BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF: )

 ) R14-

EMERGENCY RULEMAKING REGARDING ) (Rulemaking-Air)

REGULATION OF COKE/COAL BULK )

TERMINALS )

35 ILL. ADM. CODE PART 213 )

**NOTICE**

To: John Therriault, Clerk

 Illinois Pollution Control Board

 James R. Thompson Center

 100 West Randolph, Suite 11-500

 Chicago, Illinois 60601-3218

 PLEASE TAKE NOTICE that I have today filed with the Office of the Pollution Control Board the PROPOSAL AND MOTION FOR EMERGENCY RULEMAKING, ENTRY OF APPEARANCE, AFFIDAVIT OF DAVID BLOOMBERG, and AFFIDAVIT OF SANJAY SOFAT of the Illinois Environmental Protection Agency, a copy of which is herewith served upon you.

Respectfully submitted,

 ILLINOIS ENVIRONMENTAL

 PROTECTION AGENCY

By:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 Dana Vetterhoffer

 Assistant Counsel

 Division of Legal Counsel

DATED: January 16, 2014

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**THIS FILING IS SUBMITTED ON RECYCLED PAPER**

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**PROPOSAL AND MOTION FOR EMERGENCY RULEMAKING**

The Illinois Environmental Protection Agency (“Illinois EPA” or “Agency”), by and through its attorneys, hereby requests that the Illinois Pollution Control Board (“Board”) adopt the proposal set forth in Exhibit A as 35 Ill. Adm. Code Part 213, pursuant to the Board’s authority to adopt emergency regulations under Section 27(c) of the Illinois Environmental Protection Act (“Act”), 415 ILCS 5/27(c), Section 5-45 of the Illinois Administrative Procedure Act ("Illinois APA"), 5 ILCS 100/5-45, and 35 Ill. Adm. Code 102.612. The Illinois EPA also requests that the Board grant this Motion immediately in order to prevent undue delay or material prejudice, pursuant to 35 Ill. Adm. Code 101.500(d). In support of its Motion, the Illinois EPA states as follows:

I. INTRODUCTION

 1. Several bulk terminals located in Cook County process, transport, and handle large quantities of coke and/or coal, and store such materials in large outdoor storage areas. Emissions of fugitive particulate matter (“PM”) from these and similar operations are inadequately controlled, to such an extent that they cause or threaten to cause a public nuisance as well as violations of the Act and Board regulations. These emissions reasonably constitute a threat to the public interest, safety, or welfare, necessitating adoption of the emergency amendments set forth in Exhibit A. Additionally, the discharge of runoff from large, uncovered coke and coal piles into waters of the State is a violation of the Act and Board regulations and reasonably constitutes a threat to the public interest or welfare, necessitating adoption of the emergency amendments set forth in Exhibit A.

II. BACKGROUND

2. Generally, “coke” refers to solid, carbonaceous material derived from the distillation of coal (including metallurgical coke or “metcoke”) or from oil refinery coker units or other cracking processes (including petroleum coke or “petcoke”). Along with high amounts of carbon, petcoke contains sulfur and can contain a variety of metals, including vanadium, nickel, chromium, and lead. It is primarily utilized as a replacement fuel or fuel blend for coal-fired power plants and cement kilns, and in other industrial processes. Metcoke is generally used as a fuel and as a [reducing agent](http://en.wikipedia.org/wiki/Reducing_agent) in smelting [iron](http://en.wikipedia.org/wiki/Iron) ore.

 3. Dust from both coke and coal is a type of fugitive PM, subject to National Ambient Air Quality Standards. Exposure to PM can have serious health consequences, such as cardiovascular and respiratory effects and increased mortality. *See* Proposed National Ambient Air Quality Standards for Particulate Matter, 77 *Fed. Reg.* 38890, 38947 (June 29, 2012). Specific adverse effects include aggravated asthma, decreased lung function, increased respiratory symptoms such as difficulty breathing, irregular heartbeat, and nonfatal heart attacks. Several at-risk populations may be especially susceptible to PM-related effects, including those with preexisting heart or lung diseases and those with certain genetic disorders, as well as children and the elderly. *See* Final National Ambient Air Quality Standards for Particulate Matter, 78 *Fed. Reg.* 3086, 3167 (Jan. 15, 2013).

4. Coke and coal dust can be emitted into the environment during loading, unloading, transferring, handling, and transport of coke and coal, and when wind acts upon open storage piles of such materials. The dust can be carried by the wind into surrounding areas, where it may be inhaled or deposited on persons and property, or in bodies of water.

5. Stormwater and wastewater associated with runoff from open storage piles of coke and coal can be discharged to waters of the State, including surface water and groundwater. Inadequately controlled discharges into surface waters can lead to excessive floating debris or bottom deposits that could adversely affect aquatic life. Additionally, inadequate storage of coke and coal poses a threat to groundwater contamination due to leaching of metals and other constituents associated with these large storage piles.

6. Several bulk storage terminals are located in Cook County. Generally, these facilities unload coal and coke from trucks, barges, and/or railcars, convey the materials to storage piles (where the materials remain for varying lengths of time), transfer the materials on site, convey the materials to loading operations, and load the materials for transport to end users. Outdoor storage piles of coke and coal vary in size by facility, but can be 75 or more feet high and several hundreds of feet long and wide.

7. Similar coke or coal bulk terminals may be operating in, or may come into operation in, other areas of the State as well.

III. AUTHORIZATION FOR EMERGENCY REGULATION

8. Section 27(c) of the Act authorizes the Board to adopt emergency regulations pursuant to and in accordance with Section 5-45 of the Illinois APA when the Board “finds that a situation exists which reasonably constitutes a threat to the public interest, safety or welfare.” 415 ILCS 5/27(c).

9. Similarly, Section 102.612 of the Board's regulations provides:

a) W*hen the Board finds that a situation exists which reasonably constitutes a threat to the public interest, safety, or welfare, the Board may adopt regulations pursuant to and in accordance with Section 5-45 of the* IAPA [415 ILCS 27(c)].

b) *When the Board finds that a severe public health emergency exists, the Board may, in relation to any proposed regulation, order that such regulation shall take effect without delay* [415 ILCS 5/27(c)]. The Board will proceed with any required hearings while the regulation continues in effect.

35 Ill. Adm. Code 102.612.

10. Section 5-45 of the Illinois APA provides, in pertinent part:

(a) "Emergency" means the existence of any situation that any agency finds reasonably constitutes a threat to the public interest, safety, or welfare.

(b) If any agency finds that an emergency exists that requires adoption of a rule upon fewer days than is required by Section 5-40 and states in writing its reasons for that finding, the agency may adopt an emergency rule without prior notice or hearing upon filing a notice of emergency rulemaking with the Secretary of State under Section 5-70. The notice shall include the text of the emergency rule and shall be published in the Illinois Register. . . Subject to applicable constitutional or statutory provisions, an emergency rule becomes effective immediately upon filing under Section 5-65 or at a stated date less than 10 days thereafter. The agency's finding and a statement of the specific reasons for the finding shall be filed with the rule. The agency shall take reasonable and appropriate measures to make emergency rules known to the persons who may be affected by them.

(c) An emergency rule may be effective for a period of not longer than 150 days, but the agency's authority to adopt an identical rule under Section 5-40 is not precluded.

5 ILCS 100/5-45.

 11. The Board is authorized to rule upon a motion immediately, prior to expiration of the 14 day response period set forth in Section 101.500 of the Board’s regulations, when doing so is necessary to prevent undue delay or material prejudice. Section 101.500 provides, in pertinent part:

d) Within 14 days after service of a motion, a party may file a response to the motion. . . Unless undue delay or material prejudice would result, neither the Board nor the hearing officer will grant any motion before expiration of the 14 day response period except in deadline driven proceedings where no waiver has been filed. . .

35 Ill. Adm. Code 101.500.

IV. NECESSITY OF EMERGENCY REGULATION

 12. Inadequately controlled fugitive PM emissions, along with inadequately controlled discharges of stormwater and wastewater to waters of the State, from handling, processing, transport, and storage operations at coke or coal bulk terminals reasonably constitute a threat to the public interest, safety, or welfare, necessitating immediate adoption of emergency regulations as set forth in Exhibit A.

 13. Regarding bulk terminals located in Cook County, the Illinois EPA has become aware of complaints or observed that:

a) Large clouds of black dust travel beyond facilities’ property boundaries and into nearby neighborhoods, school yards, etc.;

b) Coke/coal dust is deposited upon, and blown into, residences, schools, and businesses on a daily basis;

c) Coke/coal dust accumulates on residents’ lawns, pools, vehicles, residential siding and brick, and outdoor and indoor furniture;

d) Residents are forced to avoid opening their windows or engaging in outdoor activities;

e) Residents have respiratory conditions that have been aggravated by coke/coal dust emissions;

f) Large, uncovered piles of coke/coal are being stored directly adjacent to water bodies;

g) Through the use of inadequate berms and/or unlined sedimentation ponds, runoff from these coke and coal storage sites is being inadequately contained in a manner that allows stormwater and/or wastewater into waters of the State;

h) Coke/coal has been deposited into off-site storm sewers, which ultimately discharge to waters of the State.

14. As enclosures may take a year or more to design and construct, they are incapable of providing immediate protection against the threats posed by these operations. Emissions of fugitive PM from coke or coal bulk terminals are inadequately controlled, and cannot be adequately controlled unless certain operations at the facilities, including storage, processing, handling, and transfer operations, are enclosed within a building or other structure. The proposed emergency amendments therefore require immediate measures, including road paving, use of dust suppression systems, setback requirements for storage piles from facilities’ property lines and nearby water bodies, containment of contaminated stormwater and/or wastewater, and disposal of coke and coal that has been on-site for more than a year.

15. Other statewide coke or coal bulk terminals could encounter problems similar to those at Cook County bulk terminals and should be subject to the emergency rule to ensure consistent regulation throughout Illinois and to prevent a localized problem from simply relocating to otherwise unregulated parts of the State. It is also key that the proposed amendments are in place before the Agency is compelled to take action on any new permit applications for coke or coal bulk terminals.

16. The Board’s current regulations generally address fugitive PM emissions and stormwater and wastewater runoff; however, the proposed emergency regulations are necessary to establish more detailed control requirements specific to emissions and discharges from coke and coal bulk terminal operations.

17. Undue delay or material prejudice would result if the control measures contained in the proposed emergency amendments are not implemented as soon as possible to address inadequately controlled emissions and discharges, necessitating immediate adoption of the amendments by the Board.

V. CONCLUSION

 For the foregoing reasons, the Board should immediately adopt the attached Part 213 as an emergency rule pursuant to the Board’s authority under the Act, regulations, and the Illinois APA.

ILLINOIS ENVIRONMENTAL

 PROTECTION AGENCY

By:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 Dana Vetterhoffer

 Assistant Counsel

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