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STATE OF ILLINOIS
Pollution Control Board

PC# 41

Lisa Bonnett, Director
Illinois Environmental Protection Agency
1021 North Grand Ave. East
P.O. Box 19276
Springfield, IL 62794

Re: Rulemaking Regarding Regulations of Coke/Bulk Terminals (R14-20)

Dear Director Bonnett,

It has come to the attention of the below-listed organizations that the Illinois Environmental Protection Agency (IEPA) has decided not to proceed with the coke and coal bulk terminals rulemaking (Docket No. PCB R14-20) before the Illinois Pollution Control Board (PCB). On behalf of the organizations listed below, we write today to make clear to you that we find that decision to be unreasonable and contrary to the public interest. IEPA has made no showing that improvements in the regulation of these sites, which IEPA originally believed warranted emergency action, are no longer needed. We strongly urge IEPA to reconsider its decision to not proceed with the rulemaking.

In its Proposal and Motion for Emergency Rulemaking dated January 16, 2014, IEPA provided the following background information:

> 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 [Environmental Protection] Act and [Pollution Control] Board regulations. These emissions reasonably constitute a threat to the public interest, safety, or welfare . . . 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 . . .

Page 1. IEPA also noted that "[e]xposure to PM can have serious health consequences, such as cardiovascular and respiratory effects and increased mortality." Page 2. IEPA identified a clear potential threat to public health that needs to be resolved. Although the PCB determined that an emergency situation did not exist, it acknowledged that "the rules governing bulk terminal operations for petcoke and coal could be improved," Opinion and Order of the Board (Jan. 23, 2014), at 1 and 49-50, and ordered that the proposal be continued as a general rulemaking, id. at 50.

Notwithstanding the Board's direction to move forward with a rulemaking and recognition that the current rules are lacking, over the next 15 months after the Board's order, IEPA proposed

exactly nothing. In stay motion after stay motion, IEPA asserted that it was meeting with stakeholders on the issue. Then, on April 10 of this year, IEPA informed the PCB that it "does not intend to proceed with this rulemaking at this time." IEPA provided just two sentences purportedly justifying that major decision: "The Agency has updated the new administration regarding this matter. Further, the Agency has considered the effect of the City of Chicago's recent promulgation of an ordinance addressing petcoke-related operations in the City, as well as pending litigation related to petcoke activity in the City." Status Report, at 3 (Apr. 10, 2015). Neither of those justifications, however, comes close to demonstrating that regulation of coke and coal bulk terminals is no longer needed. On the contrary, there is still a significant need for specific, detailed, and prescriptive regulations to prevent potential injury to public health and the environment.

First, IEPA noted that it had "updated the new administration regarding this matter," suggesting, perhaps, that it considers the change in administration to be a valid excuse to discontinue its efforts at writing a rule. However, a public health threat is a public health threat, and a public nuisance is a public nuisance, regardless of who sits in office. A change in administration must not derail a rulemaking that is necessary to protect public health and welfare. Indeed, it is IEPA's obligation to the citizens of Illinois to ensure that such a rulemaking moves forward.

Second, IEPA points to the City of Chicago's regulations dealing with bulk material storage and handling facilities as a reason that statewide regulations are no longer needed. This claim stands in sharp contrast with IEPA's statements in its original Proposal and Motion for Emergency Rulemaking, in which it asserted that "[o]ther 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." Page 6. Coke and coal bulk terminals that are not located within Chicago filed comments in the docket on the proposed emergency rulemaking, demonstrating that such companies do exist outside of Chicago. There is evidence that bulk coke and coal facilities outside of Chicago have caused problematic dust pollution. *See, e.g. McEvoy v. IEI Barge Services*, 622 F.3d 671 (7th Cir. Ill. 2010). And bulk material facilities may even become more prevalent in other areas of Illinois if companies relocate to avoid having to comply with Chicago's new regulations. These facilities must not be permitted to create a public nuisance or endanger public health and the environment simply because they do not happen to be located in the City of Chicago.

Moreover, as detailed in comments submitted to the Chicago Department of Public Health,[1] we do not believe that the City of Chicago regulations are as strict and comprehensive as is necessary to protect public health and welfare. Among other shortcomings, the Chicago regulations allow coke and coal bulk terminals a full two years to enclose coke and coal piles, fail to provide an opportunity for public input in facilities' fugitive dust plans, create inadequate reporting requirements, allow an improperly low moisture content, contain vague and insufficient runoff management requirements, and make broad variances available for many of the key requirements, including the implementation deadlines. KCBX Terminals Company, one

[1] Available at http://www.cityofchicago.org/content/dam/city/depts/cdph/environmental_health_and_food/PetCoke_Public_Comments/NRDC_SETF_Alliance_for_the_Great_Lakes_ELPC_Faith_in_Place_RHAMC_and_Sierra_Club_Recvd_2-7-14.pdf.

of the biggest coke transloading facilities in the state, has already been granted variances related to covering conveyors and requirements for dust suppression system operation during freezing weather.

In fact, even with the City of Chicago regulations in effect, facilities in Chicago are still failing to comply with national air pollution standards that US EPA set to protect public health. For example, as recently as February 14, 2015, the 24-hour average concentration of particulate matter less than ten micrometers in diameter (PM10) at the southeast monitoring site at KCBX's North Terminal was 175 micrograms per cubic meter, while the National Ambient Air Quality Standard for PM10 is 154 micrograms per cubic meter.[2] The City of Chicago regulations are unable to ensure compliance with national standards; they certainly provide no acceptable basis to forgo state regulations.

Third, IEPA seems to suggest that pending litigation regarding several coke and coal handling sites is also a valid reason to discontinue its rulemaking efforts. The fact that the problem has become so significant as to require litigation is a nonsensical explanation for failing to develop regulations that would more effectively prevent pollution from occurring in the first place. As noted by the PCB, "the Board does have regulations addressing these facilities." Opinion and Order of the Board (Jan. 23, 2014), at 49. Although some general prohibitions on air pollution do apply to coke and coal handling facilities, and lawsuits may be brought based on violations of these standards, a reactive strategy is not nearly as protective of the public health and the environment as prescriptive, detailed equipment and work practice requirements and other safeguards. Moreover, litigation is necessarily focused only on specific problems at specific facilities, and it is highly unlikely that any resolution to that litigation would address all the concerns that a broader rulemaking would encompass.

IEPA's decision to not proceed with the coke and coal bulk terminals rulemaking is inconsistent with the public interest and the need to protect the public from the hazards of particulate matter from coke and coal handling facilities. We respectfully urge the Illinois Environmental Protection Agency to reconsider its decision to not proceed with the rulemaking pertaining to coke and coal bulk terminals. We stand ready and willing to assist IEPA in developing appropriate rules.

Sincerely,

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[2] United States Environmental Protection Agency, *Fenceline Air Monitoring at Pet Coke Storage Facilities*, http://www2.epa.gov/petroleum-coke-chicago/fenceline-air-monitoring-pet-coke-storage-facilities (last visited June 2, 2015).

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