**Summary of Final Rules**

**for**

**Reprocessable Construction/Demolition Material Facilities**

**March 3, 2023**

The Chicago Department of Public Health (“CDPH”) is committed to the protection of public health and the environment. This includes the regulation of industrial facilities whose operations necessarily have an impact on surrounding communities, including facilities that reprocess construction and demolition (“C&D”) material.

On November 21, 2022, CDPH issued Revised Proposed Rules for Reprocessable Construction/Demolition Material Facilities (i.e., “rock crushing facilities”), together with a [Response Document](https://www.chicago.gov/content/dam/city/depts/cdph/InspectionsandPermitting/environmental-rules-regs/Reprocessing-Rules-Responsiveness-Document_Final.pdf) summarizing and responding to comments on an earlier version of the proposed rules, released on September 17, 2021. In sharing the Revised Proposed Rules,

CDPH provided a second opportunity for public comment period, until January 20, 2023.

During the second public comment period, CDPH received twelve comments, including detailed comment letters from both industry representatives and environmental and community advocates. (These comments, along with previous and final versions of the Rules, may be viewed at [www.chicago.gov/cdphcommunityinfo](http://www.chicago.gov/cdphcommunityinfo).) CDPH values public input and appreciates the engagement of all stakeholders in this matter. We carefully considered all comments and made some changes to the Final Rules (“Rules”), as described below.

Comments from Environmental and Community Advocates

In general, advocate organizations commented that facilities should be required to conduct air modeling rather than leaving this for CDPH to do “on the public’s dollar,” that regulatory grade air monitors should be required rather than “lower quality” near-reference monitors, that the rules should contain stricter pollution control requirements, and that the rules should further strengthen the ability for public involvement.

With respect to air modeling, CDPH notes that the City will not incur significant costs or effort to conduct these exercises, as CDPH already has the necessary meteorological and other data to conduct modeling, as a result of the Air Quality Zoning Ordinance, and will also have emissions inventory data provided by the facilities. Further, CDPH wishes to conduct the exercise to enhance the City’s understanding of these operations and their impacts to surrounding areas.

With respect to near-reference PM10 monitors, as explained in the earlier Response Document, the U.S. Environmental Protection Agency (USEPA) has several tiers of monitoring accuracy. The near-reference monitors are appropriate for fenceline monitoring and can be used to supplement USEPA ambient regulatory monitors. Further, other jurisdictions, such as the South Coast Air Quality Management District, have approved near-reference monitors to monitor fugitive dust from contaminated properties. Nevertheless, since near-reference monitors do have reduced accuracy when compared to FEM monitors, CDPH has changed Rule 7.6.3(f), so that the subtraction of upwind concentrations will not be allowed at facilities using non-FEM monitors.

In response to the other advocacy comments, CDPH made the following changes:

* In Rules 3.10.5 and 4.8.1, added that facilities must provide information about the location of air monitors, and added in 7.6.3(g)(iii) that monitor height information must be included in the data provided to CDPH with real-time notifications.
* In Rule 7.18, removed the option for facilities to submit reports via PDF.
* In Rule 5.12(g), added a requirement that facilities establish a process for receiving and recording complaints they receive from the public.
* In Rules 3.10.13(c) and 4.8.6(c), specified that the facilities’ idling reduction plans must include all vehicles waiting to come onto a Facility’s property, regardless of ownership, and must also include an outreach and enforcement plan to educate customers about anti-idling requirements.
* In Rule 7.4.1, clarified the stockpile location and height limits relative to perimeter fencing.
* In Rule 7.3, added a notification requirement for emergency situations that require an increase in materials accepted at a facility, and specified that facilities must return to permitted volumes following the emergency.
* In the Scope and Purpose Section, noted that all rock crushing facilities are deemed consequential for purposes of CDPH’s permitting guidelines.

CDPH notes that the Final Rules do not change the opacity limit as requested, as the limit in the Rules follows Illinois state law. The Final Rules also do not require facilities to post traffic counts. The traffic count requirement is a component of the Design Report, which is part of the application for new and expanding facilities. Thus, it is not an ongoing obligation. However, CDPH will post the Design Report along with the application during the public comment period, and it will also be available through FOIA.

Finally, CDPH analyzed the request that facilities cease work during high wind events and determined that this would not be necessary. The Rules require continuous air monitoring, as well as a contingency plan whenever the monitors detect a Reportable Action Level (RAL), regardless of wind speed. The contingency plan will describe a range of increasingly aggressive measures when an RAL is triggered. In addition, a study published in the [Journal of the Air & Waste Management Association](https://www.tandfonline.com/doi/epdf/10.1080/10473289.2000.10464037?needAccess=true&role=button) concluded that watering appears to be an effective and practical method of reducing PM10 emissions at wind speeds up to 18 m/sec (40.3 MPH). Given the continued requirement of the PM10 RAL and the effectiveness of control measures such as watering during high winds, there is no need to prohibit work during these episodes.

Comments from Industry Representatives

In general, industry commenters argued against the need for the new Rules, stating that they are overly complicated, overly broad and excessive, and that they will ultimately discourage recycling because of the increased costs. CDPH disagrees with these assertions, as explained in the initial Response Document. These Rules require appropriate control measures to mitigate the known environmental impacts of these operations. CDPH also notes that some of the provisions commenters objected to are not new and/or already exist as ordinance requirements. For example, the definition of “Incidental Debris” in the Rules is nearly identical to the definition in section 11-4-1910 of the Municipal Code, and most of the storage and handling requirements for incidental debris are directly from section 11-4-2000.

However, CDPH made a number of changes in the Final Rules to address industry concerns, as follows:

* Reorganized the Rules so that all requirements for new and expanding facilities are in one section, while all requirements for existing and modifying facilities are in a separate section, rather than having all requirements interspersed throughout the document.
* In Rule 5.5(a)(ii), regarding monitor placement, specified that other evaluations of potential exceedances shall be performed in accordance with EPA guidelines in 40 CFR 51 Appendix W.
* In Rule 5.5(b), added that, if CDPH requires air monitors to be relocated, CDPH will notify the facility in writing and explain the basis for the relocation.
* In Rule 5.5(g), with regard to monitoring for other contaminants, noted that CDPH will rely on relevant regulatory standards or guidelines published by OSHA, EPA, NIOSH, California OSHA and other agencies or organizations.
* In Rule 3.10.6, added that certain surfaces not traveled by heavy equipment do not have to be paved with concrete, though they must follow appropriate technical guidance manuals to prevent dust, standing water, potholes, and track-out.
* In Rules 3, 4, and 5, added that, to minimize redundancy, applicants may cross-reference materials that have already been provided and/or incorporate documents submitted to other regulatory agencies, as applicable.
* In Rules 5.13 and 5.14, clarified that a noise impact study is not required for temporary operating hours waivers to accommodate government infrastructure projects.
* In Rule 7.5.1, added that the requirement to repair or replace damaged tarps applies to vehicles within the operator’s control and that, for all other vehicles, the facility must have a tarping policy, which refuses service to improperly tarped trucks.
* In Rule 7.6.2(c), changed the opacity reading method to reference State law at 35 Ill. Admin. Code § 212.109 and opacity levels consistent with those under 35 Ill. Admin. Code Part 212 Subpart K.
* In the General Applicability and Requirements section, added additional language to ensure the protection of trade secrets.

With regard to the comment that requiring a separate affidavit from each source of materials is overly burdensome, CDPH notes that only one affidavit is required per source, not per individual truck. Further, individual source projects are already subject to many material screening/sampling requirements, such as Illinois EPA waste characterization forms, CCDD forms (e.g., LPC-662 and LPC-663 forms), and asbestos and lead screenings surveys, to ensure materials can be legally reused or recycled. The affidavit required under the Final Rules does not represent a significant new burden and, in any event, also protects the operator from accepting contaminated material.

Finally, in response to questions about whether CDPH will consider alternate RALs, or will consider forgoing continuous air monitoring if a facility has not exceeded a baseline level, CDPH notes that the Final Rules include a variance process, in Section 10, through which a facility may make such requests with appropriate documentation.

Conclusion

Once again, CDPH appreciates the thoughtful input provided by all commenters. Any questions about the Final Rules may be sent to envcomments@cityofchicago.org and will be routed to the appropriate CDPH staff for response.