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January 21, 2014

Via E-Mail

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

**RE: Public Comment on R14-20; Emergency Rulemaking Regarding
Regulation of Coke/Coal Bulk Terminals, New 35 Ill Adm. Code 213**

Dear Board Members:

Dynergy Midwest Generation, LLC (DMG) submits these comments to express our serious concerns with the Illinois Environmental Protection Agency's (IEPA) emergency rulemaking proposal to regulate coke/coal bulk terminals.

DMG has a direct interest in the emergency rule proposal as its wholly-owned subsidiary Havana Dock Enterprises, LLC owns the Havana Dock coal transfer facility located in Mason County. The Havana Dock facility transfers coal received from railroad cars to barges for delivery to DMG's Hennepin Power Station located in Putnam County. The emergency rule would immediately impose significant, costly and burdensome compliance requirements on the Havana Dock facility, several of which would have no environmental benefit given the rail-to-barge nature of the facility's operations. Moreover, as drafted, the emergency rule proposal's requirements could have a significant adverse impact on the delivery of coal to and, thus, interrupt the supply of electricity from the Hennepin Power Station. The Hennepin Power Station has a limited supply of coal on site and it is critical that an adequate coal supply be maintained by ongoing shipments from the barges loaded at the Havana Dock facility, its sole source of delivered coal. The emergency rule does not apply to coal-fired power plants that transfer coal from an on-site coal storage location to produce electricity. The Havana Dock facility is a critical component to the operation of the Hennepin Power Station and should be viewed as part of the Station and not be covered by this emergency rule given the unique circumstances.

The emergency rule raises several significant concerns, including fairness to affected facilities, infeasibility of certain key compliance requirements, and otherwise flawed implementation provisions. First, the emergency rule would impose several requirements that take effect immediately, including coal sampling/monitoring to demonstrate compliance with moisture content standards (§ 213.280(a)) and daily street sweeping/water spraying (§

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213.250(a)). Affected facilities would have no time to comply and effectively be forced into noncompliance with significant liability exposure.

Second, the substantive compliance requirements of the emergency rule would impose numerous challenges on affected facilities in terms of the technical and practical feasibility of achieving compliance. For example, the emergency rule would impose unreasonable compliance deadlines for many requirements that require significant up-front engineering, design and/or construction work to achieve compliance. For example:

- Section 213.325 requires implementation -- within 45 days -- of comprehensive wastewater and stormwater runoff controls, including a requirement that all sedimentation ponds and conveyance tributaries to such ponds be lined. It is entirely unrealistic to expect that, within 45 days, comprehensive wastewater and stormwater controls can be designed, permit applications submitted, permits issued by the IEPA, and controls constructed/installed (e.g., lining of ponds).
- Section 213.265 requires implementation of measures, such as water heating systems, to ensure adequate dust suppression when temperatures fall below 32 degrees Fahrenheit. The plan for such measures must be submitted within seven days. Again, it unrealistic to expect that detailed engineering plans to reconfigure a facility's dust suppression system can be developed in seven days and coordinated with other interrelated requirements in the rule (e.g., § 213.235 wastewater controls).
- Section 213.220 requires a plan for total enclosure of coal handling and transfer facilities to be developed within 45 days. Given the size and operations of these facilities, total enclosure of the affected equipment and coal handling locations will involve complex design engineering and planning, as well as significant cost. A 45-day deadline is wholly inadequate to allow for meaningful comprehensive planning and design engineering in coordination with all applicable requirements in the rule.
- The Section 213.220 requirement for total enclosure includes a requirement that entrances and exits remain closed except to allow entry or exit, but also requires structures to meet applicable building codes and utilize best practices to minimize the risk of fire or explosion. Based on our experience, the total enclosure apparently envisioned by the proposal is inconsistent with minimizing the risk of fire or explosion. The emergency rule, however, appears to denigrate employee safety to a secondary level of concern by mandating closure of entrances and exits.

None of these requirements in the emergency rule proposal had the prior benefit of constructive input from the affected industry. While avoiding undue delay may be IEPA's goal, affected facilities must be given a meaningful opportunity to achieve compliance. The rule proposal would benefit significantly if it were subject to input from affected industry through the Board's regular rulemaking process.

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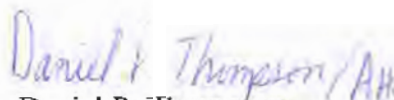
Finally, the emergency rule provides no flexibility to address facility-specific situations where compliance is technically infeasible, unreasonable in comparison to equally effective alternatives, or unnecessary. For example, as a rail-to-barge transfer operation, the Havana Dock facility does not transport coal by truck, yet the facility would be required to pave all roads within 90 days (§ 213.245), perform street sweeping/water spraying each day the facility is open for business (§ 213.250), and develop a plan to minimize the impact of truck traffic upon nearby residential areas (§ 213.275). Such requirements would further no environmental purposes targeted by IEPA's rule, but would impose significant compliance costs and burdens on DMG. As in other Board rules, flexible compliance provisions are warranted to address unique situations.

In sum, DMG urges the Board to deny the motion for emergency rulemaking so that the concerns identified by IEPA as the basis for the rulemaking proposal, as well as the substantive compliance requirements of the proposal, can be carefully and thoroughly addressed through the regular rulemaking process with benefit of full public participation and Board involvement as contemplated by the Environmental Protection Act. To the extent IEPA believes immediate action is needed at specific coke/coal bulk terminal facilities to address present threats to the public interest, safety or welfare, the Agency has adequate narrowly-tailored enforcement authorities to protect the public. The Havana Dock facility should not be subject to this rule given its unique circumstances and critical importance to the operation of the Hennepin Power Station. Simply put, the emergency rulemaking proposal is an overbroad and flawed approach that will unfairly impose significant burdens on many facilities that pose no threat to the public.

Thank you for considering DMG's comments.

Sincerely,

Dynegy Midwest Generation, LLC


Daniel P. Thompson
Vice President

cc: IEPA

IPCB Board Members:

Ms. Deanna Glosser, Chairperson

Ms. Carrie Zalewski

Ms. Jennifer Burke

Mr. Jerome D. O'Leary

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