

# **Southeast Side Coalition to Ban Petcoke**

**banpetcoke@gmail.com**

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*Via email to: EnvComments@cityofchicago.org.*

February 17, 2015

City of Chicago, Department of Public Health  
Attn: Environmental Permitting and Inspections  
333 South State Street, Room 200  
Chicago, IL 60604

Re: Chicago Port Railroad Company and Midwest Marine Terminals Inc. Combined Variance Request

To Whom It May Concern:

Thank you for the opportunity to comment on the combined application of Chicago Port Railroad Company and Midwest Marine Terminals Inc. (“Applicant,” “Applicants,” and “facilities”) for variances from the City of Chicago, Department of Public Health’s Rules and Regulations for Control of Emissions from the Handling and Storage of Bulk Material Piles (“Rules”). These comments are submitted on behalf of the Southeast Side Coalition to Ban PetCoke (“Coalition”), a community organization made up of residents of Chicago’s Southeast Side. The Coalition was formed to provide concerned residents with a forum to organize and respond to the storage of bulk materials along the Calumet River in Southeast Chicago. For the reasons set forth below, the Applicants’ application is incomplete and fails to demonstrate that the requested variances will not have an adverse impact on the community and environment. Therefore, the application to allow noncompliance with the Rules should be denied.

The Applicants’ facilities at 11701-12201 South Torrence operate in close proximity to and are bordered on the Northwest side by residential housing.<sup>1</sup> The Applicants’ facilities are bordered by the Calumet River to the South and East sides.<sup>1</sup> The application, lacks a description of and “pertinent data” related to the “population and geographic area affected by, or potentially affected by, the process or activity,” as required by requests for variance under Part E, 8.0.<sup>2</sup> The application also lacks “a demonstration that the issuance of the variance will not create a public nuisance or adversely impact the surrounding area, surrounding environment, or surrounding property uses.”<sup>3</sup> Without adequate supporting information, the Applicants request a number of permanent variances from the Rules as analyzed below:

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<sup>1</sup> <https://www.google.com/maps/place/12201+S+Torrence+Ave,+Chicago,+IL+60617/@41.6760191,-87.5580845,576m/data=!3m1!1e3!4m2!3m1!1s0x880e276a6927df0b:0x5381e10c85042154>

<sup>2</sup> City of Chicago Department of Public Health , *Rules and Regulations for Bulk Materials Storage*, Part E, 8.0(2)(b).

<sup>3</sup> *Id.*

## OBJECTION TO JOINT APPLICATION

Chicago Port Railroad Company and Midwest Marine Terminals Inc. are described as “sister corporation[s].”<sup>4</sup> Chicago Port Railroad Company “provides transportation services,” while Midwest Marine Terminals Inc. “provides...material handling and storage services.”<sup>5</sup> Transportation and material handling/storage are very different operational purposes and require unique processes – all of which would not fall under the purview of the Federal Railroad Safety Act. Based on the information provided and without a comprehensive discussion of organizational structure, it is unclear why the Applicants chose to apply for variance jointly – other than to cite, and potentially take advantage of, a poorly reasoned preemption argument. The Applicants fail to provide supporting documentation related to the State’s classification of both Applicants as a “railroad operating property.” As such, each Applicant should be required to resubmit an individual variance request.

## OBJECTION TO VARIANCE FROM THE DEFINITION OF “BULK SOLID MATERIAL”

The Applicants maintain that: “the materials handled and stored at the Facility are fertilizer (MAP , DAP , Potash , Urea), magnesite, pig iron, salt, kaolin, alumina, calcium, aluminate clinker, tire shreds, steel coils, cement, flyash, ground blast furnace slag, aggregates, sand, pea gravel, gravel, traprock, granite, limestone, lightweight Merrimac, iron ore rock, landscape boulders, quartzite, black dirt, scrap iron, briquettes, bushling, HBI fines, slag fines, plate & structural, DRI fines, bundles, iron rich material, broken concrete, crushed concrete and asphalt grindings, but do not include coke or coal.”<sup>6</sup>

The Rules define “Bulk Solid Material”<sup>7</sup> and do not permit for the exemption of vague, unsubstantiated amounts of materials that otherwise meet the criteria for mandated compliance. More information is necessary, including the specific quantities of materials used in the process or activity, as required by the Rules.<sup>8</sup> If, as the Applicants’ list alleges, the items do not fall within the definition of regulated Bulk Solid Materials, a thorough description of each material handled and stored at the facilities should be provided to the Commissioner and community for commenting and decision-making purposes. Applicants should not take advantage of carefully-constructed definitions because a comprehensive list of regulated materials is not explicitly provided – allowing applicants to do so undermines the purpose, history, adaptive nature, and public health implications of the Rules. The Applicants should not be granted variance to choose which items should be monitored under the Rules.

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<sup>4</sup> Combined Variance Application from Chicago Port Railroad Company and Midwest Marine Terminals Inc., 11701-12201 South Torrence, Chicago, IL, 60617, *available online at:* [http://www.cityofchicago.org/content/dam/city/depts/cdph/environmental\\_health\\_and\\_food/Dec192014/VarReqChgoPortRRCoMidMarTerInc1170112201STorr.pdf](http://www.cityofchicago.org/content/dam/city/depts/cdph/environmental_health_and_food/Dec192014/VarReqChgoPortRRCoMidMarTerInc1170112201STorr.pdf).

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> City of Chicago Department of Public Health , *Rules and Regulations for Bulk Materials Storage*, Part A, 2.0 (3).

<sup>8</sup> City of Chicago Department of Public Health , *Rules and Regulations for Bulk Materials Storage*, Part E, 8.0 (2) (b).

## SECTION 3.0: OPERATING AND MAINTENANCE PRACTICES

### OBJECTION TO VARIANCE FROM FUGITIVE DUST MONITORING

The Applicants request variance “from the installation and maintenance of permanent fugitive dust monitors” because: (1) the materials handled at the facilities do not include coke or coal, (2) there have never been any complaints regarding visible emissions from operations, (3) emissions from Bulk Solid Materials handling operations are “negligible and insufficient to generate opacity greater than ten percent or fugitive dust visible beyond the facilities’ property lines”, and (4) the existing pollution and industrial uses of the area “would not result in any helpful use of the data collected.”<sup>9</sup> Making a determination that no useful data would be collected in a highly polluted area does not meet the requirements for variance set out in the Rules; in fact, the Rules conceivably should collect all relevant data to determine efficacy of the Rules and cleanup of the community.<sup>10</sup>

The Applicants provide unsupported details related to cost, \$1,000,000, and technological capabilities – namely that monitors are inaccurate and ineffective.<sup>11</sup> The Applicants propose alternative methods of compliance, including indoor storage and hoods, which are described as offering benefits “much greater than the benefits of monitors.”<sup>12</sup> Because this is an unsubstantiated assertion, it is difficult to determine how the supplied measures offer the same or comparable advantages of mandated Fugitive Dust Monitoring, required by the Rules. The Rules were promulgated to ensure governance over industrial facilities, to document pollution, and to streamline monitoring processes used by facilities. To circumvent these Rules by relying on “best management practices” is not an alternative measure that is preferable to the Fugitive Dust Plan and Fugitive Dust Monitoring processes meticulously drafted within the Rules.

### OBJECTION TO VARIANCE FROM WIND MONITORING

The Applicants seek variance from the Wind Monitoring provision of the Rules because: “whether a weather station is installed at the Facility or not has no impact on the public or surrounding area.”<sup>13</sup> The Applicants provide another unsubstantiated cost estimate of \$1,000,000 and note that a weather station “would provide no helpful data that access to online wind speed and direction data already provides [sic].”<sup>14</sup> This explanation fails to meet the requirements of the Rules, and the Applicants make no effort to explain why online data is preferable to compliance with the Rules. The Applicants do not describe the percentage of operations that occur outdoors nor which materials are subject to unpredictable wind. Allowing the Applicant to self-monitor via reliance on the Internet, specifically, to comply with Part B, (5) causes the Coalition concern regarding the facilities’ capabilities to prevent additional air pollution in the area.

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<sup>9</sup> Variance application, *supra* note 4.

<sup>10</sup> City of Chicago Department of Public Health, *Rules and Regulations for Bulk Materials Storage*, Part E, 8.0.

<sup>11</sup> Variance application, *supra* note 4.

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

## OBJECTION TO VARIANCE FROM CONVEYORS

The Applicants request exemption from Part B, 3.0(6), which requires conveyors to be covered and enclosed to reduce or eliminate fugitive dust emissions.<sup>15</sup> The Applicants maintain that “covering the spouts and transfer points of the [portable] conveyors...adequately ensures that fugitive dust does not migrate from the conveyors to areas surrounding the facility.”<sup>16</sup> However, the Applicants fail to provide support of their assurance that the materials will stay within the facilities’ boundaries rather than “migrate.” The Rules were drafted to contain Bulk Solid Materials and protect the community; a promise by a polluter in the area does little to assuage the Coalition’s concerns.

## OBJECTION TO VARIANCE FROM WHEEL WASH STATION AND RUMBLE STRIPS

The Applicants request exemption from Part B, 3.0(8)(d), which requires all outgoing material transport trucks to pass over wheel wash stations and rumble strips.<sup>17</sup> The Applicants note that the facilities’ materials “do not have the propensity to accumulate on vehicles or tires.” However, the Applicants later offer, as an alternative, that “accumulated material [will be] manually removed” following visual inspections to prevent the material from leaving the facilities; the Coalition does not understand why manual removal would be necessary if material could not, in any way, ever accumulate on vehicles. The transport requirements in the Rules provide an important mechanism to ensure the public has minimal contact with materials that leave facilities during transport. Without additional information regarding the qualities and quantity of materials used at the facilities, an exemption is inappropriate. Further, the Applicants again provide an unsubstantiated installation and maintenance cost estimate without offering supporting proof or documentation. The Applicants have not evaluated “all reasonable alternatives for compliance”<sup>18</sup> and, accordingly, the Coalition requests that a variance from Part B, 3.0(8) be denied.

## OBJECTION TO VARIANCE FROM PAVING

The Applicants request variance from Part B, 3.0(14)’s requirements to pave internal roads. The Applicants maintain that there are no internal roads at the facilities. Without documentation, the Applicants note that the absence of pavement has not resulted in any public nuisance or adverse impacts.<sup>19</sup> There is no evidence supplied to suggest that the Applicants’ unpaved operation practices have been sufficient to protect the community and environment from dust emissions in the past. This shortcoming in the current practices may illustrate why this provision was included in the Rules. The transport requirements in the Rules provide an important mechanism to ensure the public has minimal contact with materials that leave facilities during transport. Despite providing another unsubstantiated estimate of cost, the Applicants do not show that pavement of internal roads is unduly burdensome to the facilities. As a result, the Coalition requests that a variance from Part B, 3.0(14) be denied.

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<sup>15</sup> City of Chicago Department of Public Health , *Rules and Regulations for Bulk Materials Storage*, Part B, 3.0(6)

<sup>16</sup> Variance application, *supra* note 4.

<sup>17</sup> City of Chicago Department of Public Health , *Rules and Regulations for Bulk Materials Storage*, Part B, 3.0(8)

<sup>18</sup> City of Chicago Department of Public Health , *Rules and Regulations for Bulk Materials Storage*, Part E, 8.0(3)(a)(ii).

<sup>19</sup> Variance application, *supra* note 4.

## OBJECTION TO VARIANCE FROM ROADWAY CLEANING

The Applicants request variance from Part B, 3.0(15)'s requirement to use a street sweeper on internal roads. The Applicants maintain that there are no internal roads at the facilities. Without documentation, the Applicants argue that a street sweeper is cost prohibitive and again note that the absence of pavement has not resulted in any public nuisance or adverse impacts.<sup>20</sup> There is no evidence supplied to suggest that Applicants' unpaved operation practices have been sufficient to protect the community and environment from dust emissions in the past. This shortcoming in current operational practices may illustrate why this provision was included in the Rules. The transport requirements in the Rules provide an important mechanism to ensure the public has minimal contact with materials that leave facilities during transport. Despite providing another unsubstantiated estimate of cost, the Applicants do not demonstrate that pavement of internal roads and road cleaning are unduly burdensome to the facilities. As a result, the Coalition requests that a variance from Part B, 3.0(15) be denied.

## OBJECTION TO RECORDKEEPING

The Applicants request variance from Part B, 3.0(17)'s requirement to keep and maintain daily logs related to each variance request. The Applicants claim that recordkeeping requirements under the Rules would necessitate hiring two employees, but fail to provide adequate support of this assertion. Because the Coalition requests that all related variances be denied, Part B, 3.0(17) in its entirety should apply to the Applicants' business practices.

## SECTION 5: OUTDOOR BULK SOLID MATERIAL STORAGE

### OBJECTION TO PROTECTION OF WATERWAYS

The Applicants request variance from Part D, 5.0(3)'s setback requirement. The Applicants maintain that: (1) "active waterline protection measures" exist on-site, (2) outdoor storage piles are not generally water-soluble, (3) no discrete storm water discharge points into any waterway, (4) storage areas along the river are comprised of absorbent materials designed to prevent storm water run-off, (5) contamination walls maintain a 25 foot setback, and (6) steel pilings provide an additional barrier in some areas along the river.<sup>21</sup> Without documentation, the Applicants argue that a setback is cost prohibitive, will "likely lead to shutdown," and again note that the current practices have not resulted in any public nuisance or adverse impacts.<sup>22</sup> There is no evidence supplied to suggest that the Applicants' waterway protection practices have been sufficient to protect the community and environment from dust emissions in the past. This shortcoming in current practices may illustrate why this provision was included in the Rules. The transport requirements in the Rules provide an important mechanism to ensure the public has minimal contact with materials that leave facilities by waterway. Despite providing another unsubstantiated description of on-site materials and estimate of cost impact, the Applicants do not show that setbacks are unduly burdensome to the facilities. As a result, the Coalition requests that a variance from Part D, 5.0(3) be denied.

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<sup>20</sup> *Id.*

<sup>21</sup> Variance application, *supra* note 4.

<sup>22</sup> *Id.*

## OBJECTION TO PROTECTION OF DUST SUPPRESSANT SYSTEM

The Applicants request variance from installation of a dust suppressant system because: (1) “the materials stored outdoors at the Facility do not produce significant fugitive dust,” (2) the estimated cost of implementation is too high, and (3) several materials stored at the facilities may not be sprayed with water.<sup>23</sup> Again, the Applicants fail to provide adequate description of the qualities and quantities of the materials stored at the facilities. Further, the Applicants do not offer supporting documentation to justify the cost estimate. Lastly, the Applicants fail to offer alternative methods of compliance required under the Rules.<sup>24</sup> There is no evidence supplied to suggest that the Applicants’ dust suppressant system practices have been sufficient to protect the community and environment from dust emissions in the past. This shortcoming in current practices may illustrate why this provision was included in the Rules. As a result, the Coalition requests that a variance from Part D, 5.0(5) be denied.

## OBJECTION TO PROTECTION OF RUNOFF MANAGEMENT

The Applicants request variance from installation and maintenance of sufficient stormwater management, erosion, and sediment controls because best management practices are already used at the facilities to control “all” stormwater discharge under a National Pollutant Discharge Elimination System (NPDES) Permit.<sup>25</sup> Again, the Applicants fail to provide adequate description of the qualities and quantities of the materials stored at the facilities. Further, the Applicants do not provide adequate description of “all” stormwater discharges, nor offer relevant information related to the scope of their NPDES Permit. Applicants do not offer supporting documentation to justify the cost estimate and likelihood of shutdown related to implementation of required controls. Lastly, Applicants fail to offer alternative and/or current methods of compliance. There is no evidence supplied to suggest that the Applicants’ runoff management practices have been sufficient to protect the community and environment from dust emissions in the past. This shortcoming in current practices may illustrate why this provision was included in the Rules. As a result, the Coalition requests that a variance from Part D, 5.0(6) be denied.

## OBJECTION TO VARIANCE PROVISIONS, GENERALLY

Section 11-4-770 of the Municipal Code of Chicago specifically provides the Department of Public Health with the authority to prescribe rules and regulations for the purpose of minimizing air pollution. The Rules were promulgated in response to complaints regarding substantial air pollution with a purpose to “prescribe reasonable, specific operating and maintenance practices to minimize emissions of airborne particulate matter...”<sup>26</sup> Due to the (1) area’s history of pollution; (2) purpose of the Rules; and (3) documented respiratory and visibility problems encountered on the Southeast Side of Chicago<sup>27</sup>, the Coalition fundamentally opposes the variance process and believes that the health of the citizens should be the highest priority of the Department of Public Health. The Coalition commented in opposition to

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<sup>23</sup> *Id.*

<sup>24</sup> City of Chicago Department of Public Health , *Rules and Regulations for Bulk Materials Storage*, Part E, 8.0.

<sup>25</sup> Variance application, *supra* note 4.

<sup>26</sup> City of Chicago Department of Public Health , *Rules and Regulations for Bulk Materials Storage*, Part A, 1.0.

<sup>27</sup> City of Chicago Department of Public Health , *Official Response to Public Comments on the Proposed Rules and Regulations For the Handling and Storage of Bulk Material Piles*, March 13, 2014.

the variance process when the Department of Public Health was considering the Rules, and the Coalition's position has not changed. The Coalition maintains that the Rules are already too lax and contain too many loopholes. The Department of Public Health should not grant exemptions to hard-fought regulatory protections that provide meager safeguards to the City's most vulnerable citizens. Further, industrial facilities, including Chicago Port Railroad Company and Midwest Marine Terminals Inc., should not be allowed to pick and choose which regulations they wish to comply with.

For these reasons, the Coalition respectfully requests that the Commissioner deny this application for variance.

Sincerely,

A handwritten signature in black ink, appearing to read 'Shelby Buettner', with a stylized flourish at the end.

Shelby Buettner  
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Environmental Advocacy Center  
Bluhm Legal Clinic  
Northwestern University Law School