



February 7, 2014

Via Email - petcokecomments@cityofchicago.org

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

Re: Department of Public Health – Proposed Rules and Regulations for the Handling and Storage of Bulk Material Piles (Proposed December 19, 2013)

To whom this may concern:

Kinder Morgan, Inc. (Kinder Morgan) respectfully requests that the Department of Public Health of the City of Chicago (Department) withdraw its Proposed Rules and Regulations for the Handling and Storage of Bulk Material Piles (Proposed Regulations). The Proposed Regulations are technically infeasible, economically unreasonable and otherwise flawed.

Kinder Morgan is submitting brief comments at this time, and reserving the right to submit more comprehensive comments in the event the Department extends the deadline. We appreciate that the Department extended the comment period from January 24, 2014 to February 7, 2014, but a further extension is warranted given the scope and overall impact of the Department's proposal.

Kinder Morgan is directly impacted by the Proposed Regulations because it owns a bulk terminal, known as Kinder Morgan Arrow Terminal (Arrow Terminal), within the City limits. Arrow Terminal does not handle coal or coke, but does handle "ores" such as pig iron and various bulk minerals. Arrow Terminal is subject to the jurisdiction of IEPA, USEPA, OSHA, the U.S. Coast Guard, the City and other governmental entities, and operates in compliance with numerous regulatory requirements and permit conditions, including air emission rules. The potential impact of the Department's inclusion of "ores" in the Proposed Regulations would eliminate much of the business we handle, resulting in the loss of jobs and potential terminal shutdown. Arrow Terminal employs 58 union and non-union workers and provides hundreds of jobs to supporting contractors. The products Arrow Terminal handles are necessary to supply raw materials to a wide variety of industries in Chicago and Illinois which, in turn, manufacture products and provide thousands of jobs.

Arrow Terminal stores certain bulk materials indoors and other bulk materials outdoors. Current IEPA regulations require that dust associated with these products cannot leave the

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property boundary and Arrow Terminal complies with these regulations by storing granular materials indoors. Outdoor storage is limited to ore ingots and fist-sized castings that have a low potential to create dust. For example, each pig iron casting is approximately 3" to 9" wide and weighs approximately 280 pounds per cubic foot. A photograph depicting four typical pig iron castings is attached to these comments. While there is a small amount of fine dust associated with pig iron castings, there is no fugitive emissions issue. The Proposed Regulations take a wide swing at facilities like ours that are operating safely and in accordance with existing state and local regulations and permits. The Department's Proposed Regulations would not improve fugitive dust emissions at Arrow Terminal, as we are already controlling dust emissions under the current regulatory scheme, but the Proposed Regulations will have a drastic over-reaching impact on a facility that is operating under the boundaries of the law.

Kinder Morgan understands that various trade associations and other entities have submitted comments on the Proposed Regulations emphasizing why they are unreasonable and cannot withstand legal scrutiny. Kinder Morgan joins and echoes those comments.

Kinder Morgan would like to highlight just a few of the reasons why the Proposed Regulations are technically infeasible and economically unreasonable.

The Proposed Regulations are Overly Broad

- The scope of the Proposed Regulations is so broad that it is not feasible. It covers virtually every type of bulk solid material in extremely small quantities at virtually every location in the City.
- Specifically, the Proposed Regulations cover any owner, operator or person who “stores, blends, handles, processes, transports, or uses Bulk Solid Materials.”
- Bulk Solid Materials are defined as ores, coal and coke. The term “ore” is not defined in the proposal; however, the common dictionary definition of “ore” includes any naturally occurring bulk solid material from which a metal or valuable mineral can be extracted. Various types of ores are located throughout the City, including in garden stores and other businesses.
- The Proposed Regulations cover any accumulation of Bulk Solid Materials, which is defined as “greater than three ounces in one square foot.”
- High wind conditions are defined as winds greater than 15 miles per hour. These wind conditions are commonplace in Chicago.
- Given this standard, virtually every business that handles a bulk solid material throughout the entire City will be in violation whenever wind conditions exceed 15 miles per hour.

The Proposed Fugitive Emissions Standard Is Not Reasonably Related to Protecting the Environment and Is Not Achievable

- Under the Proposed Regulations, any covered entity will be in violation of the fugitive emissions standard if:



- Any fugitive dust is discharged into the atmosphere and is visible beyond the property line of the facility; or
- Any fugitive dust is discharged “within the property line of the Facility at any Bulk Solid Material storage pile, Transfer Point, roadway or parking area that, for a period or periods aggregating more than three minutes in any one hour, is equal to or greater than 10% opacity.”
- Kinder Morgan does not object to the first standard. Kinder Morgan agrees that fugitive emissions should not be visible beyond the property line. This standard is also consistent with state law.
- However, Kinder Morgan has strong concerns about the second standard. The Department has no rational basis to control opacity within the property boundaries. Fugitive emissions that are contained within the property boundaries do not affect the environment, so long as the emissions do not cross the property line. OSHA regulates fugitive dust emissions within the property boundaries to the extent any emissions exceed permissible exposure limits. Therefore, workers are protected.
- The Department’s proposed opacity standard is inconsistent with state law.
- The 10% opacity standard is so low that it is simply not achievable.

The Enclosure Requirements Are Technically Infeasible, Economically Unreasonable and Not Reasonably Related to Protecting the Environment

- Total enclosure is simply infeasible and impractical. Ores are naturally occurring materials that are regularly stored outdoors in large bulk quantities.
- The comprehensive total enclosure requirements will not provide a corresponding environmental benefit.
- The Proposed Regulations do not provide any positive environmental benefit that would outweigh the negative impact to our facility.
- The enclosure requirements for loading and unloading trucks, railcars and barges are not feasible or practical.
- The requirement that all conveyors must be enclosed is also infeasible. Certain conveyors must be located outdoors, particularly given barge loading and unloading operations.
- The proposed requirements related to “Transfer Points” are also infeasible and impractical.

The Required Management Practices for Outdoor Handling and Storage of Bulk Materials Are Technically Infeasible, Economically Unreasonable and Not Reasonably Related to Protecting the Environment

- The Fugitive Dust Plan that must be submitted to the Department on an annual basis includes unrealistic provisions and calls for a number of requirements that are not reasonably related to fugitive air emissions. For example, the Department requires each party to disclose the quantity of Bulk Solid Materials received. The quantity of materials at the facility is strictly a business issue and is not reasonably related to



fugitive air emissions. A greater quantity of materials does not directly correspond to additional potential fugitive dust.

- Under the Proposed Regulations, outdoor storage is permitted at existing facilities only. The conditions that the Department seeks to impose on the existing facilities, however, are infeasible and are not reasonably related to fugitive air emissions. For example, the following conditions associated with outdoor storage are infeasible and unrelated to fugitive air emissions:
 - restriction on the quantity of materials received;
 - restriction on the quantity of materials stored;
 - setback requirements;
 - wind barrier requirements;
 - suspension of operations during “high wind events” which are only 15 miles per hour;
 - height restrictions of 30 feet;
 - extraordinary dust monitoring requirements;
 - time limitation to store bulk materials for not greater than one year;
 - dust suppressant requirements; and
 - run-off management requirements.

Numerous Other Requirements Are Not Feasible

- The “impermeable” paving requirements are infeasible and economically unreasonable.
- The “street sweeping” requirements are unnecessary and would not have any impact on fugitive emissions.
- The “transport” requirements for contractor trucks are also infeasible. The Proposed Regulations require that truck washes be installed at every facility.
- The “vehicle tarping” requirements are also infeasible.
- The “leaking” requirements bear no relation whatsoever to fugitive air emissions and are unrealistic. The materials that are loaded into trucks and railcars are product, not waste, so the possibility that trucks or railcars may spill some material is not related to an environmental issue that would require a control.
- The recordkeeping requirements are unfair in that facilities are required to maintain records that are unrelated to fugitive air emissions.
- The time-frame to come into compliance is also unreasonable.

As noted above, the Proposed Regulations will have a drastic impact on Arrow Terminal without creating a corresponding environmental benefit. The application of the Proposed Regulations on an already compliant facility is simply not warranted. Based on our preliminary assessment, it is clear that many of the requirements in the Proposed Regulations are technically infeasible and cannot be achieved under reasonable circumstances. Those requirements that can be achieved would result in costs that may exceed \$15,000,000 at the Arrow Terminal, not including total enclosure and regular maintenance. The reality, however, is that because so many



aspects of the Proposed Regulations are infeasible, the economic analysis cannot even estimate the infeasible items.

In conclusion, under the Proposed Regulations, the Department is unlawfully attempting to regulate operational issues that go well beyond the control of fugitive air emissions. The Proposed Regulations are also unlawful in that they are vague, overbroad, preempted by state and federal law, technically infeasible, economically unreasonable and exceed the Department's authority.

Simply stated, the Department's attempt to regulate the handling and storage of "ores" in such a manner is unrealistic and unjustified. In its current form, the Proposed Regulations likely would require facilities to shut down, which constitutes a regulatory taking under Illinois law. Kinder Morgan, however, prefers to avoid litigation and, therefore, welcomes an open dialogue with the Department to address fugitive dust concerns in a responsible manner.

Should you have any questions, please do not hesitate to call me at 713-369-8456.

Sincerely,

A handwritten signature in blue ink, appearing to read "Michael Pitta".

Michael Pitta
Kinder Morgan Terminals
Vice President of Environmental Health and Safety



02/05/2014