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May 22, 2020

By E-mail: envcomments@cityofchicago.org
Attention:
Dr. Allison Arwady
Commissioner of Public Health
City of Chicago
Department of Public Health
333 S. State Street, Room 200
Chicago, IL 60604

RE: Additional Comments to Revised Proposed Department of Public Health Rules for Large Recycling Facilities

Dear Dr. Arwady,

On behalf of Metal Management Midwest, Inc., which does business as Sims Metal Management (Sims), we very much appreciate the hard work that the Department of Public Health (the Department) did in proposing revisions to the Proposed Rules for Large Recycling Facilities (Revised Proposed Rules), and in providing detailed responses to the numerous public comments that the Department received since publication of the initial Proposed Rules.

We take this opportunity to issue limited additional comments regarding the Revised Proposed Rules.

(1) Outdoor Stockpile Heights and Barriers (Section 4.4): The Revised Proposed Rules establish a 30 foot maximum height for storage piles of inbound material awaiting to be processed in staging areas (Section 4.4.2). That height is reasonable and acceptable. Yet the height of processed recyclable material in storage piles awaiting shipment to customers (the Marketable Commodity) is limited to 20 feet (Section 4.4.1). That is not reasonable. The Marketable Commodity is steel ready for shipment and sale to steel mills. As a specification-grade commodity it contains negligible amounts of anything but steel and poses neither a fire nor public health risk. Often times, due to market conditions and production rates, stockpiles of steel Marketable Commodities will reach a height of up to 30 feet (as allowed by the current permit

requirement for Sims). There is no public health or other reason for the difference between the height of stockpiled unprocessed inbound recyclable materials and the height of outbound prepared ready to ship steel. For that reason the Department should allow the maximum height of both types of stockpiles to be 30 feet.

(2) Trade Secret/Confidential Business Information: Pursuant to the definition of "Trade Secret" in Section 2, the Revised Proposed Rules allows for a permittee to claim "Trade Secret" for "any scientific or technical information design, process, procedure, formula or improvement, or business plan which is secret in that it has not been published or disseminated or otherwise become a matter of general public knowledge, and which has competitive value." This definition is too narrow and needs to include Confidential Business Information similar to that allowed by federal law. *See* 40 CFR 2.201 – 2.215. "Trade Secret" is an intellectual property term of art that may not protect valuable and commercially sensitive Confidential Business Information such as the quantity of recyclable metal purchased, sold, processed or stockpiled. This type of information is kept strictly confidential, not disseminated to the public, and certainly not shared with other recyclers in the industry. This type of information has a definite "competitive value" deserving of protection from dissemination by the Department. To have this information made public would put Sims and other companies like it at a competitive disadvantage. Please reconsider. We propose the following standard:

> **"Trade Secret/Confidential Business Information"** means any information however presented which is non-public and commercially sensitive, confidential or proprietary business information, or otherwise a trade secret, developed or acquired by a business, including any scientific or technical information, or information concerning design, process, procedure, formula or improvement, proprietary equipment and/or technology, production processes, and methods, operations costs, equipment and/or process designs, diagrams, plans, specifications or projects, pricing, purchasing and sales, suppliers or customers, and types, quantities or stockpile heights or volumes of recyclable metal materials and products purchased, stored, processed and/or sold, including any memoranda, notes, summaries, analyses, forecasts, extracts, compilations, or studies that contain, are derived from or otherwise reflect such information. A business which is submitting information to the Department of Public Health pursuant to the Rules for Large Recycling Facilities may assert a business confidentiality claim covering the information by placing on (or attaching to) the information, at the time it is submitted to the Department, a cover sheet, stamped or typed legend, or other suitable form of notice employing language such as *trade secret, proprietary,* or *company confidential*. Confidential portions of non-confidential documents should be clearly identified by the business, and may be submitted separately to facilitate identification and handling by the Department. If the business desires confidential treatment only until a certain date or until the occurrence of a certain event, the notice should so state. Otherwise, such confidential treatment shall continue indefinitely.

(3) Air Quality Impact Assessment:

(a) Dispersion Modeling. While Sims agrees with evaluation of PM_{10} in the emissions and air dispersion modeling study portion of the Air Quality Assessment in the Design Report in the Revised Proposed Rules, we propose that emissions and air dispersion modeling be limited to new, modifying, and expanding facilities. The Revised Proposed Rules already require that an Existing Consequential Facility engage in PM_{10} monitoring in the dust monitoring plan. Requiring both modeling and monitoring would be unreasonably duplicative. PM_{10} monitoring as an actual measure of the impact of an existing Consequential Facility is a better measure than an estimate from emissions and air dispersion modeling study for PM_{10} emissions, which is only a predictive estimate of the impact of an existing Consequential Facility.

The Revised Proposed Rules already require the establishment of a local ambient monitoring network in the vicinity (at the fenceline), and that requirement will best establish the air quality impacts from an existing Consequential Facility. Longstanding technical guidance[1] notes that "the impacts of new sources that do not yet exist, and modifications to existing sources that have yet to be implemented, can only be determined through modeling" [underline added]. Thus, the air dispersion modeling study in the Revised Proposed Rules should be limited to new, modifying, or expanding facilities.

Sims disagrees that an air dispersion modeling study at an existing Consequential Facility is needed to assure proper placement of the PM_{10} monitors for use in the dust monitoring plan required in Revised Proposed Rules. The weather station requirements in the Revised Proposed Rules will assure that, in the event that there are no Sensitive Area receptor PM_{10} monitors, a PM_{10} monitor can be placed downwind of the prevailing wind direction (as determined by the site specific weather station monitor), and as the Revised Proposed Rules suggest, the PM_{10} monitor can be relocated as necessary to account for seasonal variation in wind direction.

(b) Mobile Source/Diesel Engines. The Revised Proposed Rules should be revised to note that PM_{10} emissions from point and fugitive operations at the facility, included in any air dispersion modeling study should only include **stationary** diesel engines at the facility. The City's existing idling reduction plan, which minimizes the unnecessary idling of vehicles and other mobile source engines, is sufficient to preclude adverse PM_{10} impacts from **mobile** source diesel engines.

(c) Calibration Plan. While Sims agrees with the Revised Proposed Rules in allowing for the use of monitoring instruments which meet Tier III guidelines, we propose a more direct and technically supported approach for the calibration plan. Specifically, Sims proposes that the site-specific correlation factor requirement in the Revised Proposed Rules be replaced with calibration in accordance with the monitor manufacturer's specifications. The Revised Proposed Rules currently require a calibration plan to determine a site-specific "correlation factor" between "an appropriate EPA laboratory test method" and the PM_{10} monitors

[1] Appendix W to 40 CFR Part 51, Guideline on Air Quality Models, Section 1.0.b. See also another similar statement per the same Guidance at 9.2.4.a.

included in the dust monitoring plan. The Revised Proposed Rules are silent on how to develop the stated correlation factor or what the acceptable criteria for the correlation factor would be. In addition, there is no EPA guidance nor acceptance criteria for establishing a "correlation factor" between ambient particulate monitors. Given this, Sims is proposing that the Rule require only that the PM_{10} monitors to be calibrated in accordance with the procedures provided by the manufacturer.

(4) Consequential Facility Air Monitoring Requirements: Sims proposes that the Reportable Action Level (RAL) response time use a 3-hour averaging period, not the 15-minute averaging period currently set out in the Revised Proposed Rules. A RAL 3-hour averaging period is more consistent than a 15-minute averaging period with the underlying goal of the RAL: to prevent the possibility of "exposure to health or environmental hazards".[2] A RAL set at 150 ug/m^3 with an averaging period of 3 hours would allow for timely and responsive mitigation actions by the facility (should it be determined that the monitored value is the result of facility operations), while ensuring that the health-based PM_{10} standard (150 ug/m^3, averaged over 24 hours) is not exceeded. A RAL set with an averaging period of 3 hours would also reduce the risk of spurious and/or inconsequential monitored values that could occur with a RAL set at a 15 minute averaging period.[3]

(5) Street Sweeper (Section 4.14.1.1): The Revised Proposed Rules require the use of a street sweeper that has a vacuum component. Section 4.14.1.1 states:

> "The street sweeper shall be equipped with a water spray, for use during nonfreezing weather, and a **vacuum system** to prevent Fugitive Dust during street sweeping." [Emphasis added]

Currently, under its existing permit, Sims uses an effective commercial street sweeper in conjunction with its water spray truck. In previous test runs and based on experience at other facilities, Sims found that a commercial sweeper with a vacuum system worked well only in non-industrial settings (such as commercial parking lots) -- in other words, not on uneven surfaces over which trucks and heavy equipment operate. The current commercial street sweeper in conjunction with its water spray truck, without the vacuum, was found to be effective in an industrial setting such as is found at a metal recycling facility. While the sweeper with a vacuum system may cost more than the alternatives, that does not translate into greater effectiveness in the industrial setting. We propose that Rules allow use of a commercial sweeper in conjunction with a water spray truck, and not require the vacuum system alternative.

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[2] The Department used the reference to "exposure to health or environmental hazards" in support of their use of a RAL in the Bulk Storage Rules. See City of Chicago, Department of Public Health, Official Response to Public Comments on Proposed Amendments to Rules For the Handling and Storage of Bulk Material Piles" (January 25, 2019), pg 11.

[3] In the Department's Draft Official Response to Public Comments on Proposed Rules for Large Recycling Facilities (May 12, 2020), pg 50, monitoring data from a Class V recycling facility collected from April 1, 2019 through June 30, 2019 would have triggered 85 reportable events over the course of the 91-day period. On average, this translates to a reportable event per day which is too frequent of an occurrence to allow for any meaningful or effective actions to be taken, regardless of the immediate response time.

Conclusion

We request that you seriously consider our limited additional comments and modify the Rules accordingly. We thank you and appreciate your attention to this matter. We also thank you and the members of the Department for your substantial effort on the Rules and responses to comments during this unprecedented COVID-19 pandemic.

In the meantime, if you have any questions or are in need of additional information, please do not hesitate to contact me.

Very truly yours,

Mark A. LaRose

MAL/mk

cc: Dave Graham, Assistant Commissioner Dave.graham@cityofchicago.org
Sims Metal Management