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December 1, 2014

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

RE: Chicago Port Railroad Company
Midwest Marine Terminals Inc.
11701-12201 South Torrence
Chicago, Illinois

Request for Acknowledgement of Exemption from
Bulk Material Storage Rules and Regulations by reason of
Preemption Doctrine; and

In the Alternative, Variance Request

Dear Commissioner Dr. Choucair:

We represent the affiliates Chicago Port Railroad Company ("Chicago Port Railroad") and Midwest Marine Terminals Inc. ("Midwest Marine"). Chicago Port Railroad provides transportation services between rail and water or rail and road at the 60 acre facility containing 15,000 feet of rail track located on the west side of the Calumet River commonly known as 11701-12201 South Torrence, Chicago, IL (the "Facility"). Chicago Port Railroad operates at the Facility under a trackage rights agreement as served by the Chicago Rail Link. Midwest Marine is a sister corporation to Chicago Port and provides the material handling and storage services to facilitate Chicago Port's transportation services. The materials handled and stored at the Facility are fertilizer (MAP, DAP, Potash, Urea), magnesite, pig iron, salt, kaolin, alumina, calcium aluminat clinker, tire shreds, steel coils, cement, flyash, ground blast furnace slag, aggregates, sand, pea gravel, gravel, traprock, granite, limestone, lightweight merrimac, iron ore rock, landscape boulders, quartzite, black dirt, scrap iron, briquettes, bushling, HBI fines, slag fines, plate & structural, DRI fines, bundles, iron rich material, broken concrete, crushed concrete and asphalt grindings, but do **not** include coke or coal.

I. REQUEST FOR ACKNOWLEDGEMENT OF EXEMPTION BY REASON OF PREEMPTION DOCTRINE

The Facility is therefore subject to federal laws and regulations governing railroad operations, including without limitation the Federal Railroad Safety Act (FRSA), 49 U.S.C. § 21101 *et seq.*, and all regulations promulgated thereunder and enforced by the Federal Railroad Administration under the authority of the United States Secretary of Transportation. The FRSA was specifically enacted under the United States Congress' constitutional authority to regulate interstate commerce with the intent of providing uniform national regulation of railroad operations. The State of Illinois has recognized that the Facility is a part of the national rail system in the State's classification of the Facility as a railroad operating property for purposes of exempting the Facility from the State property taxation system.

As such, the overall structure of federal railroad laws and regulations substantially subsumes the subject matter of Article II Air Pollution Control Rules and Regulations For Control of Emissions from the Handling and Storage of Bulk Material Piles promulgated by the City of Chicago Department of Public Health on March 13, 2014 (the "Regulations") as these Regulations relate to the Facility. The Regulations are preempted in their entirety relative to the Facility by federal railroad laws and regulations, including without limitation the FRSA.

We hereby request acknowledgement of exemption of the Facility entirely from the Regulations.

II. WITHOUT WAIVING EXEMPTION AND ONLY IN THE ALTERNATIVE, VARIANCE REQUEST

Without waiver of aforesaid exemption from the Regulations of the Facility by reason of the doctrine of preemption and only, in the alternative were said exemption unavailable, Chicago Port Railroad and Midwest Marine applies for a variance from the Regulations as follows:

A. SECTION 3.0 OPERATING AND MAINTENANCE PRACTICES.

1. 3.0(4) Fugitive Dust Monitoring.

a) Statement identifying regulation or requirement from which variance is requested:

All requirements of Section 3.0(4) relative to installation, operation and maintenance of permanent, continuous Federal Equivalent Method ("FEM") real-time PM10 monitors around the perimeter of the Facility.

b) Description of process or activity for which variance is requested:

All processes and activities of the Facility.

c) Quantity and types of materials used in the process or activity in connection with which the variance is requested, as appropriate.

The types of materials are fertilizer (MAP , DAP , Potash , Urea), magnesite, pig iron, salt, kaolin, alumina, calcium aluminate clinker, tire shreds, steel coils, cement, flyash, ground blast furnace slag, aggregates, sand, pea gravel, gravel, traprock, granite, limestone, lightweight merrimac, iron ore rock, landscape boulders, quartzite, black dirt, scrap iron, briquettes, bushling, HBI fines, slag fines, plate & structural, DRI fines, bundles, iron rich material, broken concrete, crushed concrete and asphalt grindings, but do **not** include coke or coal. The quantities vary widely from 25 tons to 30,000 tons.

d) Demonstration that issuance of variance will not create a public nuisance or adversely impact the surrounding area, surrounding environment, or surrounding property uses.

Facility operations do not result in off site fugitive dust emissions. There have never been any complaints regarding visible emissions from Facility operations. Based on historic quantities handled and published emission factors, PM₁₀ emissions from BSM handling operations are negligible and insufficient to generate opacity greater than ten percent or fugitive dust visible beyond the property line of the Facility. The area, environment and property uses surrounding the Facility are highly industrial with heavy vehicle traffic, multiple sources and changes conditions; therefore, the use of such monitors at the Facility would not result in any helpful use of the data collected.

e) Statement explaining:

i. Why compliance with regulations imposes an arbitrary or unreasonable hardship:

The costs to install, operate and maintain monitors, estimated to be \$100,000.00, greatly outweigh any benefits. The Facility is not a petcoke or metcoke bulk materials facility. Such monitors cannot accurately evaluate fugitive dust in the ambient air around the Facility. Monitored readings will arbitrarily trigger response activities for detection of dust not attributable to the Facility. Although the monitors may detect ambient particulate matter, they cannot distinguish background concentrations or origin and thus are ineffective for their intended purpose. The presence of large neighboring sources of fugitive dust makes a requirement for monitoring impractical.

f) A description of the proposed methods to achieve compliance with the regulations and a timetable for achieving that compliance, if applicable.

Not applicable.

g) A discussion of alternative methods of compliance and of the factors influencing the choice of applying for a variance.

Dust control and prevention methods are implemented at the Facility including indoor storage and hoods covering spouts and transfer points of conveyor systems. The benefits of these measures are much greater than the benefits of monitors.

h) Statement regarding current status as related to subject matter of various request.

Currently no monitors are installed at the Facility.

2. 3.0(5) Wind Monitoring.

a) Statement identifying regulation or requirement from which variance is requested:

All requirements of Section 3.0(5) relative to installation, operation and maintenance of a weather station.

b) Description of process or activity for which variance is requested:

All processes and activities of the Facility.

c) Quantity and types of materials used in the process or activity in connection with which the variance is requested, as appropriate.

The types of materials are fertilizer (MAP , DAP , Potash , Urea), magnesite, pig iron, salt, kaolin, alumina, calcium aluminate clinker, tire shreds, steel coils, cement, flyash, ground blast furnace slag, aggregates, sand, pea gravel, gravel, traprock, granite, limestone, lightweight merrimac, iron ore rock, landscape boulders, quartzite, black dirt, scrap iron, briquettes, bushling, HBI fines, slag fines, plate & structural, DRI fines, bundles, iron rich material, broken concrete, crushed concrete and asphalt grindings, but do **not** include coke or coal. The quantities vary widely from 25 tons to 30,000 tons.

d) Demonstration that issuance of variance will not create a public nuisance or adversely impact the surrounding area, surrounding environment, or surrounding property uses.

Whether a weather station is installed at the Facility or not has no impact on the public or surrounding area.

e) Statement explaining:

i. Why compliance with regulations imposes an arbitrary or unreasonable hardship:

The costs to install, operate and maintain a weather station, estimated to be \$100,000.00, greatly outweigh any benefits. Weather stations at the Facility would provide no helpful data that access to online wind speed and direction data already provides.

f) A description of the proposed methods to achieve compliance with the regulations and a timetable for achieving that compliance, if applicable.

Not applicable.

g) A discussion of alternative methods of compliance and of the factors influencing the choice of applying for a variance.

Access to online wind speed and direction data.

h) Statement regarding current status as related to subject matter of various request.

Currently, no weather stations are installed.

3. 3.0(6) Conveyors.

a) Statement identifying regulation or requirement from which variance is requested:

All requirements of Section 3.0(5) relative to covered and enclosed conveyors.

b) Description of process or activity for which variance is requested:

The conveyors used at the Facility, which currently consists of 6 100foot-long portable conveyors.

c) Quantity and types of materials used in the process or activity in connection with which the variance is requested, as appropriate.

The types of materials are fertilizer (MAP , DAP , Potash , Urea), magnesite, pig iron, salt, kaolin, alumina, calcium aluminate clinker, tire shreds, steel coils, cement, flyash, ground blast furnace slag, aggregates, sand, pea gravel, gravel, traprock, granite, limestone, lightweight merrimac, iron ore rock, landscape boulders, quartzite, black dirt, scrap iron, briquettes, bushling, HBI fines, slag fines, plate & structural, DRI fines, bundles, iron rich material, broken concrete, crushed concrete and asphalt grindings, but do **not** include coke or coal. The quantities vary widely from 25 tons to 30,000 tons.

d) Demonstration that issuance of variance will not create a public nuisance or adversely impact the surrounding area, surrounding environment, or surrounding property uses.

Covering the spouts and transfer points of the conveyors, as is the practice at the Facility, adequately ensures that fugitive dust does not migrate from the conveyors to areas surrounding the Facility.

e) Statement explaining:

i. Why compliance with regulations imposes an arbitrary or unreasonable hardship:

The costs to install complete covers over all conveyors, estimated to be \$10,000 per conveyor, greatly outweigh any benefits. Spouts and transfer points are covered which provide adequate protection against fugitive dust migration.

f) A description of the proposed methods to achieve compliance with the regulations and a timetable for achieving that compliance, if applicable.

Not applicable.

g) A discussion of alternative methods of compliance and of the factors influencing the choice of applying for a variance.

Continued covers of spouts and transfer points on conveyors.

h) Statement regarding current status as related to subject matter of various request.

Currently, only the spouts and transfer points of conveyors are covered.

4. 3.0(8) (d) Wheel Wash Station and Rumble Strips.

a) Statement identifying regulation or requirement from which variance is requested:

All requirements of Section 3.0(8)(d) relative to wheel wash stations and rumble strips.

b) Description of process or activity for which variance is requested:

All outgoing material transport trucks.

c) Quantity and types of materials used in the process or activity in connection with which the variance is requested, as appropriate.

Not applicable.

d) Demonstration that issuance of variance will not create a public nuisance or adversely impact the surrounding area, surrounding environment, or surrounding property uses.

The dry materials present at the Facility do not have a propensity to accumulate on vehicles or tires.

e) Statement explaining:

i. Why compliance with regulations imposes an arbitrary or unreasonable hardship:

The costs to install, operate and maintain wheel wash stations and rumble strips, estimated to be \$250,000.00, greatly outweigh any benefits because the dry materials present at the Facility do not have a propensity to accumulate on vehicles or tires.

f) A description of the proposed methods to achieve compliance with the regulations and a timetable for achieving that compliance, if applicable.

Not applicable.

g) A discussion of alternative methods of compliance and of the factors influencing the choice of applying for a variance.

Vehicles are inspected prior to leaving the Facility and any accumulated material is manually removed to prevent same from being brought on to the public way.

h) Statement regarding current status as related to subject matter of various request.

Currently no wheel wash stations or rumble strips are installed at the Facility.

5. 3.0(14) Paving.

a) Statement identifying regulation or requirement from which variance is requested:

All requirements of Section 3.0(14) relative to paving all internal roads.

b) Description of process or activity for which variance is requested:

Traverse of vehicles at the Facility.

c) Quantity and types of materials used in the process or activity in connection with which the variance is requested, as appropriate.

Not applicable.

d) Demonstration that issuance of variance will not create a public nuisance or adversely impact the surrounding area, surrounding environment, or surrounding property uses.

The Facility does not contain internal roads per se. Rather, vehicles at the Facility traverse over wide, unmarked areas of gravel and compacted dirt. The absence of pavement over these areas has not resulted in any public nuisance or adverse impact to the surrounding area, environment or property uses.

e) Statement explaining:

i. Why compliance with regulations imposes an arbitrary or unreasonable hardship:

The costs to pave any portion of the Facility is approximately \$8.00 per square foot. The Facility is 60 acres, a substantial percentage of which is wide, unmarked areas of gravel and compacted dirt upon which vehicles traverse at times in a random fashion rather than on designated, internal roads. The costs to pave all areas traversed by vehicles at the Facility would greatly outweigh any benefits thereof.

f) A description of the proposed methods to achieve compliance with the regulations and a timetable for achieving that compliance, if applicable.

Not applicable.

g) A discussion of alternative methods of compliance and of the factors influencing the choice of applying for a variance.

Not applicable.

h) Statement regarding current status as related to subject matter of various request.

The current absence of pavement over areas used by vehicles has not resulted in any public nuisance or adverse impact to the surrounding area, environment or property uses.

6. 3.0(15) Roadway Cleaning.

a) Statement identifying regulation or requirement from which variance is requested:

All requirements of Section 3.0(15) relative to use of and reporting regarding a street sweeper.

- b) Description of process or activity for which variance is requested:

Areas of Facility where vehicles traverse.

- c) Quantity and types of materials used in the process or activity in connection with which the variance is requested, as appropriate.

Not applicable.

- d) Demonstration that issuance of variance will not create a public nuisance or adversely impact the surrounding area, surrounding environment, or surrounding property uses.

The Facility does not contain internal roads per se. Rather, vehicles at the Facility traverse over wide, unmarked areas of gravel and compacted dirt. The absence of paved roads and a street sweeper for use on roads has not resulted in any public nuisance or adverse impact to the surrounding area, environment or property uses.

- e) Statement explaining:

- i. Why compliance with regulations imposes an arbitrary or unreasonable hardship:

Initially, pavement of any portions of the Facility upon which vehicles traverse is cost prohibitive as set forth in the immediately preceding item. The costs to purchase a street sweeper is approximately \$250,000 and the costs to operate and document the operations of a street sweeper are approximately \$80,000.00 per year. All of these costs greatly outweigh any benefit derived from a street sweeper.

- f) A description of the proposed methods to achieve compliance with the regulations and a timetable for achieving that compliance, if applicable.

Not applicable.

- g) A discussion of alternative methods of compliance and of the factors influencing the choice of applying for a variance.

Not applicable.

- h) Statement regarding current status as related to subject matter of various request.

The current absence of pavement over areas used by vehicles and a street sweeper to clean such pavement has not resulted in any public nuisance or adverse impact to the surrounding area, environment or property uses.

7. **3.0(17) Recordkeeping.**

a) Statement identifying regulation or requirement from which variance is requested:

All requirements of Section 3.0(17) relative to record keeping with respect to a) street sweeping, b) weather station data, c) application of water or chemical stabilizer, e) monitoring for fugitive dust, f) results of test of visual fugitive dust and opacity.

b) Description of process or activity for which variance is requested:

Those processes or activities for which a variance is sought above and which are the subject of these recordkeeping items.

c) Quantity and types of materials used in the process or activity in connection with which the variance is requested, as appropriate.

Not applicable.

d) Demonstration that issuance of variance will not create a public nuisance or adversely impact the surrounding area, surrounding environment, or surrounding property uses.

The absence of recordkeeping relative to these items has not resulted in any public nuisance or adverse impact to the surrounding area, environment or property uses.

e) Statement explaining:

i. Why compliance with regulations imposes an arbitrary or unreasonable hardship:

It is estimated that to comply with such recordkeeping requirements, two (2) new full time employees would need to be hired. These increased labor costs far outweigh any resulting benefits from such recordkeeping.

f) A description of the proposed methods to achieve compliance with the regulations and a timetable for achieving that compliance, if applicable.

Not applicable.

g) A discussion of alternative methods of compliance and of the factors influencing the choice of applying for a variance.

Not applicable.

h) Statement regarding current status as related to subject matter of various request.

The current absence of recordkeeping regarding these matters has not resulted in any public nuisance or adverse impact to the surrounding area, environment or property uses.

B. SECTION 5.0 OUTDOOR BULK SOLID MATERIAL STORAGE OTHER THAN COKE OR COAL.

1. 5.0(3) Protection of Waterways.

a) Statement identifying regulation or requirement from which variance is requested:

Requirements of Section 5.0(3) that outdoor storage piles be set back at least 50 feet from any waterway.

b) Description of process or activity for which variance is requested:

Outdoor storage piles at the Facility.

c) Quantity and types of materials used in the process or activity in connection with which the variance is requested, as appropriate.

The types of materials are fertilizer (MAP , DAP , Potash , Urea), magnesite, pig iron, salt, kaolin, alumina, calcium aluminate clinker, tire shreds, steel coils, cement, flyash, ground blast furnace slag, aggregates, sand, pea gravel, gravel, traprock, granite, limestone, lightweight merrimac, iron ore rock, landscape boulders, quartzite, black dirt, scrap iron, briquettes, bushling, HBI fines, slag fines, plate & structural, DRI fines, bundles, iron rich material, broken concrete, crushed concrete and asphalt grindings, but do **not** include coke or coal. The quantities vary widely from 25 tons to 30,000 tons.

d) Demonstration that issuance of variance will not create a public nuisance or adversely impact the surrounding area, surrounding environment, or surrounding property uses.

The Facility already utilizes active waterline protection measures, rendering a 50 foot setback unnecessary. Outdoor storage piles at the Facility do not generally consist of water soluble materials. There are no discrete storm water discharge points into any waterway at the Facility. Most of the perimeter of the storage areas which borders the river is comprised of absorbent materials such as dirt, rock and/or gravel which are designed to prevent storm water runoff. Containment walls are utilized at the Facility to keep the storage materials from entering the absorbent zone maintaining a 25 foot setback

from the river. Steel pilings provide a barrier between site activities and the river in other areas of the site bordering the river.

e) Statement explaining:

i. Why compliance with regulations imposes an arbitrary or unreasonable hardship:

The Facility land is long and narrow. After compliance, a minimal amount of land would be left for outdoor storage. Outdoor storage of the material in the remaining space would be impracticable. Compliance with this Regulation would have a direct negative impact on the fundamental nature and purpose of the Facility, its daily operating practices and its economics of operations, reducing annual revenue by an estimated 30%. Absent a variation, the Facility will suffer a significant reduction in the amount of material stored and the Facility's operational throughput, likely leading to shutdown, and the resulting loss of jobs and local revenue.

f) A description of the proposed methods to achieve compliance with the regulations and a timetable for achieving that compliance, if applicable.

Compliance with land use regulations applicable to the Facility set forth in Chicago Zoning Ordinances.

g) A discussion of alternative methods of compliance and of the factors influencing the choice of applying for a variance.

Not applicable.

h) Statement regarding current status as related to subject matter of various request.

The current minimum set back of outdoor storage piles at the Facility is approximately 30 feet.

2. **5.0(5) Dust Suppressant System.**

a) Statement identifying regulation or requirement from which variance is requested:

Requirements of Section 5.0(5) relative to chemical stabilizers or water spray systems.

b) Description of process or activity for which variance is requested:

Outdoor storage piles at the Facility.

c) Quantity and types of materials used in the process or activity in connection with which the variance is requested, as appropriate.

The types of materials are fertilizer (MAP , DAP , Potash , Urea), magnesite, pig iron, salt, kaolin, alumina, calcium aluminat clinker, tire shreds, steel coils, cement, flyash, ground blast furnace slag, aggregates, sand, pea gravel, gravel, traprock, granite, limestone, lightweight merrimac, iron ore rock, landscape boulders, quartzite, black dirt, scrap iron, briquettes, bushling, HBI fines, slag fines, plate & structural, DRI fines, bundles, iron rich material, broken concrete, crushed concrete and asphalt grindings, but do **not** include coke or coal. The quantities vary widely from 25 tons to 30,000 tons.

d) Demonstration that issuance of variance will not create a public nuisance or adversely impact the surrounding area, surrounding environment, or surrounding property uses.

The materials stored outdoors at the Facility do not produce significant fugitive dust.

e) Statement explaining:

i. Why compliance with regulations imposes an arbitrary or unreasonable hardship:

The cost to implement chemical stabilizers and a water spray system would be approximately \$250,000.00. Water cannot be sprayed on some materials stored at the Facility, such as cement, fertilizer, alumina, or it would render such materials useless. The costs of compliance far outweigh any benefits.

f) A description of the proposed methods to achieve compliance with the regulations and a timetable for achieving that compliance, if applicable.

Not applicable.

g) A discussion of alternative methods of compliance and of the factors influencing the choice of applying for a variance.

Not applicable.

h) Statement regarding current status as related to subject matter of various request.

The materials stored at the Facility do not produce significant fugitive dust.

3. 5.0(6) Runoff Management.

a) Statement identifying regulation or requirement from which variance is requested:

All requirements of Section 5.0(6) regarding installation and maintenance of stormwater management controls.

b) Description of process or activity for which variance is requested:

Stormwater management.

c) Quantity and types of materials used in the process or activity in connection with which the variance is requested, as appropriate.

The types of materials are fertilizer (MAP , DAP , Potash , Urea), magnesite, pig iron, salt, kaolin, alumina, calcium aluminate clinker, tire shreds, steel coils, cement, flyash, ground blast furnace slag, aggregates, sand, pea gravel, gravel, traprock, granite, limestone, lightweight merrimac, iron ore rock, landscape boulders, quartzite, black dirt, scrap iron, briquettes, bushling, HBI fines, slag fines, plate & structural, DRI fines, bundles, iron rich material, broken concrete, crushed concrete and asphalt grindings, but do **not** include coke or coal. The quantities vary widely from 25 tons to 30,000 tons.

d) Demonstration that issuance of variance will not create a public nuisance or adversely impact the surrounding area, surrounding environment, or surrounding property uses.

From Torrence Avenue on the east to the river, all stormwater runs through the Facility. The Facility has obtained coverage of the Facility under an National Pollutant Discharge Elimination System (NPDES) Permit. This coverage requires best management practices at the Facility to control stormwater discharge

e) Statement explaining:

i. Why compliance with regulations imposes an arbitrary or unreasonable hardship:

From Torrence Avenue on the east to the river, all stormwater runs through the Facility. The cost to the Facility to implement controls for all of this runoff would more than the Facility could bear and likely lead to a shutdown, and resulting loss of jobs and local revenue.

f) A description of the proposed methods to achieve compliance with the regulations and a timetable for achieving that compliance, if applicable.

Not applicable.

g) A discussion of alternative methods of compliance and of the factors influencing the choice of applying for a variance.

Coverage of the Facility under an NPDES Permit.

h) Statement regarding current status as related to subject matter of various request.

From Torrence Avenue on the east to the river, all stormwater runs through the Facility. The Facility has obtained coverage of the Facility under an NPDES Permit.

III. CONCLUSION

The Facility is maintained and operated as a railroad operating property in accordance with all applicable licenses and certifications and in compliance with all applicable federal, state and local requirements, including without limitation the Federal Railroad Safety Act (FRSA), 49 U.S.C. § 21101 *et seq.*, and all regulations promulgated thereunder and enforced by the Federal Railroad Administration under the authority of the United States Secretary of Transportation.

Therefore, the overall structure of federal railroad laws and regulations substantially subsumes the subject matter of Article II Air Pollution Control Rules and Regulations For Control of Emissions from the Handling and Storage of Bulk Material Piles promulgated by the City of Chicago Department of Public Health on March 13, 2014 (the "Regulations") as these Regulations relate to the Facility. The Regulations are preempted in their entirety relative to the Facility by federal railroad laws and regulations, including without limitation the FRSA.

Furthermore, the targets of the Regulations are coal, petcoke and metcoke. These are not handled or stored at the Facility. The Regulations' stated purpose is to prescribe reasonable practices and minimize harmful emissions. The materials stored at the Facility generate very little Fugitive Dust.

For all of the foregoing reasons, Chicago Port Railroad and Midwest Marine respectfully request acknowledgement of exemption of the Facility entirely from the Regulations. Thank you for your careful consideration of this mater which is of great importance to Chicago Port Railroad, Midwest Marine, their customers and employees. Please do not hesitate to contact us with questions or requests for more information.

Sincerely,

Ruff, Freud, Breems & Nelson Ltd.


Timothy S. Breems, Sr.

cc See Attached List

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