BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,	)	
	)	
Complainant,	)	
	)	
v.	)	PCB 97-179
	)	(Enforcement- Air)
MGP INGREDIENTS OF ILLINOIS, INC.,	)	
	)	
	)	
Respondent.	)	

RESPONDENT'S AMENDED SECOND SET OF INTERROGATORIES TO COMPLAINANT

COMES NOW Respondent MGP Ingredients of Illinois, Inc., ("MGP"), by its attorneys, Husch & Eppenberger, LLC pursuant to Section 101.616 of the Board's Procedural Regulations, Hearing Officer Order dated October 12, 2005 and Illinois Supreme Court Rule 213, requests that Complainant, People of the State of Illinois, answer in writing, under oath, the following interrogatories.

I. INSTRUCTIONS FOR INTERROGATORIES

1. Complainant is required, in answering these interrogatories to furnish all information available to Complainant or its employees, agents, contractors, experts, or consultants, or which is ascertainable by reasonable inquiry whether or not the requested information might be available from another entity.

2. If an interrogatory has subparts, Complainant is required to answer each part separately and in full.

3. If Complainant cannot answer an interrogatory in full, they are required to answer all parts of the interrogatory to the extent possible and specify the reason for its inability to provide additional information.

4. As to each interrogatory, or portion thereof, identify in the answer every oral communication, document or writing which relates to the interrogatory or response, whether or not such identification is specifically requested by the interrogatory.

5. In answering each interrogatory, identify each document, person, communication or meeting, which relates to, corroborates, or in any way forms the basis for the answer given.

6. Pursuant to Illinois Supreme Court Rule 213(3), Complainant is requested to serve upon Respondent corrected, supplemented or augmented answers hereto, documents or other forms of information from whatever source, which arguably tends to show that Complainant's prior answers are, might be, were or might have been in a sense incorrect, incomplete, potentially misleading or less than fully responsive or truthful.

7. Complainant shall supplement its answers and responses as new information and documents become available.

8. If dates are requested, the exact date should be given, if possible. However, if the exact date cannot be determined due to absence or inadequacy of records, the best estimate should be given to the interrogatory and labeled as such.

9. In construing these interrogatories:

a. the singular shall include the plural and the plural shall include the singular; and

b. a masculine or feminine pronoun shall not exclude the other gender.

10. If you encounter any ambiguity in construing any interrogatory or any definition or instruction pertaining to any interrogatory, set forth the matter deemed "ambiguous" and the construction chosen or used in responding to the interrogatory.

11. In producing documents in response to an interrogatory (See Illinois Supreme Court Rule 213(e)), you are requested to furnish all documents or things in your actual or constructive possession, custody, control, or known or available to you, regardless of whether such documents or things are possessed directly by you or by your attorneys, agents, employees, representatives or investigators.

12. This discovery is deemed continuing, necessitating supplemental answers by Complainant, or anyone acting on its behalf, when or if they obtain additional information, which supplements or alters the answers now provided.

II. CLAIMS OF PRIVILEGE

1. With respect to any interrogatory which Complainant refuses to answer on a claim of privilege, provide a statement signed by an attorney representing Complainant, setting forth each such assertion of privilege. The statement should include:

a. the name and job title of every person involved in the conversation or communication;

b. the nature of the information disclosed;

c. all facts relied upon in support of the claim of privilege;

d. all documents related to the claim of privilege;

e. all events, transactions or occurrences related to the claim of privilege; and

f. the statute, rule or decision which is claimed to give rise to the privilege or the reason for its unavailability.

2. If the objection relates to only part of an interrogatory, the balance of the interrogatory should be answered in full.

3. If you claim the attorney-client privilege or any other privilege is applicable to any document, with respect to that document:

a. state the date of the document;

b. identify each and every author of the document;

c. identify each and every other person who prepared or participated in the preparation of the document;

d. identify each and every person who received the document;

e. state the present location of the document and all copies thereof;

f. identify each and every person having custody or control of the document and all copies thereof; and

g. provide sufficient further information concerning the document to explain the claim or privilege and to permit adjudication of the property of that claim.

III. DEFINITIONS

1. "Complainant" shall mean PEOPLE OF THE STATE OF ILLINOIS and the ATTORNEY GENERAL OF THE STATE OF ILLINOIS, and any of Complainant's employees, agents, representatives, successors or assigns, or any other person acting or believed by Complainant to have acted on their behalf.

2. "Document" shall be construed in its customary broad sense and shall include, but is not limited to, the original and non-identical copy, whether different from the original because of notes made on said copy or otherwise, or any agreement, bank record or statement; book of account, including any ledger, sub-ledger, journal or sub-journal; brochure; calendar; chart; check; circular; communication (intra- or inter-company or governmental entity or agency or agencies); contract; copy; correspondence; diary; draft of any document; graph; index; instruction; instruction manual or sheet; invoice; job requisition; letter; license; manifest; memorandum; minutes; newspaper or other clipping; note; notebook; opinion; pamphlet; paper; periodical or other publication; photograph; print; receipt; record; recording report; statement; study; summary including any memorandum, minutes, note, record or summary of any (a) telephone, videophone or intercom conversation or message; (b) personal conversation or interview; or (c) meeting or conference; telegram; telephone log; travel or expense record; voucher; worksheet or working paper; writing; any other handwritten, printed, reproduced, recorded, typewritten, or otherwise produced graphic material from which the information inquired of may be obtained, or any other documentary material of any nature, including electronic mail, in the possession, custody or control of Complainant.

3. "Communication" shall mean, without limitation, any and all forms of transferring information, including discussions, conversations, meetings, conferences, interviews, negotiations, agreements, understandings, inquiries, correspondence, documents, or other transfers of information whether written or oral or by any other means, and includes any document which abstracts, digests, transcribes or records any communication.

4. "Facility" and/or "Site" shall mean the property located at South Front Street and Distillery in Pekin, Tazewell County, Illinois, as referenced in paragraph 5, Count I of the Complaint.

5. "Person" shall include, but is not limited to, any natural person; business or corporation, whether for profit or not; firm, partnership, or other non-corporate business organization; charitable, religious, education, governmental, or other non-profit institution, foundation, body, or other organization; or employee, agent or representative of any of the foregoing.

6. "Describe" when used with respect to a communication, means to provide the following information:

a. the date of the communication;

b. the type of communication (telephone, electronic mail, facsimile, letter, etc.);

c. the identity of all individuals involved in the communication;

d. the identity of all individuals who witnessed the communication; and

e. the subject matter of the communication.

f. a description of any documents generated relating to these communications.

7. "Identify" when used with respect to a person, means that you are to state the full name, present residence and business addresses, present residence and business telephone numbers, present and last-known position and business of such person and, if different, the business and position of the person at the time to which the interrogatory has reference.

8. "Identify" when used with respect to a document, means:

a. to specify the nature of the document (For example a letter or memorandum);

b. to state the date, if any, appearing on the document or, if none, the date on which the document was prepared and/or received; and

c. to describe the substance of each document for which no privilege is claimed, or to specify the nature and extent of any claimed privilege.

d. If the document is not in your possession, identify the person who has actual or constructive possession or control of the document.

9. "Or" shall mean and/or wherever appropriate.

10. "Related to" or "relating to" or "in relation to" shall mean anything which directly or indirectly, concerns, consists of, pertains to, reflects, evidences, describes, sets forth, constitutes, contains, shows, underlies, supports, refers to in any way, is or was used in the preparation of, is appended to, or tends to prove or disprove.

11. "Relied upon" shall mean being or having been depended upon or referred to or being or having been arguably appropriate for such reliance.

12. "Constructive Possession" means documents not in actual possession, but to which you have power to inspect, a right to control, review or otherwise access.

13. "Knowledge" means first-hand information and/or information derived from any other source, including hearsay.

14. "IEPA" means the Illinois Environmental Protection Agency.

15. "Board" shall mean the Illinois Pollution Control Board.

16. "Current" or "Present" means the filing date of these Interrogatories.

17. All terms not specifically defined herein shall have their logical ordinary meaning, unless such terms are defined in the Act or the regulations promulgated thereunder, in which case the appropriate or regulatory definitions will apply.

IV. INTERROGATORIES

1. Please identify:

   a. the individual(s) answering these interrogatories on behalf of the Complainant, including his or her relationship to Complainant, and how long he or she has been associated with Complainant.

   b. Each person who provided information or who otherwise consulted, participated or assisted in connection with providing answers to these interrogatories, the nature of any such consultation or assistance, whether the information was based on personal knowledge, and if not on the basis of personal knowledge, on what basis it was provided.

   c. For each person identified in the proceeding section 1(b), specify the particular interrogatories to which each such person contributed.

ANSWER:

2. Pursuant to Illinois Supreme Court Rule 213(f), with respect to any hearing witnesses, please state the following:

   a. the name, address and employer of each witness;

   b. a summary of the relevant facts within the knowledge of, or which said witnesses will testify to; and

   c. a listing of any documents or photographs, which any such witness has relied upon, will use or which may be introduced into evidence in connection with the testimony of said witness.

ANSWER:

3. Furnish the identity and addresses of all expert witnesses who will testify at hearing for Complainant, together with the subject matter on which each expert witness is expected to testify; the conclusions and opinions of each expert witness and the basis therefore; and the qualifications of each expert witness and a copy of all reports of such witnesses.

ANSWER:

4. With respect to any witness(es) interviewed by Complainant who Complainant does not intend to call to testify at hearing, state the name and address of any such witness, state whether a transcript of any interview with said witness was prepared, or a memorandum prepared in connection with any such interview, and provide a summary of the facts and opinions relevant to this proceeding which were secured from said witness.

ANSWER:

5. Pursuant to Illinois Supreme Court Rule 213(g), identify any and all opinion witnesses that Complainant has interviewed and/or expects to call at hearing. Specify:

a. The subject matter on which the opinion witness is expected to testify as well as the conclusions, opinion and/or expected testimony of any such witness;

b. The qualifications, including, but not limited to, the opinion witness' educational background, practical experience in the area he or she is expected to testify in, any articles and papers he or she has written, any and all seminars and post-graduate training he has received, his experience, if any, as a teacher or lecturer and his or her professional appointments and associations;

c. The identity of each document examined, considered, or relied upon by him or her to form his or her opinions;

d. All proceedings in which each opinion witness has previously testified as an opinion witness; and

e. Any and all reports of the opinion witness.

ANSWER:

6. Furnish the identity and addresses of all persons that communicated with Complainant regarding the facts alleged in Complainant's Complaint; and identify all persons known by you to have knowledge of the facts alleged in the Complaint or in the Answers to these Interrogatories.

ANSWER:

7. Describe the base or bases for the State's contention that the MGP facility continued to be a "major stationary source" for particulate matter after the shutdown of the fluidized bed coal boiler in 1994.

ANSWER:

8. Describe the base or bases for any "major modification" determinations at the MGP facility from 1993 to the present and identify all individuals involved in any such determination..

ANSWER:

9. Describe any and all communications, between the parties listed below, relating to air particulate permits or air particulate emission issues at MGP from 1992 to the present. Dates of relevant phone conversations include, but are not limited to, 8/13/96, 8/16/96, 8/28/96, 9/4/96, 9/16/96, 9/17/96, 9/20/96, 9/24/96, 10/15/96, 11/1/96, 11/14/96, 12/11/96, 1/28/97, 1/30/97, 3/19/97, 3/25/96, 3/27/97, 4/9/97, and 4/23/97.

a. IEPA and August Mack Environmental, Inc., ("August Mack") and/or any other consultants;

b. IEPA and MGP;

c. Internal IEPA communications;

d. IEPA and the United States Environmental Protection Agency

ANSWER:

10. Itemize the penalties which Complainant seeks to recover for each violation asserted in the Complaint; identify the manner or means and any assumptions used by which Complainant determined the penalty amounts to be sought (including but not limited to, the manner in which any statutory criteria, policy or guidance was employed in determining the penalty amounts); describe any and all internal IEPA communications or communications between IEPA and USEPA related to any penalty determination addressed above; identify the relevant facts considered in making the penalty determinations and in employing such statutory criteria, policy or guidance; and identify and explain the manner or method employed in attributing any economic benefit accruing to Respondent by reason of the violations asserted.

ANSWER:

11. Identify and describe any and all internal IEPA communications, IEPA communications with MGP and/or communications between IEPA and any third-party relating to a BACT determination for the MGP facility since January1, 1990.

ANSWER:

12. Describe the analysis conducted and methodology used by IEPA to determine the BACT for emissions from feed dryers at the MGP facility, including but not limited to, emission limitations and reductions.

ANSWER:

13. Identify all communications related to IEPA's consideration of economic and technological feasibility at the MGP facility.

ANSWER:

14. Describe the technically feasible and economically reasonable technology available to control the particulate matter emissions at the MGP facility as described in the Complaint.

ANSWER:

15. Describe any and all communications related to IEPA's consideration of potential energy, environmental and economic impacts in determining the level of emission control that the MGP facility could achieve pursuant to 42 U.S.C. § 7479(3).

ANSWER:

16. Describe any and all communications relating to emission limits established for MGP, including, but not limited to, construction permits 82110006, 93020061 and 93080045 and emission limits in any and all construction and/or operating permits relating to the MGP facility.

ANSWER:

17. Identify and describe any and all internal and/or external IEPA communications from January 1, 1994 to the present relating to MGP feed dryers 651 and 661.

ANSWER:

18. Describe any and all communications within IEPA and/or between IEPA and MGP, USEPA, August Mack or any third party regarding particulate air emission modeling related to the MGP facility and identify all data relating to air emission tests conducted at the MGP site,

emission data associated with the MGP facility, and/or air particulate modeling related to the MGP facility.

ANSWER:

19. Identify the time period used by IEPA to determine emission limits for the project which is the subject of the Complaint for the MGP facility, including but not limited to the time period used for the baseline actual emissions determination pursuant to 40 CFR 52.21(b)(48)(ii).

ANSWER:

20. Identify any and all US Clean Air Act or Illinois Environmental Protection Act exemptions that were considered by IEPA related to particulate matter emissions at the MGP facility and the basis for the denial of such exemptions.

ANSWER:

21. Describe any and all communications related to IEPA's contention that all agency modeling of particulates at the MGP facility and its environs must be complete before IEPA would consider MGP's proposal to install a regenerative thermal oxidizer.

ANSWER:

22. Describe any communications related to IEPA's 1999 decision to not assess an economic benefit penalty beyond that date.

ANSWER:

23. Identify and describe any and all mitigating factors considered by IEPA in its penalty determination and the impact of these factors on IEPA's penalty demand.

ANSWER:

24. Describe any and all communications related to IEPA's denial of a construction permit application for a wet electrostatic precipitator in and around 1997.

ANSWER:

25. Identify the date by which IEPA completed the air emission modeling necessary to fully analyze an air emissions construction permit application for feed dryer pollution control equipment submitted by MGP.

ANSWER:

26. Identify the date when IEPA communicated to MGP the completed the air emission modeling necessary to fully analyze an air emissions construction permit application for feed dryer pollution control equipment submitted by MGP.

ANSWER:

Respectfully submitted,

HUSCH & EPPENBERGER, LLC

By: _____
One of its attorneys

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2186836.01

CERTIFICATE OF SERVICE

I hereby certify that I did on the 8th day of November, 2005, send a true and accurate copy of RESPONDENT'S AMENDED SECOND SET OF INTERROGATORIES TO COMPLAINANT by first class mail, postage prepaid to:

Jane E. McBride
Assistant Attorney General
Environmental Bureau
500 South Second St.
Springfield, IL 62706

Carol Webb
Hearing Officer
Illinois Pollution Control Board
1021 North Grand Ave. East
P.O. Box 19274
Springfield, IL 62794-9274

Attorney