press (36.03 tpy) voluntary reductions (7.9 tpy)	03/1998 2000
Robbins Community Power LLC	07060061	031270AAB	06/23/06	276.00	NOx	Corn Products International	031012ABI	Boiler 10 Project at Corn Products (shutdown of boilers 1, 2, 3, 4 & 5)	
SCA Tissue North America	02020043	031003ADF	06/04/04	75.00	VOM	Visteon	031012ABQ	permanent shutdown of facility	09/1998
Wheeland Tube Company – Chicago Division	02050066	031600FDI	10/08/02	93.60	VOM	ASF Keystone East	Chicago, IN 089-13948-00002	permanent shutdown of steel foundry	2001

[1] Air Products & Chemicals, Inc. – revised permit dated 07-24-07
[2] ExxonMobil Oil Corporation – revised permits dated 03-26-06 and 06-26-06
[3] ARMs for these years not yet provided

CCMS-EBT\Mod\Offsets Chart 7.19.06

[redacted]