



January 17, 2014

Mr. John Therriault
Clerk, Illinois Pollution Control Board
100 W. Randolph St., 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 John:

On behalf of the Chemical Industry Council of Illinois (CICI) and our affected members, 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 operators of petroleum coke (petcoke), coal and bulk material storage facilities.

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 following conditions exists: a disaster emergency exists, when the Board 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 interest, safety or welfare. Here, the IEPA's proposed rules clearly do not rise to the level of an "emergency" under Illinois law. See, for example, *Citizens for a Better Environment v. Pollution Control Board*, 152 Ill. App. 3d 105, 504 N.E.2d 166 (1st Dist. 1987).

The companies that we represent have not contributed to, nor have they created, any public health or disaster-related emergencies in their handling and storage of petcoke, coal or related bulk materials. None of the above conditions exist warranting emergency rulemaking by 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 certainly is not an imminent health threat. There are no other known illnesses or health effects associated with petcoke dust. This was the conclusion of a report issued by the U.S. Environmental Protection Agency (USEPA). This report and its finding can be accessed at: [http://www.epa.gov/chemrtk/hpvis/hazchar/Category Petroleum%20Coke June 2011.pdf](http://www.epa.gov/chemrtk/hpvis/hazchar/Category%20Petroleum%20Coke%20June%202011.pdf)

Furthermore, the emergency rulemaking also specifically targets the coal industry, which has been in existence for centuries. Nothing has happened that warrants an "emergency" rulemaking regarding the handling of coal. It appears that IEPA is improperly using the emergency rulemaking procedures in an attempt to circumvent the correct rulemaking process. Simply put, there is no imminent emergency related to coal or any other bulk materials, and IEPA should not be permitted to conflate petcoke and coal in order to avoid the mandatory notice and comment rulemaking process for its proposed regulations related to the handling of coal. The implications of this designation are widespread with the potential to negatively affect

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not only operators handling and storing coal and other bulk materials throughout the State of Illinois, but the many manufacturers, utilities and transportation companies that rely on petcoke and coal for their business. Given the significant impacts that this rule will have on Illinois employers, 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 becomes law by fiat.

An attempt to permit this emergency rulemaking will only impede the pursuit of a necessary and rational resolution to this issue. We respectfully request that IPCB carefully examine all available data and elect a course of action that avoids protracted legal confrontation and respects the spirit and the letter of the law.

IEPA's "emergency" proposal will also have a profound impact on commerce in the State of Illinois. The chemical industry in Illinois is the 3rd largest manufacturing sector in the state. Illinois is also the 4th largest chemical producing state in the nation. The industry directly employs almost 45,000 Illinoisans at an average wage of \$97,000 a year. In addition, 299,242 Illinois jobs are supported by the business of chemistry. In all, the business of chemistry in Illinois generated \$40 billion worth of products, and exported \$7.9 billion, making the industry the second largest exporter in the state. Further, in July, 2012 *Chemical Week* reported that the Chicago-Joliet-Naperville area was listed as the top metro area in the U.S. for chemical manufacturing employment.

Thank you for your time and consideration. If you or your staff has any questions or comments, please do not hesitate to contact me in the Springfield office at (217) 522-5805.

Sincerely,



Mark A. Biel,
Executive Director

CC: IPCB Board Members:
Ms. Deanna Glosser, Chairperson
Ms. Carrie Zalewski
Ms. Jennifer Burke
Mr. Jerome D. O'Leary