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December 17, 2014

**VIA HAND DELIVERY**

Commissioner Bechara Choucair, M.D.  
Chicago Department of Public Health  
333 South State Street, Room 200  
Chicago, IL 60604

Re: KCBX Terminals Company's Petition for Variance from Sections 6.0(5) and 6.0(6)

Dear Commissioner Choucair:

KCBX Terminals Company ("KCBX"), by and through its counsel Quinn Emanuel Urquhart & Sullivan, LLP, hereby submits its Petition for Variance from Sections 6.0(5) and 6.0(6) of the City of Chicago Department of Public Health's Rules and Regulations for Control of Emissions from the Handling and Storage of Bulk Material Piles ("Rules"). KCBX seeks a limited variance relating to the deadline to enclose Coke and Coal Bulk Materials set forth in Sections 6.0(5) and 6.0(6).

KCBX's requested variance is necessary to enable KCBX to continue its work towards a multimillion dollar capital enclosure investment, which will create 150 skilled jobs within the City of Chicago, and for KCBX to continue to invest and do business in the City. KCBX appreciates your consideration of this Petition and will continue to focus its efforts on compliance with all rules and regulations.

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## **I. INTRODUCTION**

On March 13, 2014, the City of Chicago Department of Public Health enacted rules and regulations<sup>1</sup> that, for the first time in Chicago history, prohibit companies from having outdoor stockpiles of coal or petroleum coke (“pet coke”). The new Rules set a two-year deadline for all existing stockpiles of coal and pet coke to be moved into enclosed structures, requiring companies to build those structures if they do not already exist. In issuing the Rules, the City expressly acknowledged that this two-year timeframe was “an aggressive schedule,” and offered that “companies may obtain an extension [of the deadline] for good cause through the variance process.”<sup>2</sup> After extensive analysis, KCBX has concluded that it cannot meet the “aggressive schedule” provided in the Rules, as it simply is not feasible to design, plan, permit and safely construct an enclosure of this complexity and magnitude in two years. Accordingly, as contemplated by the City, KCBX hereby requests an extension for good cause.

The enclosure project KCBX has planned is substantial. If the City grants KCBX its extension, KCBX intends to build a \$120 million indoor terminal at its South Terminal. This will allow KCBX to consolidate outdoor operations at its North and South Terminals into a single enclosed operation. This construction project would create 150 skilled jobs over two years. The new facility would be approximately 1,000 feet long, 200 feet wide and 100 feet tall—roughly the size of the Navy Pier Exhibition Building on Lake Michigan. The proposed structure would feature steel siding and roofing, covered conveyor systems for moving product, dust collection systems,

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<sup>1</sup> Rules and Regulations for Control of Emissions from the Handling and Storage of Bulk Material Piles, March 13, 2014.

<sup>2</sup> Official Response to Public Comments on the Proposed Rules and Regulations for the Handling and Storage of Bulk Material Piles, March 13, 2014, at 32.



water retention basins, automated fire protection and a water recycling system. KCBX wants to work with the City to invest in Chicago’s southeast side, but it needs an extension in order to do so.

**II. BACKGROUND**

KCBX operates two bulk materials handling terminals in Chicago: a North Terminal at 3259 East 100th Street, and a South Terminal at 10730 South Burley Avenue. For purposes of the Rules, KCBX’s “Facility” includes the operations at the North Terminal and the South Terminal. The business of the Facility is to transfer bulk products—currently coal and pet coke (collectively referred to herein as “Product”)—from one mode of transportation such as train or barge to another mode of transportation such as lake vessel, in most cases staging the Product for a period of time to match up incoming and outgoing modes of transportation.

Pursuant to the Rules, KCBX plans to construct a transfer building and associated conveyance, loading, and unloading systems (“Enclosure”) for bulk materials at its South Terminal, and plans to transition the current operations at its North and South Terminals into that Enclosure. KCBX’s planned Enclosure is illustrated in the following conceptual drawing:

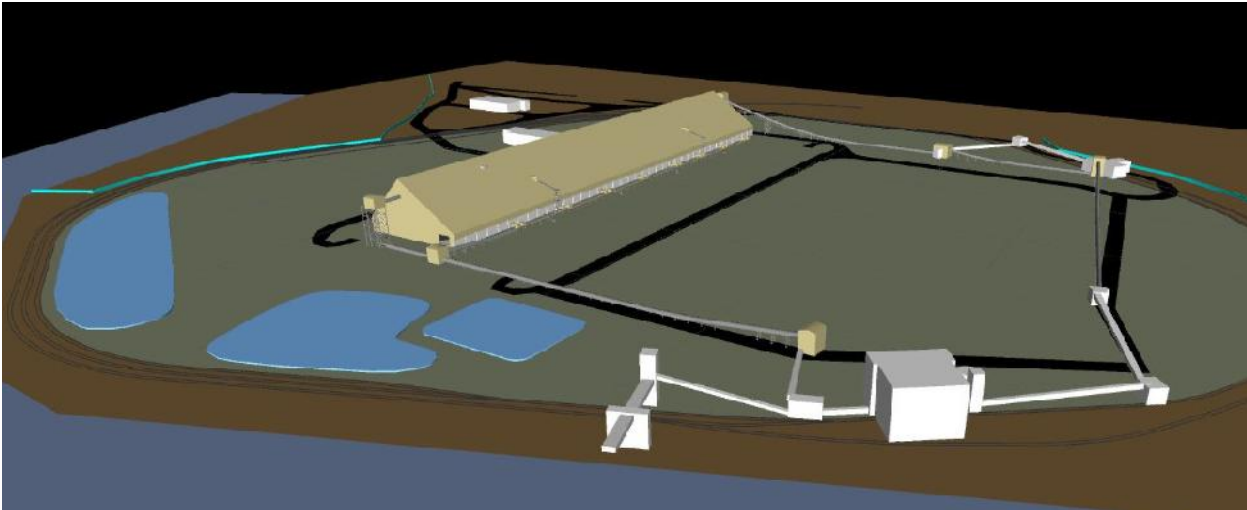


Figure 1 – Conceptual Drawing of KCBX Enclosure

KCBX has determined that it will need until August 2017 to complete the Enclosure and the necessary associated improvements to its South Terminal. Two years is simply not achievable. As discussed in detail below, KCBX has good cause and a valid need for an extension of the enclosure deadline. Therefore, KCBX requests a variance from the two-year enclosure deadline set forth in Sections 6.0(5) and 6.0(6) of the Rules.

### **III. ENCLOSURE PLANNING AND CONSTRUCTION PROCESS**

Pursuant to Section 4.0(1) of the Rules, KCBX submitted its Enclosure Plan to the City on June 9, 2014. In that Plan, KCBX described its plans for the Enclosure at its South Terminal, proposed a construction schedule, and reaffirmed its commitment to rely on its Fugitive Dust Plan to ensure the suppression of fugitive dust during construction. In the construction schedule it submitted on June 9, KCBX outlined a four-year and three-month timeline—beginning in December 2013 and concluding in March 2018—during which it would design (the work had already begun), engineer, procure materials for, permit, and construct the enclosure. As discussed in detail below, KCBX's work with its construction experts has continued over the last several months, and based on that work, KCBX is now able to propose a timeline that will allow it to complete construction and transition to Enclosure by August 2017.

The Enclosure project is complex. The transfer building that KCBX plans to build will be a clear-span building (no internal supports) that is 1,000' long, 200' wide, and 100' tall. To build this transfer building and the equipment associated with it, KCBX will conduct site preparation work on all 82 acres of the South Terminal. This work will include demolishing the system of 42 pole-mounted water cannons that KCBX installed after it purchased the South Terminal and installing approximately 45,000 linear feet of piping. The foundation for the transfer building will require approximately 4,500 cubic yards of concrete and the installation of more than 1,000 structural piles. The transfer building itself will require approximately 900 tons of steel, most of which must be

installed at elevated heights, as well as approximately 5,500 linear feet of conveyors, 80,000 linear feet of conduit, 300,000 linear feet of cable, and more than 200 light fixtures. The complexity and magnitude of this project, which is required to enclose KCBX’s operations, do not allow for completion within the time set by the Rules.

As is standard in the industry, KCBX employs a phased execution “Project Work Process” for capital projects. Using this process, KCBX has developed a very detailed plan for executing this project. KCBX has completed Phases I and II of this Process, and plans for the entire process to proceed on the following schedule:

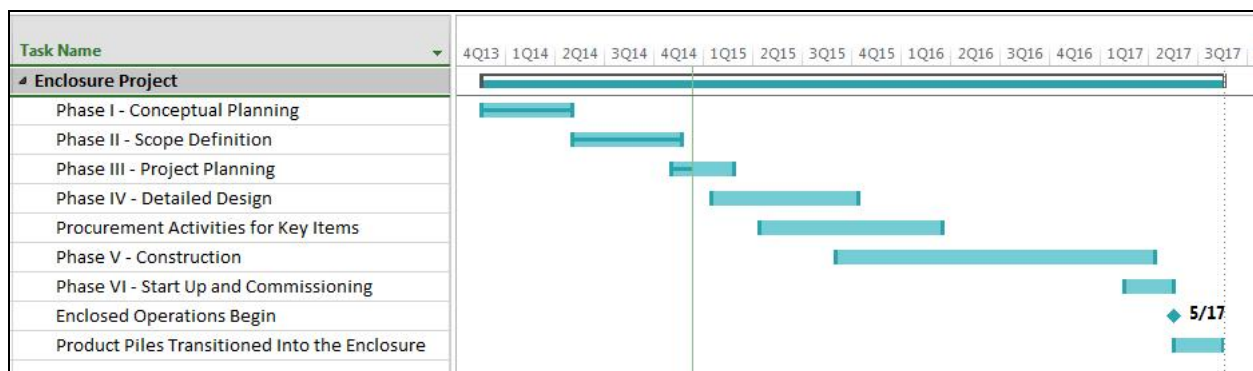


Figure 2 – Top Level Enclosure Schedule

The activities that KCBX has completed, or will have to complete in the future, during each Phase are discussed below. Where an activity has not yet taken place, the planned date(s) for that activity are set out.

**A. Phase I – Conceptual Planning (Completed, Jan. - May 2014)**

KCBX completed Phase I, Conceptual Planning, between January and May, 2014.

During Phase I, KCBX:

- determined the quantity of enclosures required for various business scenarios;
- determined the types of enclosures that might meet its project needs;
- analyzed preliminary site layout and operational impacts;
- developed conveyance options (technologies available, load rates, functionality);
- developed loading and unloading options (types of modes, technologies available, impacts to site layout);
- conducted general project conceptual planning (execution plan and preliminary project description/scope of work (“SOW”));
- developed an Engineering, Procurement and Construction (“EPC”) contractor selection process and identified potential bidders.

During Phase I, KCBX’s engineering contractor developed approximately 400 documents including drawings, supporting calculations, vendor data and technical analysis of concepts.

**B. Phase II – Scope Definition (Completed, May – Nov. 2014)**

KCBX Completed Phase II, Scope Definition, between May and November, 2014.

During Phase II, KCBX:

- refined its enclosure design, including determining size and capacity
- finalized its analysis of loading and unloading methods
- continued to refine its plans for conveyance systems, site layout and process flow
- developed its preliminary construction plan
- updated its execution plan and project description/SOW
- interviewed candidates and selected an EPC contractor

During Phase II, KCBX’s engineering contractor developed approximately 300 additional documents including drawings, supporting calculations, vendor data and technical specifications.

KCBX also selected Graycor Industrial Constructors, Inc. (“Graycor”), as its Engineering, Procurement and Construction contractor for this project. Graycor has extensive experience with large-scale industrial projects, including projects in the City of Chicago.

### C. Phase III – Project Planning (In Process, Nov. 2014 – Feb. 2015)

KCBX is currently in Phase III. During Phase III, KCBX focuses on project planning and front end engineering. KCBX and its contractors develop detailed plans and engineering for, among other things, site development, storm water management, utilities, paving and surfacing, landscaping and irrigation, foundations, conveyors, structural steel, piping, ventilation, electrical, and fire protection. Also during Phase III, KCBX meets with regulatory agencies regarding permits that are required for construction. A high-level summary of the activities that KCBX must complete during this process are set out in the following Gantt chart:

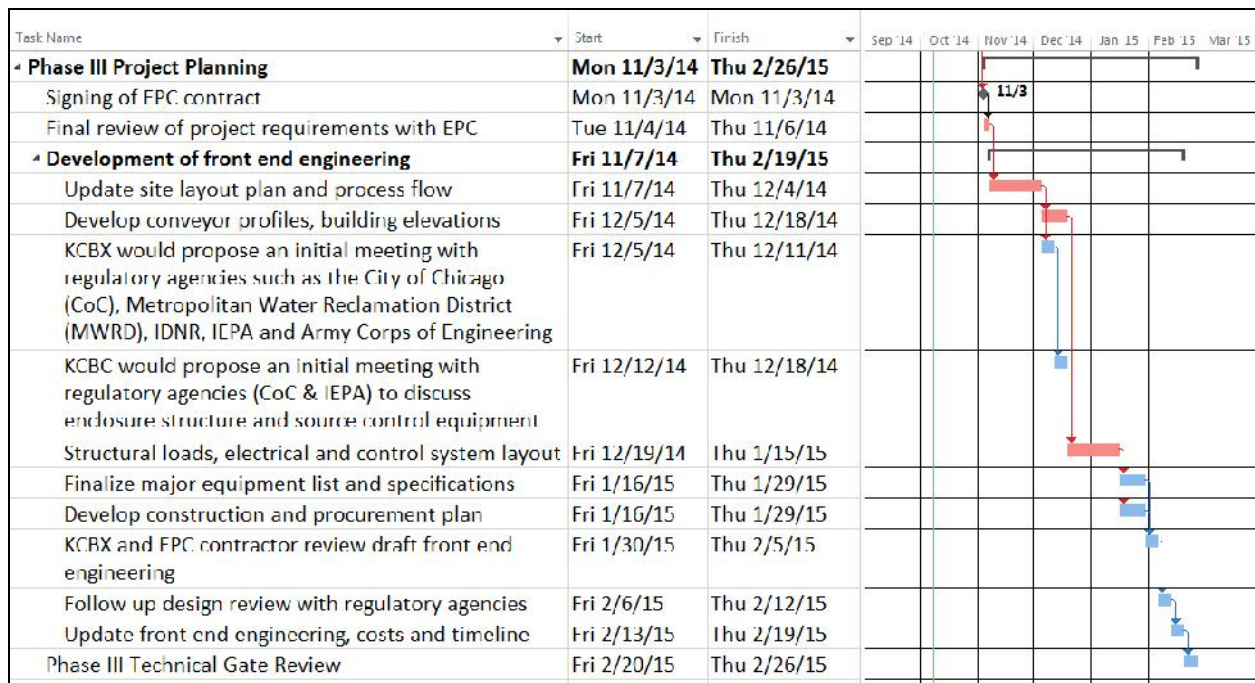
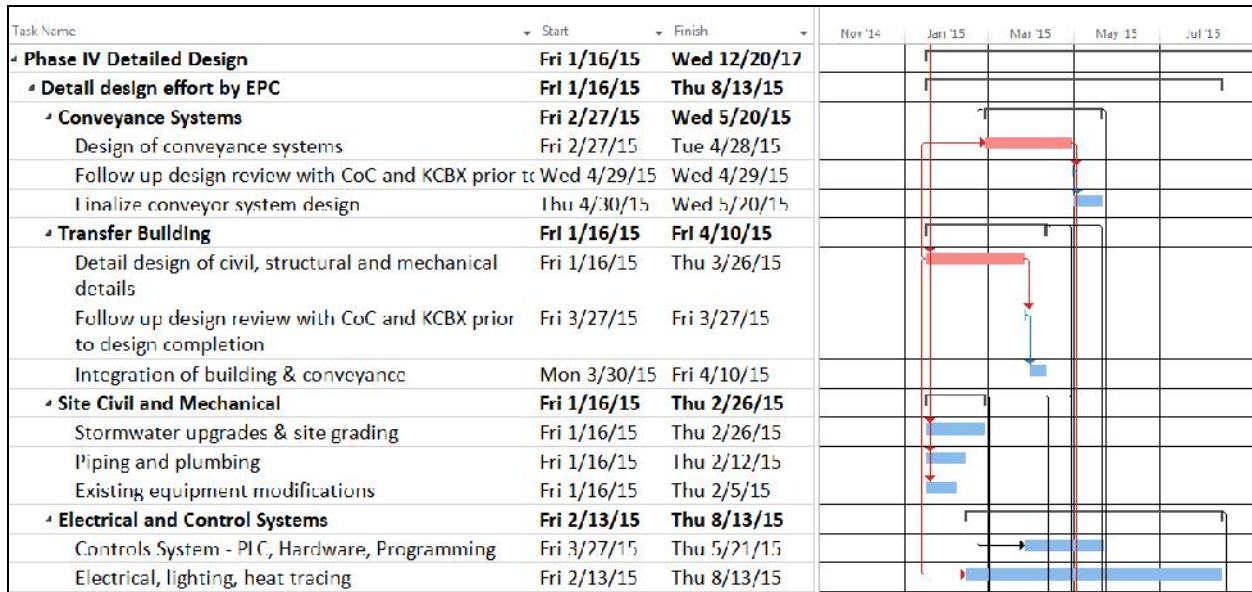


Figure 3 – Project Phase III Schedule

KCBX has completed the tasks identified in this chart as scheduled for completion by December 18, 2014, including initial meetings with regulatory agencies.

**D. Phase IV – Detailed Design/Procurement (Planned Jan. – Oct. 2015<sup>3</sup>)**

KCBX plans to begin Phase IV, Detailed Design and Procurement Activities for Key Items, in January 2015. Phase IV includes several sets of tasks which overlap. The first set of tasks involves completing detailed designs of the transfer building, conveyance systems, civil site work and electrical and controls equipment in preparation for the beginning of construction. KCBX has planned to conduct that detailed design process between January 16 and August 13, 2015, as follows:



**Figure 4 – Project Phase IV Design Schedule**

Another set of tasks in Phase IV involves applying for and obtaining building permits from the City that are required before construction on different components of the project can begin. KCBX has planned for that City permitting process to take place between April 13 and October 14, 2015:

<sup>3</sup> Not including Illinois EPA air and water operating permits.



• <b>Building Permits - CoC Department of Buildings</b>	<b>Mon 4/13/15</b>	<b>Wed 10/14/15</b>	
• <b>Foundations and Superstructures</b>	<b>Wed 4/29/15</b>	<b>Thu 8/27/15</b>	
Permit applications submitted	Wed 4/29/15	Wed 4/29/15	
Pre-review process and Review selection by CoC	Thu 4/30/15	Fri 5/29/15	
Technical review and comment process	Mon 6/1/15	Fri 8/21/15	
Drawings and plans routed through CoC for approval	Mon 8/24/15	Wed 8/26/15	
Permits issued	Thu 8/27/15	Thu 8/27/15	
• <b>Electrical and Interior</b>	<b>Fri 8/14/15</b>	<b>Wed 10/14/15</b>	
Permit applications submitted	Fri 8/14/15	Fri 8/14/15	
Pre-review process and Review selection by CoC	Mon 8/17/15	Fri 8/28/15	
Technical review and comment process	Mon 8/31/15	Fri 10/2/15	
Drawings and plans routed through CoC for approval	Mon 10/5/15	Fri 10/9/15	
Permits issued	Mon 10/12/15	Wed 10/14/15	
• <b>Fire Protection Permit</b>	<b>Mon 4/13/15</b>	<b>Tue 5/12/15</b>	
Permit applications submitted	Mon 4/13/15	Mon 4/13/15	
Pre-review process and Review selection by CoC	Tue 4/14/15	Thu 4/16/15	
Technical review and comment process	Fri 4/17/15	Thu 4/23/15	
Public comment	Fri 4/24/15	Thu 4/30/15	
Drawings and plans routed through CoC for approval	Fri 5/1/15	Thu 5/7/15	
Permits issued	Fri 5/8/15	Tue 5/12/15	

Figure 5 – Project Phase IV Building Permitting Schedule

A third set of tasks in Phase IV involves obtaining required construction permits from the City, the Illinois Environmental Protection Agency (“Illinois EPA”) and potentially other agencies, that are required before construction can begin. KCBX has planned for that construction permitting process to take place between February 27 and August 31, 2015:

Task Name	Start	Finish	Jan '15	Mar '15	May '15	Jul '15	Sep '15
• <b>Construction Permits - State and Local</b>	<b>Fri 2/27/15</b>	<b>Mon 8/31/15</b>					
Office of Underground Coordination (OUC) Approval	Mon 4/13/15	Mon 1/13/15					
Construction of new storm water outfalls from Met. Water Reclamation District	Fri 2/27/15	Fri 5/29/15					
Construction of new water intakes - Army Corps of Engineers	Fri 2/27/15	Wed 4/29/15					
Construction of new water intakes - Illinois Dept. of Natural Resources	Fri 2/27/15	Wed 4/29/15					
Harbor Permit (construction on or near a Harbor)	Tue 7/28/15	Mon 8/31/15					
IEPA construction permit with authority to operate (water)	Fri 2/27/15	Fri 5/29/15					
IEPA permit to install control equipment with authority to operate (air)	Thu 5/21/15	Thu 8/20/15					

Figure 6 – Project Phase IV Construction Permitting Schedule

Finally, in Phase IV, KCBX would begin the process of procuring key items that will be needed during the construction, such as conveyors, structural steel, and electrical and controls components. KCBX has planned for that procurement process to take place between April 2015 and March 2016. The procurement process continues in parallel with construction.

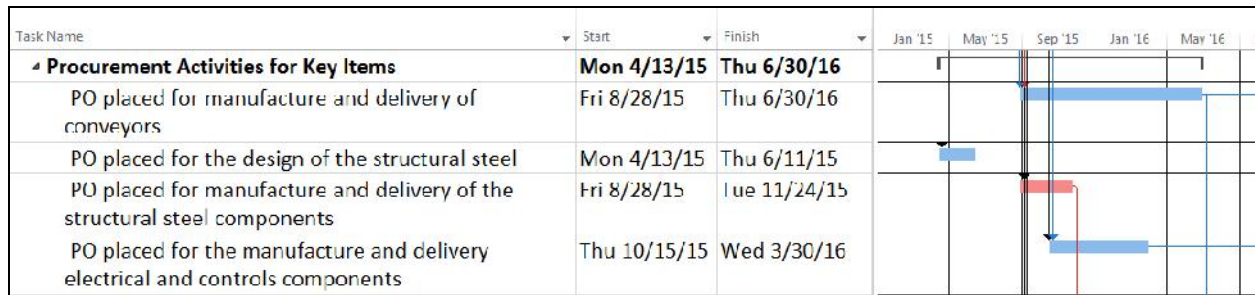


Figure 7 – Project Phase IV Procurement Schedule

### E. Phase V – Construction (Planned Sept. 2015 – Apr. 2017)

KCBX plans to begin Phase V, construction, in September 2015. Work will first begin on the transfer building, followed by work on external covered conveyance systems. The detailed schedule for construction is as follows:

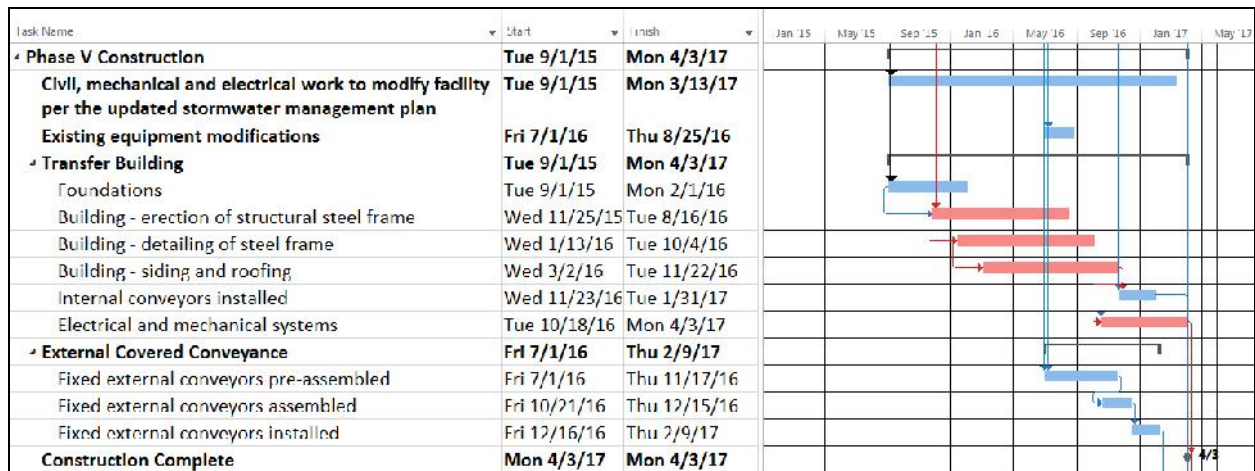


Figure 8 – Project Phase V Construction Schedule

### F. Phase VI – Startup and Commissioning

The final phase of the capital work process is startup and commissioning of the enclosure. KCBX plans to begin this process in February 2017 and to conclude it by May 24, 2017, as follows:



Task Name	Start	Finish	Jan '17	Mar '17	May '17	Jul '17
<b>Phase VI Start Up, Commissioning &amp; Operations</b>	<b>Fri 2/10/17</b>	<b>Wed 5/24/17</b>				
Dry commissioning of Bottom Dumper conveyance system	Fri 2/10/17	Thu 2/23/17				
Dry commissioning of Rotary Dumper conveyance system	Fri 2/24/17	Thu 3/9/17				
Dry commissioning Ship Loader conveyance system	Fri 3/10/17	Thu 3/23/17				
Check out of internal operations/dry commissioning of the building	Tue 4/4/17	Wed 5/3/17				
Wet commissioning of entire facility	Thu 5/4/17	Wed 5/24/17				
<b>Enclosed operations begin</b>	<b>Wed 5/24/17</b>	<b>Wed 5/24/17</b>				
<b>Product piles transitioned into the enclosure</b>	<b>Thu 5/25/17</b>	<b>Thu 8/24/17</b>				

Figure 9 – Project Phase VI Start Up and Commissioning Schedule

As the discussion above makes clear, KCBX has developed a very detailed plan and schedule to complete all of the steps that will be necessary to construct its Enclosure and comply with the Rules.

#### IV. DETAILS REGARDING PLANNED ENCLOSURE

Once the process detailed above is complete, all loading, unloading, and stock piling of Product at the Facility will occur within enclosed structures, and all conveyance of Product will occur in covered conveyors. Following are details regarding KCBX's plans.

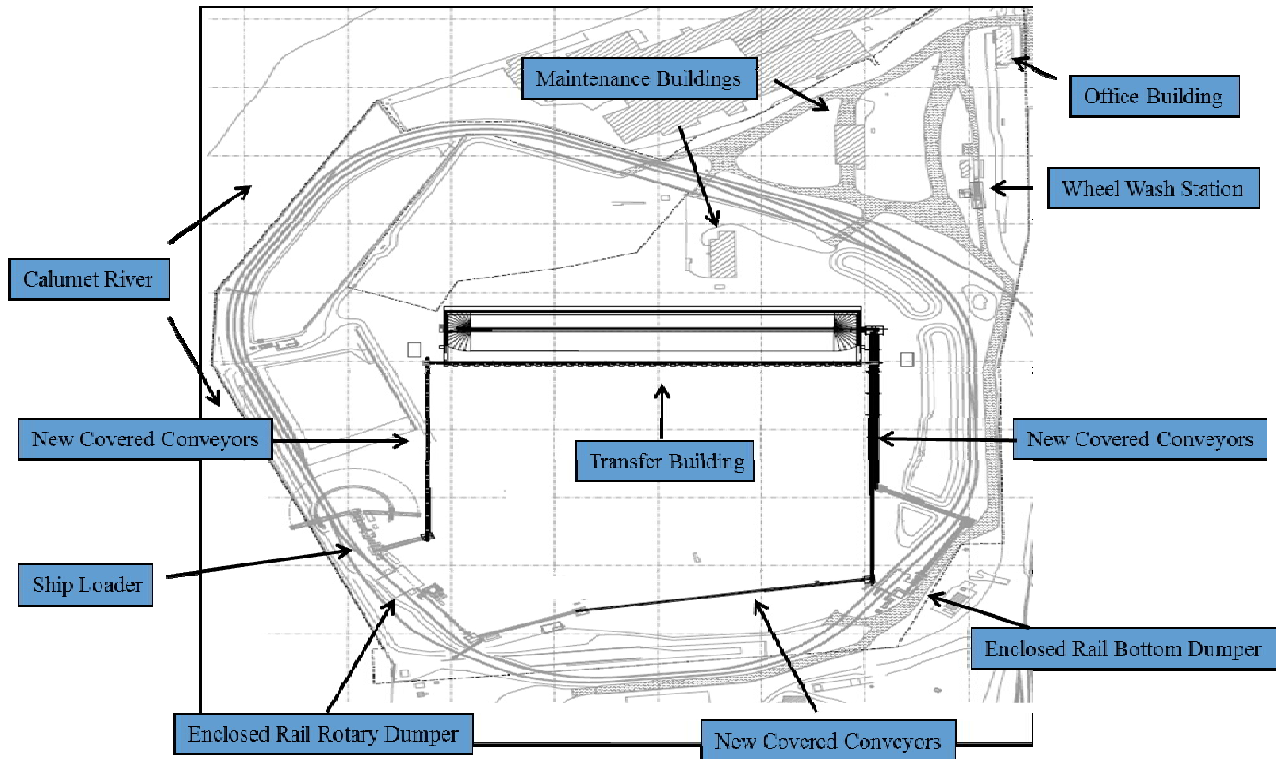
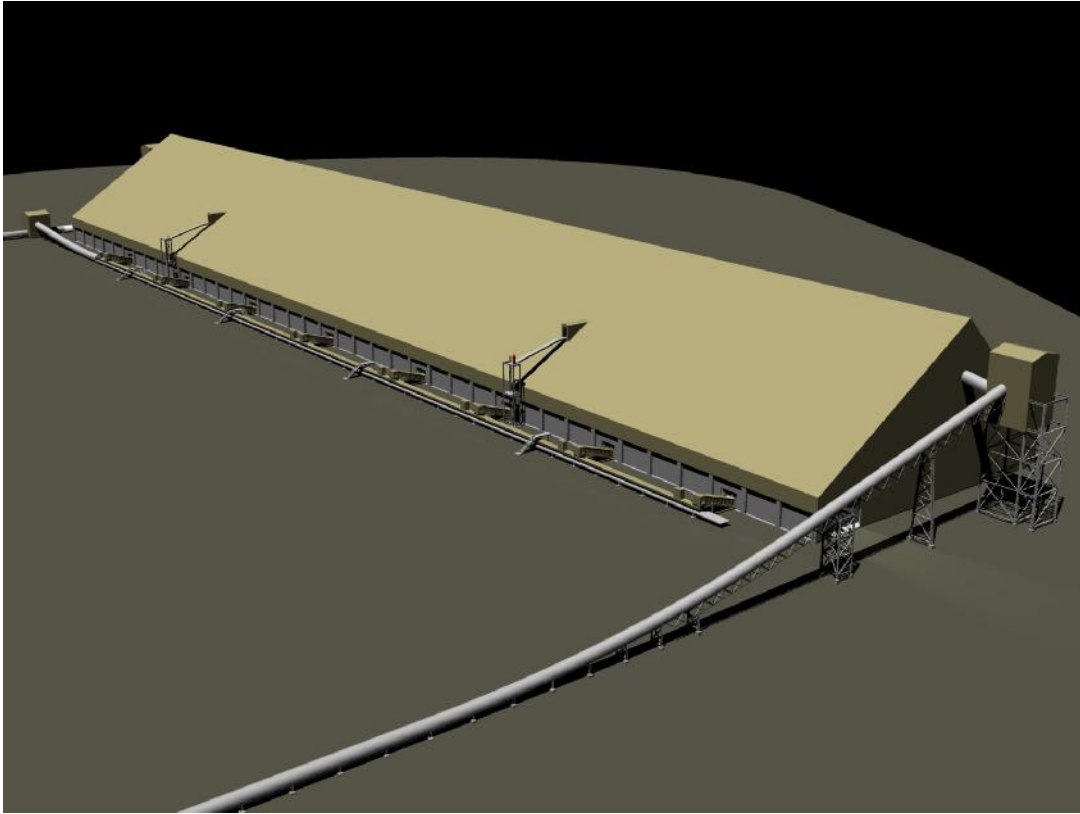


Figure 10 – Conceptual layout of KCBX South Terminal after Construction

**A. Enclosed Transfer Building**

After the transfer building is in service, all Product awaiting transfer from the Facility would be enclosed. The building would be equipped with a dust suppression system with heat traced water lines. All vehicle and material entrance and exit points also would have overhead doors, which would remain closed except to allow material or Vehicles to enter and leave. Ventilation of exhaust fumes from mobile equipment used indoors would be achieved through a series of roof top exhaust fans and wall louvers throughout the building.



**Figure 11 – Conceptual Drawing of Transfer Building**

Figure 11 above depicts the transfer building as currently planned. As discussed in more detail below, KCBX also plans to install covered fixed conveyors that would move Product from inbound rail unloading buildings to the transfer building, and from the transfer building to barge and vessel loading equipment.

### **B. Product Receiving Operations**

Product that is inbound to the Facility by rail would be received in two existing indoor rail unloading stations: the rail car bottom dumper and the rotary rail car dumper. Any product that is inbound to the Facility by dump truck would be received inside the transfer building or inside one of the rail unloading stations.

In addition to occurring indoors, both rail and truck unloading would utilize either dust suppression or dust collection technology as a means to maintain compliance with the Rules.

Product received by rail would be conveyed to the transfer building by covered fixed conveyors (see Figure 12 below). All transfer points along these conveyors would be equipped with a dust suppression system or dust collection system.



Figure 12 – Side View of a Typical Covered External Fixed Conveyor

### C. Outbound Product Loading Operations

Product would be shipped from the Facility by barge or lake vessel. Product to be shipped would be placed onto feeders located inside the transfer building. Those feeders would lead out to a covered, fixed “takeaway conveyor” located outside the south wall of the transfer building, which will lead to other covered, fixed conveyors that will transfer the Product to the marine dock loading area. Transfer points along these conveyors would be equipped with a dust suppression system or dust collection systems. KCBX will load outbound Products onto barges and lake vessels through a single ship/barge loader with an enclosed chute to deliver material directly into the cargo bays of those vessels.

**D. Direct Transfer**

Finally, while the Enclosure is being constructed, as well as after construction, KCBX will continue its current practice of transferring some Product directly from one mode of transportation (e.g., train) to another mode of transportation (e.g., barge or lake vessel) without staging. That Product would be received indoors as discussed above, and would be moved by covered, fixed conveyor directly to the shiploader without being staged inside the transfer building.

**V. KCBX ACTIONS TO ADDRESS POTENTIAL DUST EMISSIONS**

As discussed further below, KCBX has generated extensive evidence that its operations have not affected its neighbors in the past, and has put extensive measures in place to ensure that its operations will not affect its neighbors during the period of construction. Late last week, consultants for the City raised questions about whether KCBX's operations could affect its neighbors. KCBX disagrees with those consultants' opinions, and has asked for the data on which those consultants relied. KCBX has not had time to finalize its formal responses to the City's consultants' opinions, but will do so soon and file those responses as a supplement to this variance request.

**A. KCBX's Existing Dust Suppression System**

Before the Rules were issued, KCBX had implemented a number of voluntary dust suppression measures, which were then later required by the City in its Rules. At its North Terminal, KCBX had installed an advanced dust suppression system consisting of 19 pole-mounted water cannons that are capable of applying up to 600 gallons of water per minute to Product stockpiles. These water cannons were linked to a weather station that automatically increases the amount of water delivered when winds reach a pre-set speed (currently 15 miles per hour).

Since acquiring the South Terminal in December 2012, KCBX has invested approximately \$30 million in that Terminal—in addition to the purchase price—including \$10 million in a state-of-the-art dust suppression system that consists of 42 water cannons oscillating on 60-foot-high poles

with overlapping coverage areas, which reach staging and handling areas. These cannons are capable of applying up to 1,800 gallons of water per minute to Product stockpiles. This cannon system also has an integrated weather monitoring system that monitors wind direction and speed and automatically increases the amount of water delivered during adverse weather conditions by cycling of the cannons more often. For example, the weather monitoring system includes a program setting to automatically start the water cannons when the winds reach a pre-set speed (currently 15 mph). The system also self-adjusts to target water application based on wind direction, and increases the amount of water applied based on barometric pressure, which is an indicator of impending inclement weather. The dust suppression systems at both Terminals also are equipped with technology that allows operators to control the systems remotely.

Additionally, both the North and South Terminals use the following equipment and best management practices to supplement their respective dust suppression systems:

- Water Trucks—Mobile water trucks are used to supplement the cannon sprays. Mobile water trucks also have the capability to supplement spray bars at transfer points throughout the Terminals.
- Pile Management and Grooming—Stockpiles are shaped and compacted to manage the potential for wind erosion.
- Surfactant and Encrusting Agents—Commercial surfactant agents are applied to the surface of inactive piles to decrease the potential for emissions.
- Spray Bars on Fixed Conveyor Transfer Points—Water spray bars are mounted at fixed conveyor transfer points, applying water to suppress potential emissions that may occur as Product is transferred from one conveyor to another.
- Truck Wheel Washes—Truck wheel wash systems are in place to remove loose debris from trucks/tires prior to exiting the terminal.
- Street Sweeping—KCBX routinely sweeps the facilities and streets used for transport of Product.
- Suspending Operations—If employees determine during operations that, given the particular site conditions, the potential for emissions cannot be effectively managed, the activity at issue is ceased until emissions can be effectively managed.

Finally, KCBX addresses potential emissions through proactive weather monitoring. KCBX employees proactively monitor weather forecasts and develop daily plans to apply water to and/or seal piles, and/or cease operations, before high winds and/or freezing conditions occur. Then, when high winds and/or freezing conditions do occur, piles are already wetted or sealed, and KCBX is not playing “catch up.”

## **B. KCBX’s Compliance with the Rules**

Since the City issued the Rules, KCBX has made additional investments and devoted additional resources to comply with them. The Rules contain extensive requirements, the majority of which took effect within 90 days of issuance (*i.e.*, by June 11, 2014). In addition to its already existing dust management equipment and practices discussed above, prior to filing its June 9, 2014 Petition for Variance, KCBX had fully complied with the following provisions of the Rules:

- obtained a Certificate of Operation issued by the City (Rules, § 3.0(1));
- implemented a program to address potential emissions of fugitive dust (Rules, §§ 3.0(2)(a), (b), (c));
- implemented a program to address potential vehicle leaking on roads (Rules, § 3.0(10));
- conducting required roadway cleaning (Rules, § 3.0(15));
- implemented a program to address spilled material (Rules, § 3.0(16));
- submitting required enclosure reports to the City (Rules, § 6.0(7));
- implemented a program to conduct testing of visual emissions and opacity limits (Rules, § 3.0(2)(d));
- developed and submitted a Fugitive Dust Plan to the City for review (Rules, § 3.0(3));
- operating a system of nine permanent, continuous Federal Equivalent Method real-time PM10 monitors around the boundaries of the Terminals (Rules, § 3.0(4));
- conducting required wind monitoring (Rules, § 3.0(5));
- maintaining all material transfer points as required (Rules, § 3.0(7));
- addressing trucks as required by the Rules (Rules, § 3.0(8)), including
  - enforcing a speed limit no higher than 8 miles per hour,
  - transloading to and from trucks that travel on paved roads,

- cleaning outgoing material transport trucks, and
- requiring that all outgoing material transport trucks pass through a wheel wash station (except during freezing weather) and pass over rumble strips;
- requiring truck trailers to be immediately covered before leaving the Facility, and loading barges using best management practices to address potential emissions (Rules, § 3.0(9));
- conducting barge and vessel loading using a process and control system to minimize the potential for fugitive emissions (Rules, § 3.0(13));
- developed and submitted an Enclosure Plan (Rules, § 4.0(1));
- staging outdoor product piles in compliance with the Chicago Zoning Ordinance (Rules, § 5.0(1));
- staging outdoor product piles at least 50 feet from waterways (Rules, § 5.0(3));
- implemented a program to suspend disturbance of outdoor product piles during High Wind Conditions except where alternate measures are implemented to effectively control emissions (Rules, § 5.0(4));
- operating a dust suppression system to apply water and chemical stabilizers (Rules, § 5.0(5)), which consists of:
  - water cannons (42 at the South Terminal and 19 at the North Terminal),
  - water trucks (3 at the South Terminal and 2 at the North Terminal), and
  - numerous spray bars;
- maintaining runoff management controls (Rules, § 5.0(6));
- keeping records of daily cleaning, routine inspections, application of water or chemical stabilizer, suspension of work due to high winds, dust monitoring results, and quarterly tests of visual fugitive dust (Rules, §§ 3.0(17)(a), (c), (d), (e), (f), and (g)); and
- lowered pile heights to 30 feet and placed visible measurement markers at 30 feet to demonstrate the height of each pile (Rules, § 5.0(2)).

KCBX has continued to devote significant resources to comply with additional requirements of the Rules. For example, KCBX completed paving Internal Roads at its Facility on September 11, 2014. The Rules do not require paving to be completed until March 13, 2015. Rules, § 3.0(14).

**C. Analysis of Soil Samples, Surface Samples, and Air Filters, Conducted by Environmental Health & Engineering, Inc.**

For some time now, KCBX has shared with the government regulators, the general public and nearby residents the results of its analyses of KCBX-collected soil and surface samples and



community and government-collected air filters. These analyses by certified analytical laboratories confirm that the Facility does not adversely impact the surrounding area, surrounding environment, or surrounding property uses as it is currently operated. In November and December 2013 and April 2014, Environmental Health & Engineering, Inc. (“EH&E”) investigated the surfaces and soil in the East Side and South Deering neighborhoods surrounding the Facility to evaluate and sample these areas for the presence of pet coke or coal. EH&E examined the soil and surfaces for chemical indicators of pet coke and coal, including certain metal and polynuclear aromatic hydrocarbon ratios. Samples were collected and tested by an independent environmental professional and laboratories, in accordance with ASTM and EPA methods. The investigation revealed that no evidence exists of pet coke or coal on surfaces or in the soil of the East Side and South Deering neighborhoods, and that the composition of the soil in these areas is consistent with control neighborhoods in the City of Chicago. Exhibit 1, Petcoke-Coal Test Results prepared by David L. McIntosh, Sc.D., C.I.H. dated January 13, 2014 and April 21, 2014.

In addition, in July and August 2014, both EPA and EH&E tested residential air filters collected by the Southeast Environmental Taskforce. EPA concluded the filter results did not confirm the presence of pet coke, stating: “A preliminary analysis of the furnace filter sample results does not confirm the presence of pet coke.” Exhibit 2. EH&E also found no indication of pet coke or coal. Rather, EH&E found that “the levels of polynuclear aromatic hydrocarbons (“PAHs”) and metals in the air filters are not consistent with the presence of petroleum coke or coal, but instead are associated with indoor and outdoor air, settled house dust, and soil reported for Chicago and other urban areas in the United States.” Exhibit 3.

#### **D. Air Monitoring and Modeling**

In late 2013, in response to an EPA information request, KCBX and its experts developed a plan to measure particulate matter with a diameter of 10 micrometers or less (“PM10”) at its North

and South Terminals for a one-year period. KCBX's plan went well beyond the specific elements of the EPA requested monitoring program. For example, KCBX's plan included additional monitors at both the North and South terminals and an additional meteorological station. EPA approved KCBX's monitoring plan in December of 2013. At the beginning of 2014, KCBX installed nine on-site PM10 source monitors and two meteorological stations to monitor PM10 in real time at the Facility. KCBX began measuring PM10 emissions on February 18, 2014. KCBX hired Sonoma Technology, Inc. ("STI") to assist with the interpretation of the data generated by the monitors, including conducting associated air modeling to better understand the potential PM10 flow and dispersion in the areas surrounding the Facility. The air modeling was conducted in accordance with the EPA-accepted AMS (American Meteorological Society)/EPA Regulatory Model—"AERMOD" (Atmospheric Dispersion Modeling System).

After reviewing the first six weeks of air monitoring data and conducting air modeling based upon that data, STI concluded that PM10 associated with the Facility is consistent with short-term and long-term offsite PM10 levels that meet standards that are protective of public health. Exhibit 4, Letter from Sonoma Technology, Inc. dated December 15, 2014. EPA has established National Ambient Air Quality Standards ("NAAQS") for PM10 and five other widespread compounds. The NAAQS only apply to air quality in community settings to which the general public has access, rather than on industrial sites and other industrial facilities like the KCBX terminals. States, rather than individual industrial sites, are intended to implement and demonstrate attainment of the NAAQS, which is based on a 24-hour average concentration of 150  $\mu\text{g}/\text{m}^3$ .

On the other hand, KCBX's PM10 monitors that EPA approved are source monitors, meaning that they are located within the fence line of KCBX's facilities and adjacent to active piles and emissions sources. Because of their on-site location next to active piles, KCBX's PM10

monitors do not measure ambient air and therefore cannot be used to directly measure PM10 concentrations to which the public might be exposed in the neighborhoods surrounding the KCBX facilities. Thus, the PM10 monitoring conducted by KCBX is not directly applicable to evaluation of whether the NAAQS is being exceeded in the nearby neighborhoods. Moreover, applying the NAAQS standard for PM10 to source monitors such as those at the Facility is inappropriate to determine compliance. Nonetheless, it is worth noting that of the days monitored, 99.9% of the 24-hour air monitoring daily results at the Facility were still well within the PM10 NAAQS standard, which does not even apply where these monitors are located.

Nor does the CDM Smith report released in March of 2014 titled “City of Chicago Fugitive Dust Study” (“CDM Report”), in which CDM evaluated a “generic” bulk material processing facility, demonstrate that granting the request for a variance would create a public nuisance or adversely impact the surrounding area, surrounding environment, or surrounding property uses. The CDM Report suggests that some of the data it discusses may be from the KCBX Facility. As such, KCBX asked STI to evaluate the report. STI concludes that the operations and emissions assumed for the generic facility in the CDM Report “are in no way representative of actual operations and emissions at the KCBX Terminal.” STI Evaluation of CDM Report, Exhibit 5. Thus, this CDM Report should not be relied upon to evaluate whether granting this variance request would have an adverse impact on the surrounding community.

#### **E. KCBX’s Fugitive Dust Plan**

KCBX filed its Fugitive Dust Plan with the City on June 9, 2014. In that Plan, KCBX details the pole-mounted water cannons and other dust control equipment and procedures that KCBX utilizes to address and monitor for potential fugitive dust and PM10 emissions. The plan identifies all the elements of KCBX’s existing dust suppression system discussed above, and additional measures that KCBX has implemented to address potential emissions associated with:

- rail, truck and barge unloading (water application or dust collection);
- barge, vessel and truck loading (water application);
- screening (North Terminal only activity—water application); and,
- traffic and parking areas (water application and street sweeping).

The Fugitive Dust Plan also details how KCBX operates its nine PM10 monitors and two weather stations discussed in Section V(D) above. And, the Fugitive Dust Plan details how KCBX monitors readings from those PM10 monitors and responds to those readings, up to and including suspending operations that could be affecting the readings. Further, since filing its Fugitive Dust Plan with the City, KCBX has enhanced its procedures for addressing potential dust emissions. For example, in its June 9, 2014 Fugitive Dust Plan, KCBX proposed that it initially would respond to an air monitor reading when the difference between the upwind monitor and the downwind monitor is  $300 \mu\text{g}/\text{m}^3$  or greater. In fact, KCBX is responding to any monitor reading of  $300 \mu\text{g}/\text{m}^3$  or greater, regardless of the difference between the upwind and downwind monitors. In addition, KCBX analyzes the moisture of each stockpile at the Facility every two weeks. KCBX is in the process of updating its Fugitive Dust Plan to reflect its enhanced procedures and will submit its updated Plan to the City in the near future.

KCBX has implemented its Fugitive Dust Plan at both of its Terminals, and will comply with its Fugitive Dust Plan during construction of the Enclosure, including but not limited to during the timeframe of any variance that is granted by the City.

## **VI. PROCEDURE**

Because the Rules, including the variance process, are new, no precedent exists upon which KCBX can rely in submitting this Petition. KCBX believes that it has met the requirements of Section 8.0 of the Rules and that it has submitted all necessary information to facilitate the City's review of this Petition. In the event that the City disagrees, however, KCBX requests that the City

notify KCBX and allow KCBX to supplement this Petition as necessary. In addition, KCBX requests that the City provide KCBX with an opportunity to respond to any written comments on this Petition that may be submitted under Section 8.0(5) of the Rules.

## **VII. LEGAL STANDARD**

Section 8.0(1) of the Rules provides that “[a] Facility Owner or Operator may apply to the Commissioner for a variance from any Regulation set forth in Parts B, D, or E” of the Rules. “[A] request for a variance must be in writing and must set forth, in detail, all of the following:

- a) A statement identifying the regulation or requirement from which the variance is requested;
- b) 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;
- c) The quantity and types of materials used in the process or activity in connection with which the variance is requested, as appropriate;
- d) 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;
- e) A statement explaining:
  - i. Why compliance with the regulations imposes an arbitrary or unreasonable hardship;
  - ii. Why compliance cannot be accomplished during the required timeframe due to events beyond the Facility Owner or Operator’s control such as permitting delays or natural disasters; or
  - iii. Why the proposed alternative measure is preferable.
- f) A description of the proposed methods to achieve compliance with the regulations and a timetable for achieving that compliance, if applicable;
- g) A discussion of alternate methods of compliance and of the factors influencing the choice of applying for a variance;
- h) A statement regarding the person's current status as related to the subject matter of the variance request;
- i) For any request for a variance from the enclosure deadline set forth in 6.0(5), the applicant must submit all of the information required in sections 8.0(2)(a) through (h) above and shall also submit 1) fugitive dust monitoring reports for the four months prior to the date of the variance application and 2) in the event that the variance is granted, monthly fugitive dust monitoring reports

for the duration of the variance which shall be due fourteen (14) days following the end of the month which the report covers. The monthly fugitive dust monitoring reports required by this section shall be submitted in an electronic format as specified in the Variance.”

Rules, § 8.0(2).

When deciding whether to grant a variance:

“[T]he Commissioner will consider public comments received pursuant to 8.0(4) [sic] and will evaluate the information provided in the application to meet the requirements of 8.0(2). Particular consideration will be given to the following information:

- i. Inclusion of a definite compliance program;
- ii. Evaluation of all reasonable alternatives for compliance;
- iii. Demonstration that any adverse impacts will be minimal.”

Rules, § 8.0(3)(a).

#### **VIII. REQUEST FOR VARIANCE AS TO SECTIONS 6.0(5) AND 6.0(6) - ENCLOSURE DEADLINE**

KCBX seeks a variance as to Sections 6.0(5) and 6.0(6) of the Rules relating to the deadline to enclose Coke and Coal Bulk Materials. In accordance with Section 8.0 of the Rules, KCBX meets the requirements for a variance from these Sections for the reasons stated above and as follows:

##### **A. A Statement Identifying the Regulation or Requirement from which the Variance is Requested**

KCBX requests a variance from Sections 6.0(5) and 6.0(6), which state:

- (5) The following paragraph shall take effect two years from the issuance of these Rules and Regulations:  
  
4.0(2) Enclosure of Coke and Coal - Enclosure Requirements
- (6) Enclosure Deadline. Within two (2) years from the submission of the Enclosure Plan, as required by 4.0(1) and 6.0(2), all Coke and Coal Bulk Materials must be either fully enclosed or removed from the Facility and any associated Coke or Coal Bulk Material Facility, as required by 4.0 above.

As required by Sections 4.0(1) and 6.0(2) of the Rules, KCBX submitted its initial Enclosure Plan to the City on June 9, 2014. Thus, under Section 6.0(6), without a variance, KCBX’s current

deadline to enclose Coke and Coal Bulk Solid Materials at its Facility is two years from that submission date, or June 9, 2016.

As noted above, when it issued the Rules, the City “acknowledge[d] that this [i.e., designing, engineering, permitting, constructing, and commissioning an enclosure within two years] is an aggressive schedule.” Thus, the City stated, “companies may obtain an extension for good cause through the variance process” if they are “able to demonstrate a valid need for an extension.” As discussed in detail below, KCBX has good cause and a valid need for an extension of the enclosure deadline. Therefore, KCBX requests that the City grant a variance extending the deadline for KCBX to enclose to August 24, 2017. As discussed further below, this time period would include both the construction of the Enclosure and the transition of KCBX’s outdoor operations at both its North and South Terminals into the Enclosure at the South Terminal once it is complete.

**B. 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**

KCBX seeks a variance that would allow it to continue to stage Coke and Coal Bulk Solid Materials outside at its North Terminal, and outside at a portion of its South Terminal, until August 24, 2017, in order to give KCBX sufficient time to complete the Enclosure and consolidate its operations at its North and South Terminals into the Enclosure at the South Terminal. The transfer building would be constructed in the north-central portion of what is currently the outdoor bulk material storage pad at the South Terminal. During construction, KCBX would continue to stage Product in the southern half of the South Terminal and operate that portion of the property as a bulk materials handling facility. See Figure 13 below. KCBX would separate the northern and southern portions of the South Terminal with a fence to ensure that construction vehicles do not come into contact with coal or pet coke.

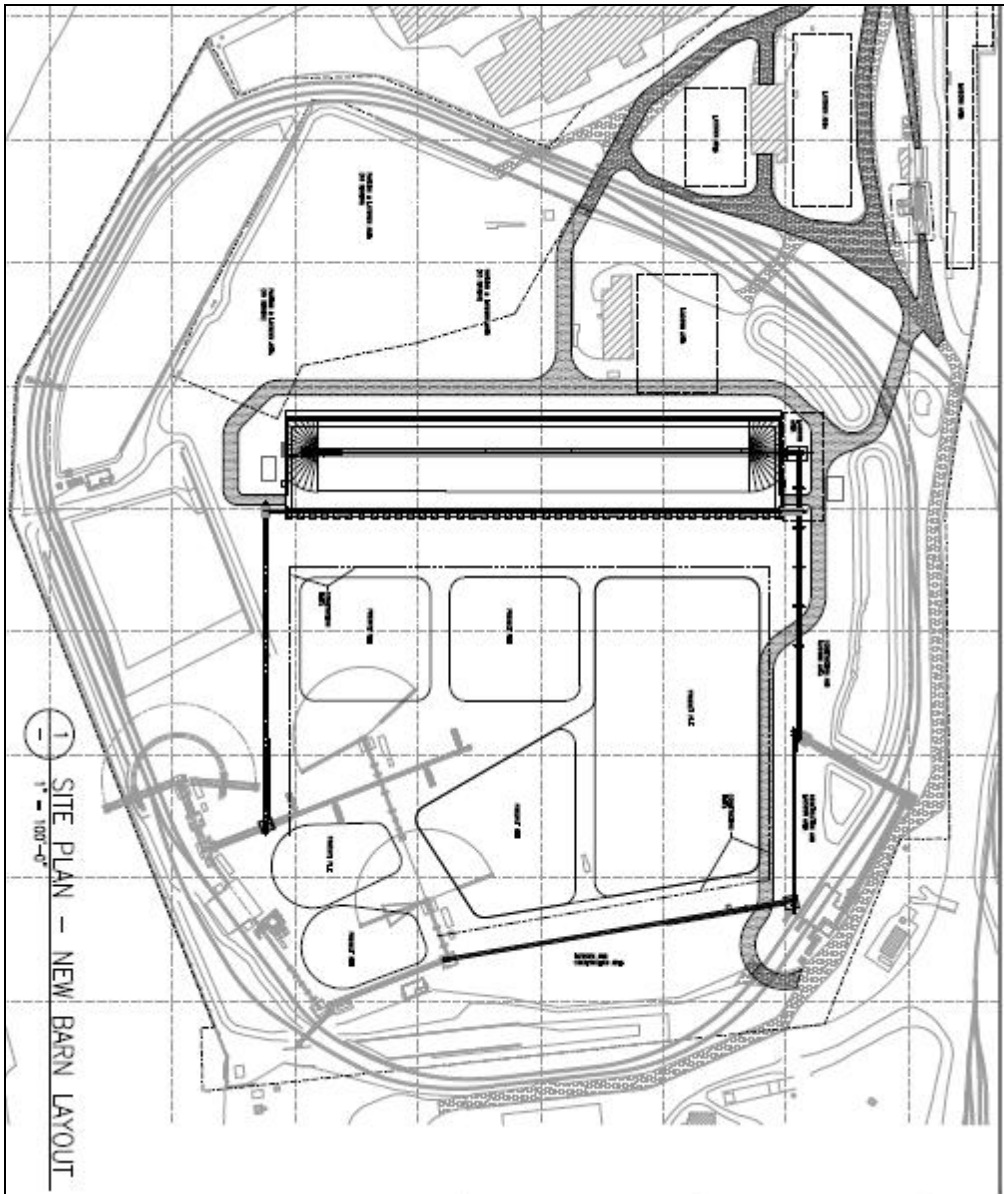


Figure 13 – South Terminal planned layout during construction

Neither the general public, nearby communities or the environment would be adversely affected by a grant of this variance request. By using its cannon system and the other measures outlined in its Fugitive Dust Plan, and installing fencing to prevent construction vehicles from contacting coal and pet coke, KCBX can effectively address potential PM emissions at its Terminals during the additional time it needs to complete the Enclosure. This is demonstrated by the results of



KCBX's air monitoring, and soil and surface sampling, discussed above, which show that operations at KCBX's two Terminals do not affect the surrounding area.

**C. The Quantity and Types of Materials Used in the Process or Activity in Connection with which the Variance is Requested**

The Facility handles only coal and pet coke. Under the Rules' pile height limit of 30 feet (Rules, § 5.0(2)), the maximum stockpile capacities at KCBX's North and South Terminals are:

North Terminal:       ≈600,000 tons

South Terminal:       ≈1.1 million tons

**D. 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**

Granting KCBX a variance from Section 6.0(5) and Section 6.0(6) would not create a public nuisance or adversely impact the surrounding area, surrounding environment, or surrounding property uses. KCBX will continue to utilize its dust suppression system and to follow its Fugitive Dust Plan during the time period of the variance. KCBX's dust suppression system is effective, as shown by the monitoring data submitted under Section VIII(I) below. These monitoring data show that PM10 associated with the Facility is consistent with short-term and long-term offsite PM10 levels that would meet air quality standards specifically designed to be protective of public health. Additionally, the STI air monitoring and EH&E soil and surface data demonstrate that the Facility's dust suppression system is effective, and that the Facility does not adversely affect the surrounding area. Finally, as discussed above, concerns recently raised by the City's consultant CDM Smith are not well founded. Thus, the City should not rely on CDM Smith's conclusions, but instead should rely on the data presented by STI, EH&E and the monitoring data submitted as part of this submission in considering this variance request.

**E. A Statement Explaining (i) why compliance with the regulations imposes an arbitrary or unreasonable hardship; (ii) why compliance cannot be accomplished during the required timeframe due to events beyond the Facility Owner or Operator's control such as permitting delays or natural disasters; or (iii) why the proposed alternative measure is preferable.**

Enclosure of Coke and Coal Bulk Materials at KCBX's Facility cannot be accomplished within 2 years due to events beyond KCBX's control. Specifically, it simply is not possible to design, engineer, permit, construct, and transition the stockpiles at KCBX's Facility into an enclosure that satisfies the requirements of the Rules—and has the size and capabilities necessary to enable KCBX to continue its business—in that timeframe.

Attached hereto as Exhibit 6 is KCBX's Project Schedule, which reflects the estimated timeline for all key design, permitting, procurement, and construction activities associated with the KCBX enclosure project. KCBX believes this schedule reflects the required key actions that are necessary for an expeditious and successful project.

As noted above, KCBX began considering how to construct an enclosure that would meet the Rules' requirements in December 2013, before the Rules were even finalized. KCBX initially developed a four-year and three-month timeline—beginning in December 2013 and ending in March 2018—during which it would choose a design, finalize that design, engineer, procure materials for, permit, and construct the Enclosure. KCBX outlined this proposed timeline in its initial Enclosure Plan, which it submitted to the City on June 9, 2014. Since submitting its initial Enclosure Plan, KCBX has continued to evaluate and re-evaluate its schedule to identify ways to complete its Enclosure more quickly. Through that process, KCBX has condensed its timeline, by proposing to conduct activities in parallel that typically would be required to occur sequentially. Assuming timely receipt of permits, KCBX's new proposed timeline—which also addresses design, engineering,

procurement, permitting, and construction—calls for completion of the Enclosure by May 2017, and transition into the Enclosure by August 2017.

KCBX's original proposal would have required a variance of 24 months, from June 9, 2016 to March 2018 for construction time, plus 3 months to transition outdoor operations at the North and South Terminals into the Enclosure at the South Terminal. KCBX's new schedule results in a variance request of 14 months, from June 9, 2016 to May 2017 for construction time, plus three months to transition. Thus, through its evaluation process, KCBX has shortened the length of the variance it needs by 10 months, or more than 40%.

Exhibit 6 details all of the steps in KCBX's enclosure project. KCBX cannot identify any further reductions it can make in the time needed to complete the project. KCBX is legally required to obtain building permits from the City of Chicago, and air and water construction permits from the Illinois EPA, before it begins construction. To obtain these permits, KCBX must first develop and submit for approval permit applications containing sufficient design, engineering and operating information regarding the project to enable the City and Illinois EPA to consider KCBX's permit requests. KCBX is in the process of developing such information, as part of Phase III of its Enclosure project. As detailed in the discussion of Phase IV of the Enclosure project above, KCBX plans to submit permit applications beginning in February of next year. Optimistically, KCBX anticipates receiving these permits by the end of August 2015 and plans to begin actual construction of the transfer building in September 2015. As discussed above, the actual construction of the Enclosure will take 19 months. The total timeframe for the project from Phase III through commissioning of the Enclosure will take 31 months. See Section III, Enclosure Planning and Construction Process, above.

This timeframe is supported by the proposal that KCBX's EPC contractor, Graycor, submitted in June 2014, before Graycor was hired by KCBX. That proposal is attached hereto as Exhibit 7. In its proposal, Graycor concluded that Phase III through construction and commissioning of the Enclosure would take 31 months. See Exhibit 7, Section E: Schedule and Manpower Chart.<sup>4</sup>

**F. A Description of the Proposed Methods to Achieve Compliance with the Regulations and a Timetable for Achieving that Compliance, if Applicable**

KCBX will achieve compliance with the enclosure requirements in the Rules by completing the Enclosure Project discussed above. KCBX proposes to complete the project by May 2017, and to complete its transition into the Enclosure at the South Terminal by August 2017. KCBX has included a detailed expected project timetable as Exhibit 6.

KCBX has already taken steps necessary to comply with the Rules and will continue to move forward to complete the Enclosure with deliberate speed. KCBX has entered into a contract with an EPC contractor that provides for bonuses to the contractor if it completes construction of the Enclosure early, and penalties if it completes construction of the Enclosure late. KCBX, its EPC contractor and subcontractors have already met with representatives of the City regarding the City construction permits that KCBX will need. Some factors that could affect construction of the Enclosure are outside of KCBX's control, such as the length of time it takes to obtain permits, weather conditions, and vendor schedules. Nevertheless, KCBX will continue to take steps to expedite the timeline for completion of the Enclosure to the extent possible.

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<sup>4</sup> Graycor's proposal assumed that Phase III of the construction project would begin in July 2014. In fact, Phase III did not begin until November 2014.

**G. A Discussion of Alternate Methods of Compliance and of the Factors Influencing the Choice of Applying for a Variance**

KCBX is not aware of any alternate method of compliance it could have chosen that would have avoided the need for a variance. The Rules require KCBX to build an enclosure. In addition to complying with that requirement, any enclosure design chosen by KCBX must have the room, capabilities, and environmental, health and safety controls that are needed to run KCBX's business and protect employees and the community surrounding the Facility. KCBX has not identified any alternate design that it could have chosen that would meet these needs and could be designed, built and commissioned within the Rules' two-year construction timeframe.

KCBX did consider several alternate designs but was not able to identify one that was viable. First, KCBX considered a pre-fabricated "off the shelf" building design. However, KCBX determined that this simplistic approach would not be able to accommodate the systems that KCBX needed to move product, an underground sump system to manage process water, or an internal structure design (clear span) that will allow for mobile equipment and truck traffic while supporting increased loads due to overhead conveyor and dust suppression systems.

Second, KCBX considered a fabric covered structure. However, such a structure could not be built more quickly than KCBX's chosen design, as it would be more complex to design and permit (due to the need to handle snow and wind loads, etc.) and would require essentially the same steel structure as KCBX's chosen design, in order to support internal overhead conveyors, dust suppression system (or dust collection), lighting and ventilation system. Further, a fabric structure would increase the risk of fugitive dust emissions in the event of a tear or failure in the fabric.

Third, KCBX considered dome structures. However, to utilize dome structures, KCBX would be required to build multiple dedicated structures for use only by specific customers, in order to keep customers' products segregated. This is not a viable alternative for KCBX's customer base.

KCBX has not identified a way that it could ensure construction of this design any more quickly than it has proposed. KCBX has sufficient dust suppression capabilities in place at its Terminals to prevent any impact from the Terminals while construction takes place. For these reasons, KCBX selected the alternative of submitting this Petition for Variance.

**H. A Statement Regarding the Person's Current Status as Related to the Subject Matter of the Variance Request**

As noted above, KCBX began considering alternatives for enclosure at its Facility when the City proposed its Rules in December 2013. Between December 2013 and May 2014, KCBX conducted Phase I of its construction process, conceptual planning. During Phase I, KCBX analyzed the number and type of enclosures it would need; developed preliminary site layout, conveyance, and loading and unloading options; and developed an EPC selection process. Between May and November 2014, KCBX conducted Phase II of its construction process, Scope Definition. During this Phase, KCBX refined its enclosure design, conveyance systems, site layout and process flow; developed a preliminary construction plan; and selected an EPC contractor. KCBX is currently in Phase III of its construction process, and is in the process of meeting with regulatory agencies and preparing permit applications.

**I. Fugitive Dust Monitoring Reports for Four Months Prior to the Variance Petition**

Section 8.0(2)(i) of the Rules requires KCBX to submit “(1) fugitive dust monitoring reports for the fourth months prior to the date of the variance application and (2) in the event that the variance is granted, monthly fugitive dust monitoring reports for the duration of the variance....” The PM10 Monitoring Reports for August 1 through November 30, 2014 are attached hereto as Exhibit 8. If this Petition for Variance is granted, KCBX will submit monthly PM10 monitoring reports to the City for the duration of the variance, as required by Section 8.0(2)(i) of the Rules.

## **IX. CONCLUSION**

For the reasons discussed above, the City should grant KCBX a variance from the two-year enclosure deadline contained in Sections 6.0(5) and 6.0(6) of the Rules. Section 8.0(3) of the Rules provides that when the City considers a variance request, “[p]articular consideration will be given to the following information:

- i. Inclusion of a definite compliance program;
- ii. Evaluation of all reasonable alternatives for compliance;
- iii. Demonstration that any adverse impacts will be minimal.”

KCBX has included a definite compliance program—its planned construction schedule, which will be/has been incorporated into a revised Enclosure Plan that KCBX will submit to the City for approval. KCBX has detailed above how it evaluated all reasonable alternatives and could not identify any option but to request this variance. And, KCBX has demonstrated above that granting this variance will not cause adverse impacts, as shown by the air monitoring and the soil and surface data submitted herewith, and as KCBX will comply with its Fugitive Dust Plan throughout the time period of construction of its Enclosure.

For these reasons, KCBX reiterates its position that the City should grant this variance request.

Dated: December 17, 2014

*/s/ Stephen A. Swedlow*  
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