

January 21, 2014

Ms. Marie Pistord
Hearing Officer
Illinois Pollution Board
100 W. Randolph Street
Suite 11-500
Chicago, Illinois 60601

Re: R2014-020-Consideration of IEPA
Decision to Seek Emergency Rules Under
Section 27(c) of the Illinois Environmental
Protection Act

Dear Ms. Pistord:

On behalf of the American Waterways Operators, the national trade association for the tugboat, towboat, and barge industry, we urge the Illinois Pollution Control Board (IPCB) to reject the designation of “emergency disaster” for the rules proposed by the Illinois Environmental Protection Agency (IEPA) involving operations of petroleum coke (petcoke), coal, and bulk material storage facilities.

The U.S. tugboat, towboat, and barge industry is a vital segment of America’s transportation system. The industry safely and efficiently moves more than 800 million tons of cargo each year, including more than 60 percent of U.S. export grain, energy sources such as coal and petroleum, and other bulk commodities that are the building blocks of the U.S. economy. The fleet consists of more than 4,000 tugboats and towboats, and over 27,000 barges of all types. These vessels transit 25,000 miles of inland and intracoastal waterways, including the Mississippi River system, the Great Lakes and the Atlantic, Pacific, and Gulf Coasts. The tugboat, towboat, and barge industry provides the nation with a secure, low-cost, environmentally friendly means of transportation for America’s domestic commerce. AWO members are committed to leading the marine transportation industry in safety and environmental stewardship.

Section 27(c) of the Illinois Environmental Protection Act clearly and unequivocally states that the IPCB may only permit administrative emergency rulemaking when one or more of the following conditions exists: a disaster emergency, a severe public health emergency, or a situation which reasonably constitutes a threat to the public interest, safety, or welfare.

Here, the IEPA's proposed rules clearly do not rise to the level of an "emergency" under Illinois law.

The handling and storage of petcoke, coal, and related bulk materials have not contributed to, nor have they created, any public health or disaster-related emergencies. None of the above conditions exist warranting emergency rulemaking under the IEPA or any other state administrative body. Further, while the rule does not apply only to petcoke, it is important in the context of an emergency rule to understand that petcoke is non-toxic, non-hazardous and not an imminent safety threat. There are no known illnesses or health effects associated with petcoke dust. Indeed, this was the conclusion of a report issued by the U.S. Environmental Protection Agency.¹

Nothing has happened that warrants an emergency rulemaking regarding the handling of coal. The IEPA is improperly using the emergency rulemaking procedures in an attempt to circumvent the proper and deliberative rulemaking process. There is no imminent emergency relating to coal or other bulk materials, and the IEPA should not be permitted to conflate petcoke and coal in order to avoid the mandatory notice and comment rulemaking process for proposed regulations related to the handling of coal. The implications of such an unwarranted action could have a profound effect on AWO member companies that transport petcoke and coal and rely on it for the continuity of their businesses. Given the significant impact of this rule on AWO member companies up and down the river, AWO urges the IEPA to go through the regular rulemaking process, so that this rule can be properly reviewed and considered.

We respectfully request that IPCB carefully examine all available data and elect a course of action that respects the spirit and the letter of the law. We look forward to working with the IPCB on this matter. Thank you for your consideration of our concerns.

Sincerely,

A handwritten signature in cursive script that reads "Lynn M. Muench".

Lynn M. Muench

¹ U.S. EPA Screening Level Hazard Characterization of Petroleum Coke,
http://www.epa.gov/chemrtk/hpvis/hazchar/Category_Petroleum%20Coke_June_2011.pdf