ELPC Comments on the Proposed Rules for Reprocessable Construction/ Demolition Material Facilities

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To: envcomments <envcomments@cityofchicago.org>
Cc: Susan Mudd <SMudd@elpc.org>; Tiffany Werner <TDavis@elpc.org>; Eric Sippert <esippert@elpc.org>

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To City of Chicago Department of Public Health:
The Environmental Law & Policy Center, on behalf of itself and its members, submit the attached comments on the Proposed Rules for Reprocessable Construction/ Demolition Material Facilities.

Thank you for your consideration of these comments.

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ENVIRONMENTAL LAW & POLICY CENTER
Protecting the Midwest's Environment and Natural Heritage

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Chicago Department of Public Health
Attn: Environmental Permitting and Inspections
333 South State Street, Room 200 Chicago, IL 60604
Submitted electronically to EnvComments@cityofchicago.org

RE: Comments on Proposed Rules for Reprocessable Construction/ Demolition Material Facilities

To City of Chicago Department of Public Health:

The Environmental Law & Policy Center ("ELPC"), on behalf of itself and its members, submit these comments on the Proposed Rules for Reprocessable Construction/ Demolition Material Facilities, also known as "rock crushing facilities." ELPC is the Midwest's leading public interest environmental legal advocacy organization and works to protect the environment and public health.

ELPC's work includes an air quality monitoring program that partners with neighborhood residents, community organizations, and students to conduct air quality monitoring. We collect and map small particulate levels, using AirBeam monitors. The AirBeam monitors have been tested against the Federal Reference Monitors and provide particulate matter ("PM") measurements (PM 1, PM 2.5, and PM 10) in real time on a second by second basis. Although ELPC's community science project has not mapped every block of Chicago, we already see that exposure to particulate matter is disparate across our city.[1] We see higher levels on major corridors and where there is industrial and manufacturing activity, especially those with regular diesel truck traffic, such as 47th St between intermodal facilities, and others with frequent diesel bus service, which are near the zoned areas for the rock crushing facilities. This map, like those of Chicago's poverty, pollution sources, poor health, and death rates from COVID-19, all look the same: communities on the south and west sides show higher levels of each. Moreover, these same neighborhoods are where many of these rock crushing facilities are zoned.

Therefore, as CDPH develops and implements these Proposed Rules, it must be mindful of the communities the existing and new rock crushing facilities are placed in. ELPC appreciates the decision to develop these rules and protect air quality and communities. However, as written, we have some concerns about how protective the Proposed Rules will be of public health, the environment, transparency, and public access to information.

[1] *See* airqualitychicago.org.

The Proposed Rules Are Not Adequately Protective of Air Quality

The Proposed Rules recognize the need for facilities to be located in areas where surrounding uses are consistent with the industrial nature of rock crushing facilities while being operated so that environmental impacts are minimized as they are significant sources of dust and contaminated storm and process water discharges with the potential to harm human health and the environment, and cause a public nuisance or adversely impact the surrounding area or surrounding users. However, the Proposed Rules as written leave gaps to inhibit the realization of these goals.

First, given that many of the rock crushing facilities are zoned into areas in or near environmental justice communities, the City should account for the cumulative impacts on the community where there are existing or will be new rock crushing facilities. Although the Proposed Rules note that the facilities should be in areas where the surrounding uses are consistent with the industrial nature, this often means, as noted by the City's own Air Quality and Health Map, the facilities would belong in communities that are already overburdened by environmental pollution and systems that keep that pollution in their neighborhoods. For instance, Section 3.8.21.1 provides that there be an emissions and air dispersion modeling study of the facility and its operations, and that this study evaluates airborne emissions from each point and fugitive source. We are concerned about the limited scope of this study. It should include the listed parameters and diesel engines on-site, those coming inbound and going outbound. Furthermore, looking at the map of existing rock crushing facilities provided during the September meeting, many if not all of the facilities appear to be in or near environmental justice communities. As the City likely learned in other permitting contexts—such as the air quality permitting process for RMG in the 10th Ward—it is important to account for the cumulative impacts a community faces while considering permitting industrial facilities. In modeling air quality, the Proposed Rules must require the applicant facility to factor in other pollution sources in at least a one-mile radius. The Proposed Rules should not exclude the modeling of diesel emissions from mobile sources, especially if the Applicant has control of those sources. The Proposed Rules should also require the Applicant to take existing traffic data and model it with its air quality study. The public should be allowed to comment on the study's results.

Next, the Proposed Rules require plans that have no apparent enforcement mechanisms. For instance, Section 3.8.13.1.3 requires an idling reduction plan that demonstrates compliance with Section 9-80-095 of the Code and that minimizes unnecessary idling of vehicles and equipment in order to avoid contributions to poor air quality and noise. However, there is no apparent enforcement mechanism to ensure that there is no idling. Existing checks under Section 9-80-095 are already problematic with the current inability to report idling via the 311 application. Even if this reporting method was functional, there must still be an enforcement mechanism to curtail air pollution via idling in the Proposed Rules.

The Proposed Rules must be protective of public health and the environment. For instance, Section 5.7.3 requires that stationary mechanical equipment shall meet or exceed the emission control levels required under the Facility's local, state, and federal air permits, as applicable. The Proposed Rules could be more protective by requiring measurement of PM2.5 from Vehicles and Equipment referenced in Section 5.7. The Proposed Rules should also require under Section 5.7 that vehicles (especially inbound and outbound trucks), railcars and barges, and stationary equipment are electric or at least meet stringent emission standards (such as California Air Resources Board

Optional Low NOx Standards for heavy-duty engines).

Section 5.8.7.1.6 should also be modified to be protect public health and the environment. It provides that in cases where there is an upwind PM10 monitor present, the upwind PM10 concentration may be subtracted from the downwind PM10 concentration to determine a PM10 Reportable Action Level ("RAL") exceedance. Although there might be other contributing sources, the community is still being exposed to these elevated levels of PM10. This alludes to the need to complete a cumulative impacts analysis and to set the PM10 standard to a level that is cumulatively protective of public health.

In addition, we are concerned about potential loopholes baked into the Proposed Rules. Section 3.8.19 provides that a noise impact assessment shall not be required in temporary circumstances when the facility must remain open to receive materials from government infrastructure projects. If there must be an exemption for receipt of materials from government infrastructure projects, the Proposed Rules should ensure that there is no loophole for receipt of material from other projects at the same time as the government project. Furthermore, if there is receipt of material from government projects with material from non-governmental projects, the noise impact assessment should account for the cumulative impact of the projects.

The exemptions for air quality monitoring are also detrimental to public health and the environment. Section 5.8.7.1.14 provides that an Applicant can request exemption if it can demonstrate that it (1) conducts all loading, unloading, processing, and material storage inside a building with adequate emission controls; (2) has no unpaved parking lots or internal roadways within 660 feet of a Sensitive Area; and (3) has not been found in violation of any air-quality laws relating to fugitive dust emissions in the previous three years. This last exemption requirement is particularly alarming, given the issues with the determination as to whether a facility is in violation of air quality laws. In Chicago, we have seen several instances of the surrounding community filing evidence-supported complaints about air quality, but when the inspector is able to arrive, the circumstances surrounding the facility have changed. There are other instances where a facility has been placed under an administrative consent order, but due to the finding of no liability under the order, the facility was not in violation of air quality laws.[2] This exemption should therefore not include facilities that have received a number of complaints within at least the last three years of operating. To allow such a loophole would undermine the Proposed Rules.

The Proposed Rules Do Not Adequately Promote Transparency or Public Participation

The Proposed Rules also recognize that the annual operating permits and permit applications required are an important part of assuring environmentally sound operations, and that it is important to have a more detailed recitation of operational standards, permit application submittal requirements, location standards, and design standards for these facilities. However, not all of the provisions are consistent with this stated purpose.

First, we have concerns about the overall permitting process. Given that this permitting process is to allow air and water pollution in communities, the Proposed Rules—in addition to being consistent with Section 17-9-0117-G.4 of the Code as required under Section 3.11 of the Proposed

[2] *See* General Iron Administrative Consent Order, available at https://www.epa.gov/il/general-iron.

Rules—should explicitly allow community members' access to the permit application, including, but not limited, to the operating plan, design plan, environmental assessment, contingency plan, dust monitoring plan, and the closure plan via a publicly accessible website *and* in a physical location for review by members of the public.

Next, the public should have timely access to all monitoring data. The monitoring data gathered under Section 3.8.21's Air Quality Impact Assessment, types of material under Section 3.9.1, and quantity of materials under Section 3.9.2 should be publicly accessible on at least a publicly accessible website, so community members can understand to what pollutants they are being exposed. Communities should not have to wait for CDPH to potentially post the information once received from the permittee. Waiting for air quality monitoring data months, or even weeks, after people have been exposed to pollutants neither promotes transparency nor protects public health. Section 5.8.7.1 of the Proposed Rules also provides for air quality monitoring, but falls short. The public should have access to this data on a real-time basis rather than waiting for CDPH to share this information. The public should similarly have access to the quarterly reports under Section 5.8.16, rather than wasting resources to access it via a public records request. Delayed access to information about the air the public breathes is not wholly protective of public health.

We are also concerned about financial assurances required by the Proposed Rules. Section 3.9.13.1.5 provides for the Closure Plan to include documentation to demonstrate sufficient financing to complete all closure activities. To ensure that taxpayers are not left to foot the bill if a permittee faces unforeseeable financial hardship, the Proposed Rules should prohibit financing mechanisms like self-bonding or self-insurance. The Proposed Rules can protect communities by specifying this limitation and prohibiting empty promises with no separate surety or collateral.

We therefore implore CDPH to modify the Proposed Rules to protect public health and the environment. Thank you for your consideration of these comments.

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