

# Southeast Side Coalition to Ban Petcoke

[banpetcoke@gmail.com](mailto:banpetcoke@gmail.com)

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*Via email to: [EnvComments@cityofchicago.org](mailto:EnvComments@cityofchicago.org).*

September 15, 2014

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

Re: Calumet River Terminal Ltd. Variance Request

To Whom It May Concern:

Thank you for the opportunity to comment on the application of Calumet River Terminal Ltd. ("Applicant" and "facility") for variances from 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"). These comments are submitted on behalf of the Southeast Side Coalition to Ban PetCoke ("Coalition"), a community organization made up of residents of Chicago's Southeast Side. The Coalition was formed to provide concerned residents with a forum to organize and respond to the storage of bulk materials along the Calumet River in Southeast Chicago. For the reasons set forth below, Calumet River Terminal Ltd.'s application is incomplete and fails to demonstrate that the requested variances will not have an adverse impact on the community and environment. Therefore, the application to allow noncompliance with the Rules should be denied.

As seen in the Google Satellite image to the right, the Applicant's facility at 10740 S. Burley Avenue operates in close proximity to and is bordered on the South and East sides by residential housing and neighborhood parks.<sup>1</sup> The Applicant's property is bordered by the Calumet River to the North and West sides.<sup>1</sup> The application, lacks a description of and "pertinent data" related to the "population and geographic area affected by, or



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<sup>1</sup> <https://www.google.com/maps/place/10740+S+Burley+Ave,+Chicago,+IL+60617/@41.6989452,-87.5431265,1183m/data=!3m1!1e3!4m2!3m1!1s0x880e278363ea3203:0x81740499a3d5612e>

potentially affected by, the process or activity,” as required by requests for variance from the Rules under Part E, 8.0.<sup>2</sup> The Applicant notes that adjacent residential areas are too “remote”<sup>3</sup> to be affected by industrial pollution from this and similar facilities – a claim which is not supported by data or experience. Without adequate supporting information, the Applicant requests a number of permanent variances from the Rules as analyzed below:

#### OBJECTION TO VARIANCE FROM THE DEFINITION OF “BULK SOLID MATERIAL”

The Applicant maintains that, “Pig iron, HBI [Hot Briquetted Iron] and DRI [Direct Reduced Iron] do not meet the definition of a Bulk Solid Materials [*sic*] (BSM) because they generate little fugitive dust that is too dense to become airborne or be scattered by the wind.”<sup>4</sup> The Rules define “Bulk Solid Material”<sup>5</sup> and do not permit for the exemption of vague, unsubstantiated amounts of materials that generate “little”<sup>6</sup> or insignificant fugitive dust, but otherwise meet the criteria for mandated compliance. If, as the Applicant states, “[h]andling [these materials] will not create a public nuisance or adverse effects” because Pig iron, HBI, and DRI are not “substances susceptible to being windborne,”<sup>7</sup> the inclusion of these materials in an already-required Fugitive Dust Monitoring Plan is unlikely to be administratively burdensome. Applicants should not take advantage of carefully-constructed definitions because a comprehensive list of regulated materials is not explicitly provided – allowing applicants to do so undermines the purpose, history, adaptive nature, and public health implications of the Rules. The Applicant should not be granted variance to choose which items should be monitored under the Rules.

#### OBJECTION TO VARIANCE FROM FUGITIVE DUST MONITORING

The Applicant requests variance “from the installation and maintenance of permanent fugitive dust monitors” because: (1) the materials handled at the facility are dense alloys and (2) establishing a background level of source emissions would be “impractical” due to a neighboring polluter.<sup>8</sup> Labeling a mandatory action “impractical” because other polluters are present in a highly polluted area does not meet the requirements for variance set out in the Rules.<sup>9</sup> The Applicant does not provide additional details related to cost, resource, or technological capabilities required to comply with the Rules. The application also fails to address the costs of compliance or implementation of its proposed alternative – “best management practices.”<sup>10</sup>

The Applicant insists that it will implement “best management practices”<sup>11</sup> to comply with the Rules, but this term is not adequately defined and does not allow for sufficient monitoring or oversight. The Rules were promulgated to ensure governance over industrial facilities, to document pollution, and to streamline monitoring processes used by facilities. To circumvent these Rules by relying on “best

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<sup>2</sup> City of Chicago Department of Public Health, *Rules and Regulations for Bulk Materials Storage*, Part E, 8.0(2)(b).

<sup>3</sup> Variance Application from Calumet River Terminal, 10740 S Burley Avenue, Chicago, IL, 60617, available online at: [http://www.cityofchicago.org/content/dam/city/depts/cdph/environmental\\_health\\_and\\_food/VarReqfromCalumetRiverTerm10740SBurleyAve.pdf](http://www.cityofchicago.org/content/dam/city/depts/cdph/environmental_health_and_food/VarReqfromCalumetRiverTerm10740SBurleyAve.pdf)

<sup>4</sup> Variance application, *supra* note 3.

<sup>5</sup> City of Chicago Department of Public Health, *Rules and Regulations for Bulk Materials Storage*, Part A, 2.0 (3).

<sup>6</sup> Variance application, *supra* note 3.

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> City of Chicago Department of Public Health, *Rules and Regulations for Bulk Materials Storage*, Part E, 8.0.

<sup>10</sup> Variance application, *supra* note 3.

<sup>11</sup> The Fugitive Dust Plan referenced by the Applicant has not been provided to the public.



management practices” is not an alternative measure that is preferable to the Fugitive Dust Plan and Fugitive Dust Monitoring processes meticulously drafted within the Rules.

#### OBJECTION TO VARIANCE FROM WIND MONITORING

The Applicant seeks variance from the Wind Monitoring provision of the Rules because: (1) the facility does not maintain large piles of Bulk Solid Material, (2) the facility stages Bulk Solid Material indoors or in the paved yard, and (3) the facility has access to wind information on the Internet.<sup>12</sup> The Applicant writes that transfer operations will be discontinued in the event of High Wind Conditions.<sup>13</sup> This is not adequate to meet the requirements of the Rules and the Applicant makes no effort to explain why this alternative is preferable to compliance to the Rules and why compliance is infeasible. At times, the Applicant’s operations do occur outdoors and, as such, materials are subject to unpredictable wind. Allowing the Applicant to self-monitor and rely on the Internet, specifically Midway Airport and the Water Intake Crib’s websites<sup>14 15</sup>, to comply with Part B, (5) causes the Coalition concern regarding the facility’s capability to prevent additional air pollution in the area.

#### OBJECTION TO VARIANCE FROM TRANSFER POINTS

The Applicant requests exemption from the regulatory controls placed on transfer points of Bulk Material, specifically Part B, 3.0(7)(d), requiring transferred materials to be “moist” (as defined in Part A, 2.0(15)). The Applicant argues that it cannot comply with the transfer point requirements because certain Bulk Materials handled by the applicant must be kept dry for safety reasons. The Applicant does not address the alternative methods of dust control proposed in the Rules, including total enclosure (subsection (a)) or use of air pollution control equipment (subsection (c)). The Applicant has not evaluated “all reasonable alternatives for compliance”<sup>16</sup> and, accordingly, the Coalition requests that the request for variance from Part B, 3.0(7) be denied.

#### OBJECTION TO VARIANCE FROM TRANSPORT

The Applicant requests variance from the requirement that outgoing material transport trucks pass through a wheel-wash station and over rumble strips. There is no evidence supplied to suggest that Applicant’s “best management practices,” defined as visual inspections of tires and routine sweepings,<sup>17</sup> have been sufficient to protect the community and environment from dust emissions in the past. This shortcoming in the current practices may illustrate why this provision was included in the Rules. The transport requirements in the Rules provide an important mechanism to ensure the public has minimal contact with materials that leave facilities during transport. The Applicant does not show that wheel-washing and rumble strips are unduly burdensome to the facility. As a result, the Coalition requests that a variance from Part B, 3.0(8)(d) be denied.

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<sup>12</sup> Variance application, *supra* note 3.

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

<sup>15</sup> The Coalition has been unable to locate the wind-specific areas of the websites referenced by the Applicant.

<sup>16</sup> City of Chicago Department of Public Health, *Rules and Regulations for Bulk Materials Storage*, Part E, 8.0(3)(a)(ii).

<sup>17</sup> Variance application, *supra* note 3.

## OBJECTION TO VARIANCE PROVISIONS, GENERALLY

Section 11-4-770 of the Municipal Code of Chicago specifically provides the Department of Public Health with the authority to prescribe rules and regulations for the purpose of minimizing air pollution. The Rules were promulgated in response to complaints regarding substantial air pollution with a purpose to “prescribe reasonable, specific operating and maintenance practices to minimize emissions of airborne particulate matter...”<sup>18</sup> Due to the (1) area’s history of pollution; (2) purpose of the Rules; and (3) documented respiratory and visibility problems encountered on the Southeast Side of Chicago<sup>19</sup>, the Coalition fundamentally opposes the variance process and believes that the health of the citizens should be the highest priority of the Department of Public Health. The Coalition commented in opposition to the variance process when the Department of Public Health was considering the Rules, and the Coalition’s position has not changed. The Coalition maintains that the Rules are already too lax and contain too many loopholes. The Department of Public Health should not grant exemptions to hard-fought regulatory protections that provide meager safeguards to the City’s most vulnerable citizens. Further, industrial facilities, including Calumet River Terminal Ltd., should not be allowed to pick and choose with which regulations they wish to comply.

For these reasons, the Coalition respectfully requests that the Commissioner deny this application for variance.

Sincerely,



Lydia-Jordan  
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Environmental Advocacy Center  
Bluhm Legal Clinic  
Northwestern University Law School

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<sup>18</sup> City of Chicago Department of Public Health , *Rules and Regulations for Bulk Materials Storage, Part A, 1.0.*

<sup>19</sup> City of Chicago Department of Public Health, *Official Response to Public Comments on the Proposed Rules and Regulations For the Handling and Storage of Bulk Material Piles*, March 13, 2014.