

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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

**NOTICE OF FILING**

TO:

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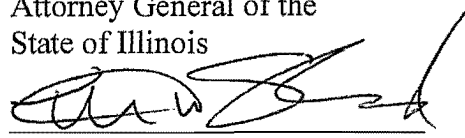
Bradley P. Halloran  
Hearing Officer  
Illinois Pollution Control Board  
James R. Thompson Center  
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PLEASE TAKE NOTICE that on the 17<sup>th</sup> day of August, 2012, I filed with the Office of the Clerk of the Illinois Pollution Control Board the attached Affidavit of Laurel Kroack in Support of Respondent's Motion for Summary Judgment a copy of which is hereby served upon you.

Respectfully submitted,

LISA MADIGAN,  
Attorney General of the  
State of Illinois

By:

A handwritten signature in black ink, appearing to read 'THOMAS H. SHEPHERD', written over a horizontal line.

THOMAS H. SHEPHERD  
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69 West Washington Street, Suite 1800  
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**AFFIDAVIT OF LAUREL KROACK IN SUPPORT OF RESPONDENT'S  
MOTION FOR SUMMARY JUDGMENT**

I, LAUREL KROACK, being duly sworn on oath, depose and state that I am over 21 years of age, have personal knowledge of the facts stated herein, and, if called as a witness, could competently testify to facts as set forth herein as follows:

1. I am currently employed by the Illinois Environmental Protection Agency ("Illinois EPA" or "Agency") as Chief of the Bureau of Air ("BOA") at the Illinois EPA, located at 1021 North Grand Avenue East, Springfield Illinois. I have held this position since March 2005.

2. As Bureau Chief, my duties and responsibilities include, in part, administering all of the Bureau programs, with a program staff of approximately 275 people.

3. From May 2003 to March 2005, I was employed by the Illinois EPA as Division Manager for Air Pollution Control with direct supervisory responsibility for its programs, including air quality planning, compliance and enforcement, air monitoring, permitting, and inspections.

4. In 2005, I assisted the Agency in its decision regarding whether the coke plant owned by Chicago Coke Co., Inc. ("Chicago Coke"), located at 11400 South Burley Avenue, Chicago, Illinois ("Facility"), was permanently shut down for purposes of the issuance of a construction permit authorizing the performance of a pad-up rebuild project to restart operations at the Facility ("Construction Permit").

5. From 2007 through 2010, I also assisted the Agency in its decision regarding whether the Facility was permanently shut down in response to Chicago Coke's request that emission reductions from the Facility be available for use as emissions offsets for the permitting of future major new emissions sources in the Greater Chicagoland ozone and fine particulate matter (PM<sub>2.5</sub>) nonattainment areas ("Emission Offsets" or "Emission Reduction Credits" ("ERCs")).

6. In determining if a source has permanently shut down for purposes of determining the creditability of a source's emission reductions, the Illinois EPA examines the intent of the owner or operator to restart the source. In doing so, the Agency considers several factors on a case-by-case basis, with no factor being determinative. The factors are set forth in the applicable federal guidance and include: (i) the reason for the shutdown; (ii) statements by the owner or operator regarding intent; (iii) duration of time the facility or source has been out of operation; (iv) the costs and time required to reactivate the

facility or source; (v) status of permits; (vi) ongoing maintenance and inspections that have been conducted during the shutdown; and (vii) the handling of the shutdown by the State of Illinois ("State").

7. Pursuant to federal guidance, a source that has been shutdown for longer than two years is presumed to be permanently shutdown. A source may rebut this presumption with a demonstration of intent to restart operation in light of the above-factors.

8. In 2005, the Illinois EPA considered the above-factors in determining that the 2002 shutdown of the Facility was not a permanent shutdown for purposes of Chicago Coke's application for the Construction Permit authorizing the necessary repairs to restart coking operations at the Facility. The Agency's decision was based on numerous representations by representatives of Chicago Coke that the company intended to restart the Facility in the near future. The Agency also considered the following information: evidence of maintenance and inspections of the Facility; inclusion of the Facility in the State's emissions inventory maintained by the Agency ("Emission Inventory"); Chicago Coke's renewal of the Facility's permit under the Clean Air Act Permit Program ("CAAPP") in September 2004; the Facility's continued payment of operating fees and its continued submittal of required Annual Emissions Reports ("AERs"); and Chicago Coke's non-demolition of any buildings or process facilities that would be used to resume operations.

9. The Construction Permit expired in October 2006. Chicago Coke never performed a pad-up rebuild of the coke oven battery.

10. On July 11, 2007, representatives of Chicago Coke met with the Illinois EPA. At the meeting, Chicago Coke admitted to the Illinois EPA that the company no longer intended to operate the Facility, but rather had negotiated a possible sale of the real property and claimed ERCs to a third-party. The Agency expressed its concerns with the availability of the Facility's emission reductions for use as Emission Offsets under the Illinois Pollution Control Board's Air Pollution regulations and under federal law, regulations, and guidance.

11. From June 2007 through February 2010, the Illinois EPA met and communicated with Chicago Coke several times regarding Chicago Coke's emission reductions, the Illinois EPA's concerns regarding the creditability of the emission reductions, and the bases for the Illinois EPA's concerns.

12. In a letter dated February 22, 2010, the Illinois EPA advised Chicago Coke that the Facility was considered permanently shut down and that the Facility's emission reductions were no longer creditable for use as Emission Offsets. A true and correct copy of the February 22, 2010 decision letter was previously filed in this action and certified by the Illinois EPA in the Administrative Record at p. 1593.

13. The Illinois EPA based its decision on the above-factors identified in the federal guidance and on the facts and circumstances before the Agency in 2010. At the time of the Agency's decision, the Facility had not been in operation for eight years, Chicago Coke failed to perform the repairs necessary to reopen the Facility when given the opportunity to do so under the Construction Permit issued in 2005, and Chicago Coke admitted in 2007 that it did not intend to restart the Facility.

14. From 2003 through 2008, Chicago Coke reported to the Illinois EPA zero emissions of regulated air pollutants from coking operations at the Facility. True and correct copies of the Facility's Annual Emissions Reports for the reporting years 2003 through 2008 were previously filed in this action and certified by the Illinois EPA in the Administrative Record at pp. 0471-0806 and 1201-1435. In fact, the only minimal emissions reported by Chicago Coke for the years 2004 and 2005 were from the trans-loading operations of Calumet Transload Railroad, LLC ("CTR") that were moved adjacent to the Facility after Chicago Coke's purchase of the coke plant. (See AERs, Admin. Record at pp. 0471-0582 and 1322-1435.) CTR's trans-loading operation consisted of the loading, unloading, and transferring of materials between railcars, trucks, ships, barges and storage piles on site. CTR's trans-loading operations were not part of the original operations at the Facility and were independent of Chicago Coke's permitted, non-operational coking operations. The Illinois EPA issued a permit to CTR in 2006 that addressed the new trans-loading operations near the Facility.

15. Additionally, the cost of the repairs necessary to restart the coking operations at the Facility was estimated in 2004 to be between \$88 million and greater than \$1.2 billion. By 2010, the cost to repair the Facility was likely much greater, making future restart of the Facility unlikely.

16. Chicago Coke stopped paying operating fees in 2008 and the company did not submit AERs for 2009 forward.

17. Emissions from the Facility were removed from the State's Emission Inventory in 2008. A true and correct copy of a notation by the Illinois EPA identifying

that the Facility was removed from the State's Emission Inventory was previously filed in this action and certified by the Illinois EPA in the Administrative Record at p. 2285. As a result, the State's Maintenance Plan, submitted to the United States Environmental Protection Agency ("USEPA") in 2009 in conjunction with a request for redesignation of the Chicago nonattainment area with regard to the 1997 8-hour ozone National Ambient Air Quality Standard ("NAAQS"), "counted-out" the Facility's emissions as zero for the purpose of demonstrating continued attainment of the NAAQS. A true and correct copy of the Maintenance Plan was previously filed in this action and certified by the Illinois EPA in the Administrative Record at p. 2286.

18. The Agency analyzed the facts set forth above in light of the applicable federal guidance and determined that the February 2002 shutdown of the Facility was a permanent shutdown.

19. The Illinois EPA examines several factors contained in 40 C.F.R. § 51.165, 35 Ill. Adm. Code 203.303, and federal guidance in determining the creditability of emission reductions from facilities or sources that have been permanently shut down. The factors include: (i) the location of the source of the emission reductions; (ii) an examination of applicable regulations or consent orders to determine if the emission reductions to be used as offsets are in fact surplus, permanent, quantifiable, and enforceable; (iii) the timing of the emission reductions; and (iv) whether the emission reductions have been relied upon in a permit or for demonstrating attainment or reasonable further progress.

20. To achieve the express purpose of Emission Offsets under the Clean Air Act, which is to ensure that emissions from new sources do not impede an area's movement



toward attainment of the NAAQS or impede reasonable further progress toward attainment, the Illinois EPA generally uses five years as a “guideline” with regard to the availability of emission reductions for use as offsets following the permanent shutdown of a facility (“Five-Year Guideline”). This practice is consistent with the State’s responsibility for, and authority and discretion over, attainment planning. Emission reductions that are over five years old are generally deemed to have “expired.” The five-year lifespan of the emission reductions begins to run from the date the facility is deemed to have permanently shutdown. This guideline provides finality to the availability of emission reductions for use as offsets, both for attainment planning purposes and, generally, to serve the overarching goal of improving air quality. The Illinois EPA bases this practice on the five-year time frame allowed for “netting” contemporaneous emission increases and decreases at a source when determining whether a source modification rises to the level of a major modification under New Source Review. As the concepts of netting and offsetting are similar, the Illinois EPA uses this same five-year time period in evaluating the creditability of emission reductions.

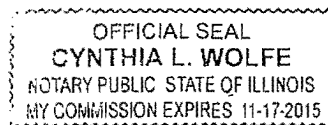
21. In regard to the Facility, the Illinois EPA analyzed the factors set forth in the pertinent federal guidance and determined that the February 2002 shutdown of the Facility constituted a permanent shutdown. At the time of the Illinois EPA’s decision in 2010, the age of the emission reductions from the shutdown was well-past the Five-Year Guideline, and in fact the emission reductions were used by the State to demonstrate continued attainment, and as such they were unavailable for use as Emission Offsets in any future permitting transactions.

FURTHER, AFFIANT SAYETH NOT.



LAUREL L. KROACK

SUBSCRIBED and SWORN to  
before me this 16th day  
of August, 2012.



  
NOTARY PUBLIC

**CERTIFICATE OF SERVICE**

I, THOMAS H. SHEPHERD, do certify that I filed electronically with the Office of the Clerk of the Illinois Pollution Control Board the foregoing Notice of Filing and Affidavit of Laurel Kroack in Support of Respondent's Motion for Summary Judgment and caused them to be served this 17<sup>th</sup> day of August, 2012, upon the persons listed on the foregoing Notice of Filing by electronic mail as per the agreement between the parties to the litigation at or before the hour of 5:00 p.m.

A handwritten signature in black ink, appearing to read 'THOMAS H. SHEPHERD', is written over a horizontal line.

THOMAS H. SHEPHERD