BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:	:	
	:	
	:	R14-20
EMERGENCY RULEMAKING REGARDING REGULATIONS OF COKE/BULK TERMINALS: NEW 35 ILL. ADM.CODE 213	:	(Rulemaking-Air/Land/Water)

NOTICE OF FILING

To: See Attached Service List

PLEASE TAKE NOTICE that on January 21, 2014, I filed with the Clerk of the Pollution Control Board of the State of Illinois, Kinder Morgan Terminal's Comments in Response to IEPA's Proposed Emergency Rulemaking, a copy of which is attached hereto and herewith served upon you.

By:_____
Darren J. Hunter

Darren J. Hunter
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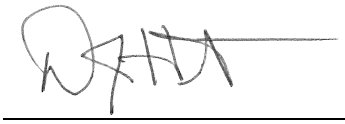
CERTIFICATE OF SERVICE

NOW COMES Darren J. Hunter, counsel for Kinder Morgan Terminals, and provides proof of service of the attached Response to IEPA's Proposed Emergency Rulemaking and Notice of Filing upon the parties listed on the attached Service List, by having a true and correct copy affixed with proper postage placed in the U.S. Mail at Rooney, Rippie, Ratnaswamy LLP, 350 West Hubbard Street, Suite 600, Chicago Illinois 60654, at or before 4:30 p.m. on **January 21, 2014**.



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Dated: January 21, 2014

SERVICE LIST

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KINDER MORGAN
TERMINALS

January 21, 2014

ORIGINAL

Mr. John Therriault
Clerk, Illinois Pollution Control Board
100 W. Randolph St., Suite 11-500
Chicago, Illinois 60601

Re: R2014 – 20 – Kinder Morgan's Comments in Response to IEPA's Proposed Emergency Rulemaking regarding Regulation of Coal/Coke Bulk Terminals – Illinois Administrative Code Part 213

Dear Mr. Therriault:

Kinder Morgan, Inc. (Kinder Morgan) respectfully requests that the Illinois Pollution Control Board (Board) exercise sound judgment and reject the Illinois Environmental Protection Agency's (IEPA) Motion for an Emergency Rulemaking regarding the Regulation of Coal/Coke Bulk Terminals (Emergency Rulemaking) under a new proposed Part 213 of the Board's regulations.

Kinder Morgan is submitting brief comments at this time in the event the Board decides to rule on IEPA's motion at the regularly scheduled Board Meeting on January 23, 2014. If the Board extends the comment period, Kinder Morgan reserves the right to submit supplemental comments.

Kinder Morgan is directly impacted by IEPA's proposal, as Kinder Morgan owns three bulk coal terminals in the State of Illinois. These terminals are highly regulated, subject to the jurisdiction of IEPA, USEPA, OSHA and MSHA, among other agencies. Kinder Morgan's three terminals have numerous environmental controls in place to comply with applicable regulatory requirements, including the fugitive dust regulations set forth in in Part 212, Subpart K of the Board's regulations. We operate these terminals in a clean and compliant manner, and take pride in the fact that these terminals provide 72 jobs (including 32 union jobs) and hundreds of jobs to supporting contractors. The products we handle are necessary to supply a wide variety of industries in Illinois that also supply hundreds to thousands of jobs.

The Board should reject IEPA's motion for an Emergency Rulemaking based on well-settled legal principles and common sense:

- The Emergency Rulemaking does not meet the legal standard of "emergency" under section 27(c) of the Illinois Environmental Protection Act (Act).
- Under section 27(c) of the Act, the Board can only exercise its discretion to approve an Emergency Rulemaking if a situation exists that reasonably constitutes a threat to

public interest, safety or welfare. The Board is not permitted to bypass the regular rulemaking procedures unless a true emergency situation exists. *See Citizens for a Better Environment v. Illinois Pollution Control Board,* 152 Ill. App. 3d 105 (1st Dist. 1987).

- The Board already has regulations in place that cover fugitive emissions. *See* 35 Ill. Adm. Code Part 212 (Title 35: Environmental Protection, Subtitle B: Air Pollution, Chapter I: Pollution Control Board, Subchapter c: Emission Standards and Limitations for Stationary Sources, Part 212: Visible and Particulate Matter Emissions). Part 212 of the regulations covers industry in general, including coal and coke bulk storage terminals.
- IEPA has not demonstrated in its motion why the current regulations in Part 212 are ineffective and must be supplemented by the new proposed Part 213 that would apply exclusively to coal and coke bulk handling terminals. Because there are already rules in place, it is not an emergency. Therefore, IEPA should be required to follow regular rulemaking proceedings.
- IEPA alludes to certain incidents that occurred at petroleum coke (petcoke) terminals in Cook County. Kinder Morgan is not in a position to comment on the situation in Cook County, except to note that the situation was publicized many months ago, so it is impossible to understand why it suddenly rises to the level of a state-wide emergency.
- Kinder Morgan also emphasizes that petcoke and coal are separate and unrelated commodities. The two should not be conflated.
- The coal industry in Illinois has been in existence long before environmental regulations have been in place, and there is not a sudden emergency that has arisen in the year 2014 related to coal handling.
- The proposed Emergency Rulemaking contains broad and sweeping mandates. IEPA has not stated in its motion why each of these mandates must immediately go into effect under emergency rulemaking proceedings. In a true emergency situation, IEPA should only address the "emergency" issues in the context of an Emergency Rulemaking, and should address the remainder of the issues through the traditional rulemaking process.
- Many of the requirements in the Emergency Rulemaking are technically infeasible and economically unreasonable. Certain requirements are impossible to achieve under any time-frame and other requirements cannot be achieved in the "emergency" time-frame set forth in the proposed Emergency Rulemaking.
- It is infeasible, for example, to limit the height of coal storage piles to 30 feet within 60 days of the effective date of the emergency rule (section 213.235). There is insufficient space on terminal properties to limit the height of coal piles in this manner, and barge traffic is limited in the winter months, so the coal piles cannot even be moved. Regardless, it is absolutely unnecessary to limit the height of coal piles so long as terminals comply with the fugitive emission requirements set forth in Part 212.
- It is also infeasible to totally enclose coal storage piles (section 213.220). Not only is total enclosure technically and economically unreasonable and unrealistic, it also will lead to safety concerns given the potential combustibility of coal.

- The storm water runoff controls (section 213.325) are already sufficiently covered in existing regulations and associated permits and, therefore, should not be considered an emergency. This provision is also unrelated to fugitive air emissions. Furthermore, time is necessary to review and reconcile the controls outlined in the Emergency Rules against existing terminal NPDES permits. It is unlikely that the Emergency Rules provide a higher level of protection than existing requirements; however, they will most certainly create a significant burden to the terminals that may not be achievable in the short timelines outlined in the Emergency Rules.
- In addition, certain requirements in the Emergency Rulemaking are entirely unrelated to fugitive emissions but will have significant negative consequences on business and commercial interests. For example, the proposed requirement in section 213.215 that coal and coke must be removed from the terminal within one year after the date it was received from the source in no way benefits environmental interests. These commodities are not considered hazardous wastes under RCRA, but IEPA improperly intends to impose storage restrictions in the Emergency Rulemaking as if these commodities were hazardous wastes. IEPA's proposed storage restrictions may result in contract violations and will affect business operations. With adherence to our permits and the use of proper controls, the length of time the commodity remains on the property has no bearing on air emissions.
- These are just a few examples of the deficiencies in the Emergency Rulemaking. Kinder Morgan is prepared to provide a line-by-line summary of all of the deficiencies by submitting comments in the context of a traditional rulemaking.

Kinder Morgan is compelled to comment on this proposed Emergency Rulemaking because, like all coal and coke terminals, it will not be able to come into compliance in the required time-frame, if at all. Therefore, Kinder Morgan will be faced with the dilemma of either shutting down operations or operating out of compliance. Neither option is acceptable. Therefore, if the Board were to grant IEPA's motion for an Emergency Rulemaking, Kinder Morgan may have no other option but to litigate, a road which Kinder Morgan would prefer to avoid.

In conclusion, there simply are no factual or legal grounds to support an Emergency Rulemaking. Given the overall impact of the Emergency Rulemaking, including the questions surrounding feasibility and the severe economic and commercial consequences, due process must prevail. Kinder Morgan is confident the Board will ignore political pressure, reject IEPA's Emergency Rulemaking, and require IEPA to follow the regular rulemaking proceedings, including notice and comment. Under traditional rulemaking proceedings, all parties will have an opportunity to present evidence and be heard.

Sincerely,

Michael Pitta
Kinder Morgan Terminals
Vice President of Environmental Health and Safety