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

**RE: R2014-020 - Emergency Rulemaking Regarding Regulations of Coke/Bulk Terminals: New 35 ILL. ADM. Code 213**

On behalf of the Illinois Manufacturers' Association, thank you for the opportunity to provide comments with respect to recent emergency regulations filed by the Illinois Environmental Protection Agency. The IMA is a statewide trade organization representing nearly 4,000 companies and facilities that employ 580,000 workers and contribute the single largest share of the Gross State Product. Members of the IMA strongly oppose the content of the rules and the designation of the rules as an "emergency."

We respectfully request that the Illinois Pollution Control Board reject the proposed emergency rules immediately so that all parties can utilize the normal rulemaking process.

Section 5-45 of the IL Administrative Procedure Act requires that agencies may use this short form rulemaking procedure only if the agency finds that an emergency exists and the agency must make an effort to notify the affected public. Further, the Illinois Environmental Protection Act (Section 27c) clearly articulates that the IPCB may only permit administrative emergency when one or more of the following conditions exist: a disaster emergency exists, when the IPCB finds that a severe public health emergency exists, or when the Board finds that a situation exists which reasonably constitutes a threat to the public interests, safety or welfare.

**1. There is no threat to public interest, safety or welfare.**

The United States Environmental Protection Agency (USEPA) does not classify petcoke as a hazardous material. According to the Congressional Research Service, which cited the June 2011 study completed by the USEPA:

> *"The U.S. Environmental Protection Agency does not classify petcoke as a hazardous waste. EPA has surveyed the potential human health and environmental impacts of petcoke through its High Production Volume (HPV) Challenge Program and found the material to be highly stable and non-reactive at ambient environmental conditions. Most toxicity analyses of petcoke find it has a low potential to cause adverse effects on aquatic or terrestrial environments as well as a low health hazard potential in humans, with no observed carcinogenic, reproductive or developmental effects."*

Further, the Chicago Department of Public Health (CDPH) agrees with the USEPA. According to the CDPH:

> *"There are no other known illnesses or health effects associated with petcoke dust. This was the conclusion of a report issued by the United States Environmental Protection Agency based on available scientific data."*

**This independent scientific analysis from the USEPA clearly and unequivocally contradicts Illinois EPA's unsubstantiated claim that exposure can have serious health consequences and that emergency action is necessary. Petcoke is a non-toxic, non-hazardous material and is not an imminent health threat.**

More than thirty states including Illinois have petcoke storage and handling facilities that have operated for more than seventy years. The proposed IEPA rule is far stricter and costlier than any law, rule, or regulation in any other state in the nation.

## 2. The Emergency Rule Imposes Unreasonable or Unnecessary Economic Costs

Section 230.550 of the Illinois Administrative Code provides criteria by which the Joint Committee on Administrative Rules can suspend emergency rules. Subsection 3a asks the question "does the emergency rule impose unreasonable or unnecessary economic costs on any citizen of this state?" The IEPA did not reach out to impacted parties to determine the economic cost and refused to share draft rules with industry to get comment.

It is very clear that the Illinois EPA's emergency rulemaking will result in a significant economic burden on many employers across the state who have not created or contributed to any public health or disaster-related emergency. The proposed rule impacts hundreds of companies engaged in the manufacturing, electric generation, and transportation sectors who will pay significant money for roads, facility enclosures, pads, ponds, and other items. **Each of these companies will be forced to expend significant financial resources within a very tight timeline that may not be physically possible to comply with because the IEPA developed arbitrary timelines without consulting industry.** For example:

> A. The Illinois EPA concluded that it "may take a year or more to design and construct" an enclosure and then proposed a rule that companies must submit a plan with very specific requirements for total enclosure of all coke piles, coal piles, conveyors, transfer stations, truck loading and unloading areas, screening areas, crushing areas, and sizing areas. Despite the fact that IEPA acknowledges that it will take more than a year for design and construction, the IEPA rule requires a specific plan within 45 days.

B. Section 213.245 requires owners and operators to pave all roads within the source within 90 days in a manner sufficient to handle the expected traffic. It is extremely difficult to pave roads in the middle of an Illinois winter where average temperatures hover at the freezing level. In Chicago, the average high temperature in January is 32 degrees and the average low is 18 degrees. According to the U.S. Department of Transportation, *"in cold climates, asphalt cement behaves like an elastic solid... at low temperatures, it may become too brittle and crack."* With regard to concrete, the Illinois Department of Transportation provides that the minimum temperature at which companies can pave with concrete is 40 degrees for the binder course and 45 degrees for the surface course.

C. While companies are required to construct all new paved roads within 90 days, they are also required to move the materials according to setback boundaries from property lines, water and well setbacks, and locate them on impermeable bases and pads within 60 days. Companies may not be able to move the materials while the roads are being paved. If companies spend sixty days creating a base and moving product on current roads, they only have thirty days to meet the road requirement.

**3. One Isolated Incident Does Not Constitute an Emergency**

Illinois is one of more than thirty states where petcoke has been stored and transported for more than seventy years without major incident. In August of 2011, one operator in Cook County experienced blowing dust due to several factors: (1) they did not have the required water suppression system as required under current laws (Fugitive Dust, Clean Water Act, etc) and permits; (2) a period of very hot weather, (3) low river levels on the Mississippi River prohibited the movement of barge traffic, and (4) very high winds. This incident was reported and the Illinois EPA and Attorney General's Office are appropriately enforcing the violation using current laws.

**Outside of this one isolated incident in Cook County, neither the Illinois EPA nor the Illinois Attorney General's Office have identified any other fact-based case in Illinois directly related to petcoke dust where an operator violated state or federal laws or operated in violation of their permit.**

Since the one incident, the alleged violator sold the company and the new operator has installed more than $30 million in water suppression devices. In the last six months, there have been no additional verified problems with dust. It is critical that a regulator such as the Illinois EPA utilize fact-based reports and data to develop rules and regulations rather than anecdotal stories.

Finally, I would note that the incident in Cook County was widely reported by the media in August 2013. If dust from petcoke is truly an emergency, then I would question why the Illinois EPA waited more than six months to draft and file emergency rules. This is a purely a political issue and clearly does not rise to the level of a threat to the public interest, safety or welfare of the state.

In 2007, Governor Blagojevich and the Department of Healthcare and Family Services filed an emergency rule that clearly did not meet the legal requirements for an emergency rule as set forth in statute. Several individuals including a principal of the Illinois Manufacturers' Association filed litigation to overturn the HFS rule. Both the Circuit Court and Appellate Court ruled against the state before they finally settled at a cost of nearly $2 million to the taxpayers.

**On behalf of the Illinois Manufacturers' Association, I respectfully request that the Pollution Control Board reject the emergency rules.** It is very clear that there is no immediate threat to the public interest, safety or welfare of Illinois and any rulemaking can and should go through the normal rulemaking process so that all parties have an adequate time to respond and participate.

Thank you for your consideration.

Sincerely,

Mark Denzler
Vice President & COO

Cc: IPCB Board Members:

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