



ENVIRONMENTAL LAW & POLICY CENTER

Protecting the Midwest's Environment and Natural Heritage

February 2, 2015

Julie Morita, M.D.
Acting Commissioner of Health
Chicago Department of Public Health
Attn: Environmental Permitting and Inspections
333 South State Street, Room 200
Chicago, IL 60604

RE: Comment on Variance Application from KCBX Terminal Company

Via email to EnvComments@cityofchicago.org

Dear Ms. Morita,

Thank you for the opportunity to comment on KCBX Terminal Company's ("KCBX") petition for a variance from Sections 6.0(5) and 6.0(6) of the City of Chicago Rules and Regulations Pertaining to the Handling and Storage of Bulk Material Piles, which require coal and coke to be enclosed by 2 years after the submission of an Enclosure Plan for the facility. KCBX asks for an additional 14 months to enclose its coal and coke piles, yet KCBX has not made the required showing that the variance would not negatively impact the surrounding area, as is required under § 8.0(2)(d), nor has it identified the population and area affected by its operations or provided a complete discussion of alternate methods of compliance, as required under §§ 8.0(2)(b) and (g).

Importantly, fugitive dust from coal and coke piles has serious negative impacts on the surrounding communities. Airborne particulate matter, such as coal and coke dust, can cause serious respiratory and cardiovascular damage. The dust is also a public nuisance, blowing into people's yards, coating homes and vehicles, and lowering property values. These adverse impacts will continue for an additional 14 months if the variance is granted. ELPC urges you to deny the variance.

I. Contrary to KCBX's assertions, its operations cause fugitive dust which negatively impact the surrounding area.

Contrary to KCBX's claims that "its operations have not affected its neighbors in the past," there is extensive evidence that its facilities have caused fugitive dust that negatively affects the surrounding area. First, the City of Chicago retained an expert consultant, CDM Smith, whose analysis of dust samples found evidence of petcoke offsite near the KCBX facility. Although

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KCBX employed a consultant who allegedly found no evidence of petcoke in surrounding soil, the Department of Public Health's response to KCBX's first set of variance requests explained that "soil sampling of the sort undertaken by KCBX is unlikely to detect petcoke even if it is present." P.3. In addition, the U.S. Environmental Protection Agency (U.S. EPA) issued a Notice of Violation to KCBX on June 3, 2014 for the company's violation of the Clean Air Act and the Illinois State Implementation Plan, based in part on dust wipe sampling from surfaces near KCBX.

The Notice of Violation issued by U.S. EPA was also based on the fact that pollution from the KCBX facility has violated National Ambient Air Quality Standards ("NAAQS") for particulate matter 10 microns in diameter or less ("PM10"). KCBX claims that data from the PM10 monitors on its sites do not matter for the purposes of NAAQS compliance, because the monitors are located "within the fence line of KCBX's facilities and adjacent to active piles and emissions sources." KCBX Petition for Variance, p.19. KCBX argues that NAAQS only apply to ambient air outside the facility boundaries, yet cites no source for this creative reimagining of what NAAQS require. In fact, federal law requires ambient air everywhere to comply with the standards set forth in the NAAQS; areas that do not meet the NAAQS are required to establish stringent pollution limitations to bring the ambient air back into compliance.

Moreover, U.S. EPA reported on its website that violations of PM10 standards have occurred at fenceline air monitors,¹ not at monitors in the middle of the site. Air monitors at a site's fenceline are carefully placed to monitor fugitive emissions that migrate off the property. And in this case, the existing fenceline monitors are not even capturing the full scope of pollution from the KCBX site: the consultant for the City of Chicago determined that there are gaps in KCBX's air monitoring programs, such that some fugitive dust that blows off the property may not even be detected. In summary, despite KCBX's claims, the evidence shows that its operations cause unsafe levels of fugitive dust and KCBX has failed to demonstrate otherwise.

II. KCBX has not demonstrated that the variance would not adversely impact the surrounding area.

The bulk material storage and handling regulations require every variance request to include "[a] demonstration that issuance of the variance will not create a public nuisance or adversely impact the surrounding area, surrounding environment, or surrounding property uses." § 8.0(2)(d). KCBX fails to make this showing.

In attempting to "demonstrate" why a variance will not lead to negative impacts on the surrounding area, KCBX claims that its facilities have not emitted fugitive dust in the past, and that it will continue to use its existing dust suppressant methods. As explained above, however, KCBX's existing dust suppression methods are not sufficient, as fugitive dust from the facilities has violated national standards and polluted surrounding neighborhoods. The facilities have negatively impacted the neighborhoods in the past, and reliance on the same dust control methods will lead to continued negative impacts in the future, including during the 14-month variance period, if granted.

¹ Fenceline Air Monitoring at Pet Coke Storage Facilities, U.S. Env'tl Protection Agency, <http://www2.epa.gov/petroleum-coke-chicago/fenceline-air-monitoring-pet-coke-storage-facilities> (Aug. 28, 2014).

Moreover, one of the primary dust suppression methods used at the South Terminal is the much-touted (by KCBX) pole-mounted water cannon system, which KCBX's petition states would be used to address fugitive emissions at the terminal during the variance period. Earlier in its request, however, KCBX states that as part of the site preparation work for the enclosure construction, the system of pole-mounted water cannons at the South Terminal will be "demolished." KCBX Variance Petition, p.3. If the water cannon system is demolished during the site preparation work, it certainly can't be used to control fugitive dust during the construction of the enclosure. In other words, if the variance is granted, there would be less dust suppression and likely greater fugitive dust during the 14-month variance period than has been experienced up to this point. Clearly, KCBX has failed to demonstrate that a variance would not adversely affect the surrounding area.

III. KCBX has not identified the population and area affected by its operations.

KCBX has failed to comply with the requirement that it provide "[a] description of the process or activity for which the variance is requested, including pertinent data on location, size, and the population and geographic area affected by, or potentially affected by, the process or activity." § 8.0(2)(c) (emphasis added). KCBX attempts to duck the issue by claiming that "[n]either the general public, nearby communities or the environment would be adversely affected by a grant of this variance request." KCBX Variance Petition, p.25. However, KCBX has not proven that the outdoor storage of coal and coke does not affect or potentially affect the surrounding area and communities. Accordingly, KCBX cannot use this allegation as an excuse to avoid complying with important requirements of a variance request. Indeed, the inclusion of the terms "potentially affected" in the regulations makes clear that City regulators want to know who might be affected by the process or activity, regardless of whether the variance petitioner believes they will actually be affected or not. KCBX's failure to comply with this requirement alone is reason enough to deny its variance request.

IV. KCBX has failed to adequately analyze compliance alternatives.

KCBX is also required, but failed, to provide a complete analysis of possible compliance alternatives. KCBX describes three types of enclosure structures, but does not explore alternatives beyond that. For example, KCBX does not explore the possibility of transloading coal and coke such that the material is never actually stored at the facility during the extra time needed to construct an enclosure (i.e. immediately transfer incoming coal and coke to an outgoing transportation vessel). Such an alternative should be viable in light of KCBX's representation, made at a stakeholder meeting on the bulk solids material rulemaking, that it "is not really a 'storage' facility, but a 'transfer' facility," and is "paid for the transfer."² KCBX also did not discuss fugitive dust control measures that could be implemented during the proposed variance period if a variance were granted, such as tarping the piles and/or erecting wind screens. Therefore, KCBX did not adequately consider alternate compliance options. KCBX's failure to comply with the alternatives analysis requirements is, again, reason enough to deny its petition.

² Stakeholder Communication: Bulk Solid Materials Rulemaking, http://www.cityofchicago.org/content/dam/city/depts/cdph/environmental_health_and_food/SummaryStakeholderCommKCBX_1-10-14.pdf, p.2 (Jan. 10, 2014).

* * *

In requesting a variance, KCBX has the burden of showing that the granting of the variance would not lead to adverse impacts to the surrounding area. KCBX has failed to make that showing. In addition, KCBX has failed both to describe the affected population and area and to sufficiently explore alternative methods of compliance. KCBX's facilities already cause fugitive dust that migrates off the property, and a 14-month extension for the enclosure requirement would subject the surrounding communities to an additional 14 months of negative impacts. This would be an unacceptable outcome. For all the reasons stated herein, KCBX's variance request should be denied.

Sincerely,

A handwritten signature in black ink that reads "Rachel Granneman". The signature is fluid and cursive, with a long horizontal flourish extending to the right.

Rachel Granneman, Associate Attorney
Jennifer Cassel, Staff Attorney
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