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STATE OF ILLINOIS
Pollution Control Board

ILLINOIS POLLUTION CONTROL BOARD
January 29, 2014

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

HEARING OFFICER ORDER

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 would require immediate measures that include road paving, use of dust 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 the 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 stated:

While the Board is not convinced an "emergency" exists, the Board does have regulations addressing these facilities and the Board believes that the rules governing bulk terminal operations for petcoke and coal could be improved. Also, the Board believes that the proposal will benefit by proceeding through the regular rulemaking process. Therefore, in order to examine this issue more closely, the Board will proceed with IEPA's proposal under Section 27 of the Act (415 ILCS 5/27 (2012)) as general rulemaking to address the public health and environmental concerns raised by IEPA and the commenters. The Board directs the hearing officer to enter 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).

Part 102 of the Board's rules govern regulatory proceedings. Section 102.202 includes several items that may be appropriate to be included in a rulemaking proposal. While IEPA has provided some of that information, other items were not included. For example, Section 102.202(c) requires a "synopsis of all testimony to be presented by the proponent at hearing." 35 Ill. Adm. Code 102.202(c). As IEPA's proposal did not anticipate a hearing, this material was not included. IEPA also did not provide the information required by Section 102.202(e).

Section 102.202(k) states: “[w]hen any information required under this Section is inapplicable or unavailable, a complete justification for the inapplicability or unavailability.” 35 Ill. Adm. Code 102.202(k).

In its reply (*see* PC 31 Reply at 5), IEPA indicated that it would propose a general rulemaking proposal “to further codify the protections addressed” in the emergency proposal. Given IEPA’s representation and the need for additional information, IEPA is directed to provide the additional information required by Section 102.202 as an amendment to its proposal by March 3, 2014. If IEPA believes that additional time is necessary, IEPA should direct a motion to the hearing officer explaining its reasoning for seeking additional time. If IEPA does not wish to amend its proposal and wishes to proceed with the proposed amendments already filed, hearings will be set after March 3, 2014.

IT IS SO ORDERED.



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