

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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

NOTICE OF FILING

To: Counsel of Record
(See attached Service List.)

PLEASE TAKE NOTICE that on this 4th day of February 2011, the following were filed electronically with the Illinois Pollution Control Board: **Chicago Coke Co., Inc.'s Limited Waiver of Decision Deadline and Motion to Lift Stay**, which are attached and herewith served upon you.

CHICAGO COKE CO., INC.

By: s/Elizabeth S. Harvey
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 copies of the foregoing documents to counsel of record via U.S. Mail at 330 North Wabash Avenue, Chicago, IL 60611, at or before 5:00 p.m. on February 4, 2011.



Jeanette Podlin

[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.

7012-002

SERVICE LIST

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

PCB 10-75

(Permit Appeal -- Air)

Andrew B. Armstrong
Assistant Attorney
General Environmental Bureau
69 West Washington Street
18th Floor
Chicago, Illinois 60602

Bradley P. Halloran, Hearing Officer
Illinois Pollution Control Board
James R. Thompson Center
100 West Randolph Street
Suite 11-500
Chicago, Illinois 60601

Ann Alexander, Senior Attorney
Shannon Fisk, Senior Attorney
Natural Resources Defense Council
2 North Riverside Plaza, Suite 2250
Chicago, Illinois 60606

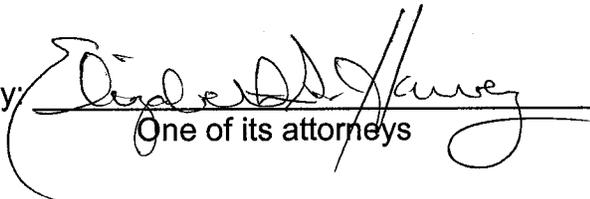
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LIMITED WAIVER OF DECISION DEADLINE

Petitioner, CHICAGO COKE CO., INC., by its attorneys Swanson, Martin & Bell, LLP, hereby waives the decision deadline in this appeal to and including November 4, 2011.

CHICAGO COKE CO., INC.

By: 
One of its attorneys

Dated: February 4. 2011.

Michael J. Maher
Elizabeth S. Harvey
Erin E. Wright
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MOTION TO LIFT STAY

Petitioner, CHICAGO COKE CO., INC. ("Chicago Coke"), by its attorneys Swanson, Martin & Bell, LLP, moves the Board or its hearing officer to lift the stay currently in effect in this appeal.

1. This case is Chicago Coke's appeal to the Board of respondent the ILLINOIS ENVIRONMENTAL PROTECTION AGENCY's ("IEPA") final decision denying Chicago Coke the right to sell its emission reduction credits ("ERCs"). Chicago Coke filed its petition for review on March 29, 2010. The petition for review also included a request that the Board stay this proceeding pending the outcome of a companion matter filed in Cook County Circuit Court.
2. On May 6, 2010, the Board granted Chicago Coke's request for a stay. (Board Order, May 6, 2010.) IEPA subsequently filed a motion to dismiss Chicago Coke's appeal. The Board lifted the stay for the sole purpose of ruling on IEPA's motion to dismiss.
3. On September 2, 2010, the Board issued its order denying IEPA's motion to

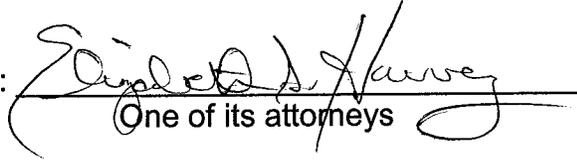
dismiss and accepting this appeal for hearing. The Board also reinstated the stay. (Board Order, September 2, 2010.) In its order, the Board noted the stay would remain in effect until 90 days prior to the decision deadline¹, and that “any additional requests for a stay may be directed to the hearing officer.” (Board Order, September 2, 2010, p. 8.)

4. The stay of this proceeding was granted at Chicago Coke’s request, to allow the circuit court proceeding to move forward and to avoid any overlapping or contradictory action by the court and the Board.
5. On January 7, 2011, the circuit court dismissed Chicago Coke’s petition, finding Chicago Coke has not exhausted its administrative remedies. (See Exhibit A.)
6. There is no longer an action pending in the circuit court between Chicago Coke and IEPA. Thus, there is no reason to continue to stay the Board proceeding. The Board has already accepted the appeal for hearing, and denied IEPA’s motion to dismiss. Chicago Coke is ready to move forward on its appeal.
7. Chicago Coke asks that the stay on this appeal be lifted, so the matter can proceed before the Board.

WHEREFORE, Chicago Coke moves the Board or its hearing officer to lift the stay so this appeal can move forward, and for such other relief as the Board deems appropriate.

¹ Chicago Coke has filed, contemporaneously with this motion, a limited extension of the decision deadline, to and including November 4, 2011.

CHICAGO COKE CO., INC.

By: 
One of its attorneys

Dated: February 4, 2011.

Michael J. Maher
Elizabeth S. Harvey
Erin E. Wright
SWANSON, MARTIN & BELL, LLP
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Chicago, Illinois 60611
Telephone: (312) 321-9100

Exhibit A

Order

(2/24/05) CCG N002

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

Chicago Coke Co., Inc.

v.

Scott, et al.

No. 10 CH 12662

ORDER

THIS CAUSE BEFORE THE COURT on ~~Plaintiff's~~ ^{Defendants'} Section 2-619.1 Combined Motion to Dismiss Complaint Pursuant to Sections 2-615 and 2-619,

IT IS HEREBY ORDERED THAT:

① Defendants' motion is granted, and Plaintiff's Complaint is dismissed for failure to exhaust administrative remedies.

Atty. No.: 99000

Name: AAG Andrew Armstrong

Atty. for: Plaintiff

Address: 69 W Washington, 18th Floor

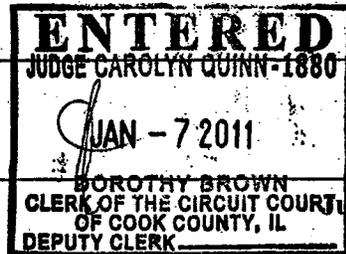
City/State/Zip: Chicago, IL 60602

Telephone: 312-814-0660

ENTERED:

Dated:

Judge



Judge's No.