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January 21, 2014

Members of the Illinois Pollution Control Board
C/o John Therriault, Assistant Clerk
Illinois Pollution Control Board
100 W. Randolph Street, Ste. 11-500
Chicago, IL 60601-3218

RE: Case R14-20 -- Consideration of IEPA decision to seek emergency rules under Section 27(c) of the Illinois Environmental Protection Act

Dear Honorable Members of the Illinois Pollution Control Board,

Peabody Energy respectfully requests the Illinois Pollution Control Board (Board) reject the Illinois Environmental Protection Agency's designation of an "emergency" allowing it to pass this emergency rule without adhering to the normal rulemaking requirements.

Peabody Energy operates multiple underground mines and surface operations across the United States and holds leadership positions in production and reserves in the Illinois Basin. In the state of Illinois, wholly owned subsidiaries of Peabody Energy operate the Gateway Mine near Coulterville, as well as the Cottage Grove Mine and Wildcat Hills Mine in Gallatin and Saline counties. In 2012, these mines produced approximately 6.4 million tons and employed over 650 salaried and hourly employees that earned over $70 million in wages and benefits. In addition, Peabody has over 2.2 billion tons of proven and probable coal reserves in Illinois.

Bulk material facilities are critical to the delivery of our product to U.S. utilities and manufacturing facilities in a safe, efficient and affordable manner. In 2012, over 4.4 million tons of our company's Illinois production passed through Illinois bulk material facilities – this represents almost 70% of our production in the state. In addition, over 2.8 million tons of coal from our western mining operations passed through these facilities.

The proposed emergency rule will not only impact our operations in the state, but will also disrupt the ability to deliver low-sulfur coal that brings affordable and reliable electricity to the benefit of the citizens of Illinois. These are hardships that are not justified by the facts in the case and are not acceptable under the pretense of "emergency rulemaking". In particular:

- The facts surrounding this rulemaking do not constitute an emergency.
- This proposed emergency rulemaking will serve to circumvent the regulatory process and its requirements without cause.
- This action is bad policy and sets a precedent for future attempts to abuse the emergency rule making process.

Section 27(c) of the Illinois Environmental Protection Act (IEPA) states that the Illinois Pollution Control Board may only permit administrative emergency rule making when "a disaster emergency exists, or when the Board finds that a severe public health emergency exists" or "the Board finds that a situation exists which reasonably constitutes a threat to the public interest, safety or welfare".

The facts surrounding this rulemaking do not constitute an emergency.

The Proposal and Motion for Emergency Rulemaking (Proposal) provides that the "emergency" is because the emissions of fugitive particulate matter and runoff from coke and coal piles constitute "violations of the Act and Board regulations". The violation of the Act and Board regulations may, at best, call for increased compliance monitoring but does not constitute an "emergency" or even the requirement of further regulation.

The Proposal cites complaints from a bulk terminal in Cook County as evidence of a threat to the public interest, safety or welfare. However, IEPA Director Lisa Bonnett noted in the Governor's press conference on the emergency rule that "[y]ou have seen a lot of historical waste being removed from these sites and you are seeing good actions from those" indicating no such "emergency" exists.

The Governor later stated that the threat was not the Cook County operator but his concern was that the facilities would "just move from Chicago to another part of Illinois". Clearly the possibility that there could be violators in the future is not an "emergency" that would authorize the agency to circumvent the regulatory requirements of passing new rules.

This proposed emergency rulemaking will serve to circumvent the regulatory process and avoid the requirements necessary to enact a rule without cause.

Despite the fact that petroleum coke and coal have been safely stored and transported throughout the state for decades, the IEPA now alleges, without support, that the threat to public welfare is so great it will not even allow the 14 day response period, thus forcing employers to respond to the Proposal in only one and a half business days after its filing. Additionally, by declaring this emergency rule, the IEPA can force employers to comply with the rule without the economic impact of the rule being reviewed. This is not how the regulatory process should work.

This action is bad policy and sets a precedent for future attempts to abuse the emergency rule making process.

The Board has a very limited history of allowing emergency rules and has generally only approved them when a temporary gap in laws needed to be filled or as a result of a natural disaster such as the 1993 floods. However, if this rule is allowed, the precedent of allowing emergency rules based on conclusory statements and limited facts would be far reaching. Almost any allegation of harm could be determined to meet the requirement of an emergency rule requiring compliance with rules that have not been shown to provide a benefit commensurate with the costs of compliance. Certainly these uncertain conditions do not produce a business climate that would promote investment. Additionally, an improperly passed emergency rule challenged in court could leave taxpayers at risk for expenses associated with such litigation.

We therefore ask the Board to deny the IEPA's request and ask them to work within the rulemaking process in order to ensure all those affected are allowed the opportunity to be heard and all required rulemaking requirements are met.

Thank you,

Keith Haley

Keith Haley
Senior Vice President Midwest Operations
Peabody Energy Americas