

ILLINOIS POLLUTION CONTROL BOARD
April 16, 2015

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

ORDER OF THE BOARD (by D. Glosser):

On January 16, 2014, the Illinois Environmental Protection Agency (IEPA) filed a motion and proposal for emergency rulemaking (Mot.) pursuant to Section 27(c) of the Environmental Protection Act (Act) (415 ILCS 5/27(c) (2012)), Section 5-45 of the Illinois Administrative Procedure Act (IAPA) (5 ILCS 100/5-45 (2012)), and Section 102.612 of the Board's rules (35 Ill. Adm. Code 102.612). IEPA proposed an emergency rule applicable statewide to govern the handling of coal and coke, including petroleum coke (or "petcoke"), at bulk terminals and other specified facilities. The proposed emergency rules required immediate measures that included road paving, use of duct suppression systems, setback requirements, containment of stormwater, and disposal of coke and coal that have been on site for more than one year.

On January 23, 2014, the Board denied IEPA's motion and declined to adopt an emergency rule; however, the Board agreed to proceed with the proposal as a general rulemaking. The Board directed the hearing officer to issue an order asking IEPA to amend its proposal to include the information required in 35 Ill. Adm. Code 102. Emergency Rulemaking Regarding Regulations of Coke/Bulk Terminals: New 35 Ill Adm. Code 213, R14-20, slip op. at 1 (Jan. 23, 2014).

On January 29, 2014, the hearing officer directed IEPA to provide the additional information required by Section 102.202 of the Board's procedural rules as an amendment to its proposal by March 3, 2014. On February 20, 2014, IEPA filed a motion asking that this proceeding be stayed (Mot.). The Board received no responses to IEPA's motion.

On March 20, 2014, the Board granted IEPA's request to stay the proceedings until June 23, 2014, and directed IEPA to provide a status report at that time and to request an additional stay if necessary.

On June 23, 2014, IEPA filed a status report and a request for an additional stay of the proceedings (Mot. II). In its motion, IEPA indicated that it has conducted outreach meetings with different stakeholders and interested parties, and will continue to do so as rule development continues. Mot. II at 3. IEPA also indicated that it was reviewing the efforts of other authorities to regulate petcoke bulk terminals within the State of Illinois. *Id.* IEPA could not designate a certain date when a general rulemaking proposal that incorporated input from stakeholders and provided for long-term, comprehensive regulation of petcoke and coal bulk terminals would be

available. *Id.* IEPA therefore asked the Board to continue to stay the proceedings in this matter pending its actions to investigate appropriate long-term control approaches, develop regulations implementing those approaches, and develop a rulemaking submittal in compliance with Board regulations. *Id.* IEPA indicated that it is willing to provide quarterly status calls with the hearing officer to keep the Board apprised of the rulemaking development process. *Id.*

On July 10, 2014, the Board granted IEPA's request to stay the proceedings. However, the Board indicated a reluctance to grant an indefinite stay, even with periodic status reports to the hearing officer. Therefore, the Board stayed the proceedings until January 12, 2015. The Board required IEPA to provide a status report to the Board and allowed that a request for an additional stay could be made. The Board noted that if substantial progress has not been made the Board may consider closing this docket.

On January 12, 2015, the IEPA filed a status report and request for additional stay (Mot III). IEPA asked for an additional stay of 90 days to give IEPA "an opportunity to update the new administration regarding this matter". Mot. III at 3. IEPA indicated that at that time the IEPA "should be able" to provide the Board with details on how IEPA intends to proceed.

On January 22, 2015, the Board granted IEPA a stay for an additional 90 days. However, the Board noted that this docket was opened as an emergency rule docket over one year ago. Absent a rulemaking proposal in the immediate future, the Board informed IEPA that it is inclined to close this docket at the end of the 90-day stay. Therefore, the Board directed IEPA to provide the Board with additional information by April 13, 2015.

On April 10, 2015, the IEPA filed a status report (Report) that indicates that IEPA has updated the new administration and considered the effect of the City of Chicago's (City) ordinance addressing petcoke operations in the City. In light of those considerations, IEPA indicated it "does not intend to proceed with this rulemaking at this time" and IEPA supports the Board's dismissal of the docket. Report at 3.

The Board finds that maintaining this docket is no longer necessary. Therefore, the Board dismisses the rulemaking and closes the docket.

IT IS SO ORDERED.

I, John T. Therriault, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on April 16, 2015 by a vote of 5-0.



John T. Therriault, Clerk
Illinois Pollution Control Board

