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January 21, 2014

Mr. John Therriault, Clerk
Illinois Pollution Control Board
James R. Thompson Center
100 W. Randolph Street, Suite 11-500
Chicago, Illinois 60601-3218

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

Dear Mr. Therriault:

BP Products North America Inc. appreciates the opportunity to comment on the pending action before the Illinois Pollution Control Board (IPCB) related to IEPA's proposed "emergency" rules on bulk storage terminals which handle petroleum coke and coal (R2014-020).

BP's Whiting Refinery, located in northwest Indiana, is a major supplier of refined products to the Midwest and other parts of the United States. Our Whiting Refinery ("Whiting") started operations in 1889 and is currently the 6th largest refinery in the U.S. With a capacity to process over 400,000 barrels of raw crude per day, Whiting produces up to 15 million gallons of refined products daily. In 2012, Whiting employed nearly 10,000 full-time and contract personnel, hundreds of whom are residents of Illinois. BP has been and continues to be a long-term business presence in the Chicago area, employing more than 2,500 people. Approximately three million U.S. consumers rely on Whiting for fuel. The recently completed Whiting Refinery Modernization Project invested in excess of $3.8 billion to modernize the Refinery by reconfiguring or replacing the end-of-life crude distillation and coking units and adding world-class hydro-treating, sulfur recovery and coking capacity. BP is currently contracted with KCBX in Chicago for terminal services and handling of petcoke fuel produced at our Whiting Refinery.

We urge the Illinois Pollution Control Board (IPCB) to reject IEPA's proposed "emergency" rules, at R2014-20, which impose onerous and unnecessary regulations on bulk storage terminals handling petroleum coke and coal. These terminals have been doing business in Chicago and elsewhere in Illinois for decades, and are already regulated on both the Federal and State levels through numerous existing laws and regulations.

Section 27(c) of the Illinois Environmental Protection Act (Act) clearly and unequivocally states that the IPCB may only permit administrative emergency rulemaking when one or more of the

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following conditions are presented: a disaster emergency; a severe public health emergency; or when the Board finds that a situation exists which reasonably constitutes a threat to the public interest, safety or welfare. The emergency rulemaking authority "should be limited to those situations where it is clearly necessary so that the notice and comment procedures are not diluted." *Senn Park Nursing Ctr., a Div. of Mid-States Health Centers, Inc. v. Miller*, 118 Ill. App. 3d 733, 744 (1983), *aff'd sub nom. Senn Park Nursing Ctr. v. Miller*, 104 Ill. 2d 169 (1984); *see also Champaign-Urbana Pub. Health Dist. v. Illinois Labor Relations Bd.*, 354 Ill. App. 3d 482, 491 (2004) ("The reason for adopting an emergency rule should be truly emergent and persuasive to a reviewing court.").

Here, the IEPA's proposed rules clearly do not rise to the level of an "emergency" under Illinois law. While IEPA argues that bulk storage terminals located in Cook County have produced localized and sporadic complaints of fugitive emissions, it is our understanding that the 2013 windstorm situation cited by the IEPA has been addressed since the time of any alleged complaints. One facility has removed all petcoke from the property. The other facility has made significant investments in advanced emissions control equipment, and is presently working with the U.S. EPA to install air monitors to confirm whether the new system is providing the appropriate level of controls.

IEPA may not improperly use the emergency rulemaking procedures in an attempt to circumvent the correct rulemaking process. Facts must exist "to show that without these emergency rules the public would be confronted with a threatening situation." *Citizens for a Better Env't. v. Illinois Pollution Control Bd.*, 152 Ill. App. 3d 105, 109 (Ill. App. Ct. 1987). According to both the United States Environmental Protection Agency and the City of Chicago, petcoke is not a hazardous product, nor does it pose any emergent threat to health or the environment. Petroleum Coke Category Analysis and Hazard Characterization Report, pp. 12 & 17, December 2007, *available at* http://www.epa.gov/hpv/pubs/summaries/ptrlcoke/c12563rr2.pdf (petcoke has "an extremely low environmental hazard potential" and "has a low health hazard potential"); City of Chicago, *What is Petroleum Coke?*, at http://www.cityofchicago.org/petcoke (no known illnesses or health effects are associated with petcoke dust beyond those associated with any other form of dust); Screening-Level Hazard Characterization, Petroleum Coke Category, Environmental Protection Agency, June 2011, available at http://www.epa.gov/chemrtk/hpvis/hazchar/Category_Petroleum%20Coke_June_2011.pdf (same).

Simply put, there is no imminent emergency or threatening situation related to petcoke transport and handling that would justify imposing unreasonable regulatory burdens and compliance timeframes, outside of the normal rulemaking process, on an industry which is already subject to various state and federal regulations, and which has been operating in Illinois for decades.
We support implementation of regulations that result in the desired effect of reducing dust emissions without imposing unreasonable regulatory burdens on industry. As with many

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materials, petroleum coke handling does require adequate fugitive dust plans to manage the impacts of dust. However, there are many different ways that can be achieved. IEPA should work closely with impacted businesses to allow companies the flexibility they need to develop optimal solutions to fugitive dust emissions. Given the significant impact this rule will have on Illinois employers, and the dangerous precedent that could be set by using administrative emergency rules to impose regulations for non-emergency issues, the IPCB should reject these emergency rules. The regular rulemaking process, with its public input process and legislative review, should be used so that all of the important parts of the rule can be reviewed and considered before it become effective.

Beyond the legal and factual question of whether these proposed rules meet the required definition to be "emergency rules," there are also many technical areas of concern with the proposed regulations as currently drafted. For example:

- "Moist": The definition in the proposed emergency rules is a significant departure from the current state standard for moisture and is based on (California) South Coast Air Quality Management District Rule 1158. In California's Rule 1158, the term "moist" is applied to very specific conditions (e.g. "non-lump," "moist" or "using") and is not applied to open stockpiles. The standards were determined in conjunction with local industry using local historical data to base the measurement criteria.. We propose clarifying the use of the term "moist" to be more consistent with the conditions used in Rule 1158 and determining representative regional measurement criteria for each product impacted by the regulation, rather than the blanket adoption of inappropriate California criteria which do not take into account local production characteristics and other regional conditions. Separately, dust suppression agents (surfactants) are designed to act to create a "crust" that would prevent water absorption, making the regulation unintentionally in conflict to the extent it requires both dust suppression methodologies and moisture content minimums

- Transfer Points: Significant portions of this definition originate in Rule 1158 and apply to facilities with enclosure, not an open storage facility. We propose adding "and other than the open storage area where material is stored" to the definition to clarify actual transfer points. Also, if the intent of the proposed rule is to reduce and control fugitive dust emissions, water spray dust suppression systems should be required to be used when dust is present. Such systems should be used when needed, as overuse results in unnecessary water usage.

- Paving: Requiring substantial infrastructure upgrades like paving, which may only be temporary until enclosures were built, is an unreasonable and wasteful requirement. We recommend review of the Enclosure Plan and identification of temporary and

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permanent roads, and then requiring paving of permanent roads only. In addition, the 90-day timeframe for paving appears to be extremely aggressive considering that: 1) It is unlikely that a party could plan roadways while still determining a site layout for enclosures, all within the 45 day enclosure plan timeline; 2) Designing, permitting, bidding and constructing the road will likely take more than 90 days; and 3) Seasonal weather conditions may prevent meeting these aggressive timelines.

- Total Enclosure: 45 days to submit a plan is very aggressive when considering the engineering, permitting, necessary due diligence, and other external factors affecting timing. And, two years to enclose is also extremely aggressive and unrealistic taking into account normal project considerations and local weather restrictions. A more practicable and realistic timeframe for total enclosure would be three years.

- Impermeable base: In the interim period prior to full enclosure, requiring the petcoke storage piles to be on an impermeable base or pad is unwarranted, and such measures could not be in place within 60 days. Such a requirement would also make construction of an enclosed facility more difficult and time consuming.

- Additional Subpart C Water Pollution Controls: Requiring additional water pollution controls when there has been no notice of a water pollution emergency is without basis. Adequate state and federal regulations already exist to protect waterways. This comment also illustrates, once more, that a true emergency does not exist with respect to petcoke.

- Hazardous Waste Determination: As written, the frequency of the determination needs clarity.

These are illustrative examples only. Many other technical issues need to be explored, and thus bulk storage terminals and other impacted businesses have raised significant concerns with, and objections to, the proposed emergency rules. BP adopts and incorporates these concerns to the extent applicable to BP. These concerns confirm the need for a regular (not emergency) regulatory rulemaking process.

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In sum, we urge the IPCB to reject these emergency rules and to conduct a deliberate, fact-based analysis that allows for thoughtful and complete industry and community involvement to properly develop additional regulatory controls, if needed, that are protective of human health and the environment and fair to Illinois business.

Sincerely,

William J. Hollis
BP Products North America Inc.
Head of Supply
East of Rockies Fuel Value Chain

cc: IPC Board Members
Chairperson Deanna Glosser
Ms. Carrie Zalewski
Ms. Jennifer Burke
Mr. Jerome D. O'Leary

CERTIFICATE OF SERVICE

I certify that on January 21, 2014, I caused the foregoing, filed with the Illinois Pollution Control Board on January 21, 2014, to be served via overnight mail to the parties on the Service List, including:

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