

September 2, 2014

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

Re: Kinder Morgan Variance Request

To Whom It May Concern:

Thank you for the opportunity to comment on the application of Kinder Morgan for variances from the Department of 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 Natural Resources Defense Council ("NRDC") and our nearly 10,000 members and activists in the City of Chicago, including those who reside on the Southeast Side in the Calumet area, as well as the Southeast Environmental Task Force ("SETF"), an active community group dedicated to improving the Calumet neighborhood's environment. For the reasons set forth below, the application is incomplete and fails to demonstrate that the requested variances will not have an adverse impact on the community and environment, and thus the request should be denied.

According to information derived from the demographic feature of U.S. EPA's ECHO database, there are 3,780 people who live within a one mile radius of the applicant's facility. More than 50% of the people who live within this one mile radius are Hispanic (48.41%) or African-American (2.59%). U.S. EPA's ECHO database also indicates a total of 1,385 households in this one mile radius, with a total population of 962 children 17 years and younger.

The applicant's facility operates on the north side of 126th Street, which is the dividing line between an industrial area and a densely populated residential neighborhood commonly called Avalon Trails or Hegewisch. Residential streets – Saginaw, Marquette, Manistee and Muskegon are directly south across 126th Street. Youth baseball fields are located to the southwest, also on the other side of 126th Street. The Calumet River, which is used extensively by recreational watercraft, is to the north. The eastern boundary of the larger Kinder Morgan property is Indian Creek, which is fed from Wolf Lake, flows through the Hyde Lake wetland and then to the Calumet River.

Industrial Impacts to City Residents and Environment

Earlier this year, the City adopted the new Rules to help address the problem of harmful dust pollution from industrial sources. Dust pollution can cause permanent harm to people's lungs, significantly limit the uses and enjoyment (and so market values) of private property as well as public parks, and inhibit the growth of plants and wildlife.¹

¹ Comments of NRDC et al. ("Comments") at 3-7, available at http://www.cityofchicago.org/content/dam/city/depts/cdph/environmental_health_and_fo

While a significant impetus for the Rules was the clouds of petroleum coke and coal dust from several handlers along the Calumet River, the City appropriately sought to reduce dust from bulk materials more generally, adopting rules that apply city-wide to handlers of a range of bulk materials. This action represented a much-needed update to the City's existing measures to combat dust.

We continue to believe that the Rules are too lax in some areas; however, they represent a significant step forward in providing increased protections to Chicago communities. Moreover, as set forth below in more detail, we believe it is imperative that the Commissioner stringently assess applications for variances to ensure the purposes of the Rules are not circumvented on a case-by-case basis.

Objections to Variance Provisions

In our prior comments on the City's proposed dust rules, we noted significant concerns with both the scope of the variance provision and the lack of procedural safeguards for making variance determinations.² We urged the City to dispense with the variance provision altogether, or at minimum to include additional safeguards both in terms of substance and process. The City responded by adding requirements for variance applications, an opportunity for public comment, and criteria for reviewing a variance application.³ With these improvements, the Commissioner is empowered to hold applicants' demonstrations to high standards and to pay close attention to the interests of the public articulated through their written comments.

At the outset, we provide two general comments to guide this review. First, the area of fugitive dust regulation generally is plagued by a history of poor emissions estimates, overblown claims of control efficiencies, and vague requirements. As such, it is especially important that applications for variances are supported by detailed, site-specific information, robust technical demonstrations, and specific, enforceable proposed requirements. Second, obligations and costs above what the facility would have borne under prior city, state and federal obligations are to be expected under this new set of regulations. Mere reference to some increase in burden should not qualify as grounds for a variance.

CDPH Must Deny The Applicant's Request To Avoid Installing PM Monitors

The scope of the Commissioner's authority and responsibility is broad, extending to "...any matter, material or substance susceptible to being windborne and for the handling, transportation, disposition or other operation with respect to any material subject to being windborne." Municipal Code of Chicago 11-4-770. As pointed out by CDPH in its March 13, 2014 Response To Public Comments, the intent in establishing regulations is to protect public health and the environment from activities that have the potential to cause windborne dust, even "...existing businesses that are lawfully operating under

[od/PetCoke Public Comments/NRDC SETF Alliance for the Great Lakes ELPC Faith in Place RHAMC and Sierra Club Recvd 2-7-14.pdf](#)

² Comments at 38-40.

³ Rules Section 8.0

current Chicago land use laws.” 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, at 3. As asserted by CDPH, there are four categories of material and handling and storage activities that its own experts concluded can create airborne dust as part of the outdoor storage of materials - bulldozing and grading, material dropping operations, equipment travel on the surfaces of stockpiles and vehicle travel on paved roads. Id. at 4.

Consistent with the MCC, CDPH appropriately requires that these facilities have the capacity to prevent, detect and respond to potential releases of windborne material. To this end, CDPH mandates the development and implementation of a proactive fugitive dust plan. Every fugitive dust plan must contain some required elements, but CDPH also expressly allows flexibility for businesses to develop plans that make the most sense based on their unique operations. Id. at 21. However, the actual success of a fugitive dust plan is not left to guesswork. For CDPH, the most reliable means to demonstrate the success of a fugitive dust plan for operators, regulators and residents is through uniform, empirically verifiable PM monitoring. It is not an exaggeration to state that PM monitoring is the lynchpin of the new CDPH protocol. As stated by CDPH:

The requirement for fugitive dust monitoring is a critical component of the regulations to ensure that the facility’s dust control measures are working. CDPH inspectors cannot observe facility operations on a daily basis. And facility workers who are occupied in doing their jobs may not always realize when there is a dust problem. Therefore, the PM monitors are important for alerting facility operators when there might be an issue with their dust control systems. They are also important to ensure compliance with the fugitive dust prohibition, as well as to give neighbors a level of comfort in knowing the air is being monitored. Id. at 23.

Because of the importance of PM monitoring, the variance standard is the most difficult of any requirement in the CDPH regulations. In addition to the exacting variance standards in Section 8.0, the standard for a variance from PM monitoring is also addressed in Section 3.0(4), which establishes the following threshold criteria:

Unless...the Facility Owner or Operator establishes that the Facility’s operations do not result in off-site fugitive dust emissions, the Facility Owner or Operator must install, operate, and maintain, according to manufacturer’s specifications, permanent, continuous Federal Equivalent Method (FEM) real-time PM 10 monitors around the perimeter of the facility...

Simply, the applicant in this case must establish its operations do not result in off-site fugitive dust emissions as a result of any of its activities, for example, bulldozing and grading, material dropping operations, equipment travel on the surfaces of stockpiles and vehicle travel on paved roads. The applicant must establish these kinds of operations do not result in off-site fugitive dust emissions over the full range of weather and operating conditions. The applicant must establish “no off-site fugitive dust emissions” for every compass point around the perimeter of its facility, be it a waterway, public road, or

residential neighborhood. If an applicant fails to establish “no fugitive off-site dust emissions”, it cannot be granted a variance from the requirement to establish a PM monitoring system in accordance with the regulations.

In light of CDPH’s approach – operational flexibility but a mandatory requirement to monitor – KM’s request for a variance from PM monitoring is ill-conceived. The applicant believes it should receive a 2-year extension from monitoring requirements while it completes its plans to eliminate fugitive dust emissions. From the perspective of SETF and NRDC, the applicant must operate a PM monitoring system now and take measures to prevent off-site fugitive dust emissions. If these measures prove effective in eliminating fugitive off site dust emissions at some point in the future, this would be the point at which a variance request could be considered, not before.

For KM, this does not mean a variance is impossible; instead, it means the applicant cannot meet this exacting standard now. Without irony, we would point out that the best way for the applicant to attempt to demonstrate there are no off-site fugitive dust emissions is to establish the PM monitoring network now required by the regulations. Following site improvements, if PM monitoring establishes there are “no off-site fugitive dust emissions” over a representative period of time and range of conditions, then this is the point at which to seek a variance from an ongoing obligation to continue this monitoring. The monitoring would establish an objective empirical basis for the variance that would have credibility for regulators, other regulated entities and residents. In the meantime, in the event the monitoring system detects off-site dust emissions not anticipated by the applicant, it will provide a basis for further refinement of its fugitive dust plan. In any event, it is much more likely the task of developing and implementing a fugitive dust plan will be taken seriously if the results are verified by perimeter PM monitors, operated according to a uniform regulatory protocol.

The Applicant Has Not Met The Standard for Receiving A Variance From Several Operational Requirements

In addition to its variance request from PM monitoring requirements, the applicant also requests variances from several other requirements of the CDPH regulations.

In its variance application, the applicant must describe the process or activity for which the variance is sought, and demonstrate why the variance will not result in a public nuisance or “adversely impact the surrounding area, the surrounding, environment, or surrounding property values.”⁴ The applicant also must explain why compliance would impose an arbitrary or unreasonable hardship.⁵ In turn, in making a determination on a

⁴ Rules Section 8.0(2)(b) and (d).

⁵ *Id.* at (e)(i). While Section 8 does not lay out additional guidance on what constitutes an arbitrary or unreasonable hardship, guidance may be found in the City’s parallel criteria for review of a variation from the zoning ordinance, as summarized in City of Chicago, Dept. of Housing and Economic Development, “Zoning Board Rules and Regulations,” August 2011, at 12-13, available at

variance application, the Commissioner is to consider public comments, and give particular consideration to, among other things, whether a demonstration has been made that any adverse impacts will be minimal.⁶ Because the application falls short in many respects, we urge the Commissioner to deny the variance requests.⁷

The applicant requests related variances from requirements to utilize a wind monitoring station and to be subject to the 15 mph “high wind speed” threshold in the City’s Rules. As an alternative, the applicant proposes using a wind sock and a 17.3 mph “high wind speed” threshold. The 17.3 mph wind speed corresponds to the point at which the proposed wind sock detects wind and extends. The applicant does not provide cost estimates for operating a wind monitoring station, but instead broadly asserts it would save \$250,000 by avoiding related requirements for a wind monitoring station and a PM monitoring system. The applicant claims these costs would be better spent improving facility PM controls in other ways.

NRDC and SETF disagree that inexpensive wind socks are equivalent or better than a modern wind monitoring station in detecting high wind events. The basis for this disagreement is the City’s own reasoned conclusions in its Response to Public Comments on the Proposed Rules and Regulations For The Handling and Storage of Bulk Material Piles. Stated simply, a high wind event is 15 mph not 17.3 mph. The City’s conclusion that 15 mph is a high wind event is well-supported by the record. As stated by the City:

Fifteen miles per hour is the standard for high wind speeds in South Coast AQMD’s Rule 15. It is also the standard above which work must be suspended with material piles on construction sites, in accordance with Section 11-4-760 of the MCC, unless alternative measures are implemented to effectively control dust. *Id.* at 9.

The City further notes that the CDM Study it commissioned determined hourly wind speeds exceed 15 mph 13% of the time, but accounted disproportionately for calculated annual emissions, and therefore merit special attention in developing and implementing fugitive dust plans. *Id.* at 10.

The applicant’s variance proposal is not as protective of human health and the environment because it is incapable of detecting high wind events and deploying responsive measures at the mandated 15 mph wind speed. It isn’t possible to evaluate any potential hardship to the applicant because it lumps the costs of wind and PM

http://www.cityofchicago.org/content/dam/city/depts/zlup/Administrative_Reviews_and_Approvals/Publications/ZBA_Rules_and_Regulations.pdf.

⁶ See Rules Section 8.0(3)(a).

⁷ See Rules Section 8.0(3)(b). At most, the Commissioner should only grant the portions of the variance for which the applicant has provided the requisite supporting information and require supplemental information to be provided moving forward, upon which the variance is conditioned. *Id.* at (3)(c) (“The Commissioner may grant a variance in whole or in part, and may attach reasonable conditions to the variance to ensure minimization of any adverse impacts.”)

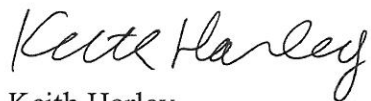
monitoring together, arriving at a total cost for which it provides no empirical justification. Even taken at face value, the applicant does not claim that the costs of operating a compliant wind and PM monitoring system create a hardship, but rather, that the money is better spent elsewhere. The result is a profound deviation from the Rules that avoids PM monitoring, a wind monitoring station and the ability to detect high wind events at the 15 mph threshold. Because of this significant deviation from the Rules, SETF and NRDC urge the Commissioner to deny these related variance requests.

The applicant further requests a variance from dust suppression requirements when temperatures drop below 32 degrees F. NRDC and SETF point to the well-reasoned basis for the requirement to maintain dust suppression capabilities over the full temperature range. CDPH determined that the highest average wind speed in Chicago occurs over the winter months. *Id.* at 9. CDPH further determined that higher wind periods like those in the winter account disproportionately for annual emissions. *Id.* at 10. Yet, this is the very period for which the applicant is seeking a variance from operating any dust suppression system. This request was made even though CDPH broadened the allowable approaches to dust suppression, stating that “as long as a facility is applying water or another solution in a manner that effectively suppresses fugitive dust, it does not matter whether they use a hose, a cannon, a mister or another technology.” *Id.* at 13. The City’s further allows that dust suppressant systems must be operable but not necessarily dispensing at all times. *Id.* at 24. Consequently, if (as the applicant asserts) it is far-fetched that fugitive dust events will occur in freezing conditions, the City has already provided significant operational flexibility.

Despite these accommodations, the applicant contends it cannot maintain a dust suppression system when temperatures drop below 32 degrees F. Notably, the applicant has not explained why it cannot employ a misting system (by contrast to a spraying system). The City Rules provide the applicant with the flexibility to tailor different dust suppression systems to different materials that are handled and stored on-site; it’s not clear the applicant has contemplated this type of more tailored approach. Finally, the applicant’s request is devoid of financial information to justify any hardship it would experience in order to comply. Consequently, NRDC and SETF contend CDPH must deny this variance request.

For these reasons, we respectfully request that the Commissioner deny Kinder Morgan's application for a variance. Please do not hesitate to contact us if you have any questions.

Sincerely,



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Menu



Detailed Facility Report

Facility Summary

KINDER MORGAN ARROW TERMINALS LP
 2926 E 126TH ST, CHICAGO, IL 60633

Facility Information (FRS)

FRS ID: 110001684044
 EPA Region: 05
 Latitude: 41.66861
 Longitude: -87.55464
 Industry:
 Indian Country: N

Regulatory Interests

Clean Air Act: Operating Minor (1703102203)
 Clean Water Act: Minor, Permit Expired (ILR10J329), Minor, Permit Terminated (ILR000730)
 Resource Conservation and Recovery Act: No Information
 Safe Drinking Water Act: No Information

Also Reports

Air Emissions Inventory (EIS): 1776511
 Greenhouse Gas Emissions (eGGRT): No Information
 Toxic Releases (TRI): No Information

Enforcement and Compliance Summary

| Statute | Imp (5 Years) | Date of Last Inspection | Current Compliance Status | Qtrs in NC (of 12) | Qtrs in Significant Violation | Informal Enforcement Actions (2 years) | Formal Enforcement Actions (2 years) | Penalties from Formal Enforcement Actions (2 years) | EPA Cases (5 years) | Penalties from EPA Cases (5 years) |
|---------|---------------|-------------------------|---------------------------|--------------------|-------------------------------|--|--------------------------------------|---|---------------------|------------------------------------|
| CAA | 2 | 07/05/2011 | Partial | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| CWA | 0 | | No Major | 0 | 0 | 0 | 0 | 0 | 0 | 0 |

Facility/System Characteristics

Facility/System Characteristics

| Statute | Facility | System | Status | Area | Permit Expiration Date | Indian Country | Latitude | Longitude |
|---------|--------------|---|------------|--------------------------|------------------------|----------------|----------|-----------|
| CAA | 110001684044 | | Operating | | | N | 41.66861 | -87.55464 |
| CAA | 1776511 | | Operating | SB | | N | 41.66861 | -87.55464 |
| CAA | 1703102203 | Other Minor | Operating | SB | | N | 41.66861 | -87.55464 |
| CWA | ILR10J329 | Minor, General Permit, General Facility | Expired | Storm Water Construction | 07/31/2012 | N | 41.66861 | -87.55464 |
| CWA | ILR000730 | Minor, General Permit, General Facility | Terminated | Storm Water Construction | 08/31/2010 | N | 41.66861 | -87.55464 |

Facility Contact Information

| System | Identifier | Facility Name | Facility Address |
|--------|--------------|----------------------------------|--|
| FRS | 110001684044 | KINDER MORGAN ARROW TERMINALS LP | 2926 E 126TH ST, CHICAGO, IL 60633 |
| EIS | 1776511 | Kinder Morgan Arrow Terminals LP | 2926 E 126th St, Chicago, IL 60633 |
| EIS | 1703102203 | KINDER MORGAN ARROW TERMINALS LP | 2926 E 126TH ST, CHICAGO, IL 60633 |
| CFR | ILR10J329 | KINDER MORGAN ARROW TERMINALS | 2926 E 126TH ST, CHICAGO, IL 60633 |
| CFR | ILR000730 | KINDER MORGAN ARROW TERMINALS | 2926 E 126TH STREET, CHICAGO, IL 60633 |

Facility SIC Codes

| System | Identifier | SIC Code | NAICS Code | NAICS Desc |
|--------|------------|----------|------------|--|
| EIS | 1776511 | 4471 | 4471 | Gasoline and Petroleum Bulk Stations and Dealers |

Facility NAICS Codes

| System | Identifier | NAICS Code | NAICS Desc |
|--------|------------|------------|---|
| EIS | 1703102203 | 48310 | Port and Harbor Operations, Except Dredging |
| EIS | 1776511 | 48310 | Port and Harbor Operations, Except Dredging |

Facility Tribe Information

| Tribe Name | EPA Tribal ID | Distance to Tribe (miles) |
|----------------------------|---------------|---------------------------|
| No data available returned | | |

Enforcement and Compliance

Compliance Monitoring History (5 years)

| Statute | System | Source ID | System | Inspection Type | State | Lead Agency | Date | Finding |
|---------|------------|-----------|-----------------------------|-----------------|-------|-------------|------------|---------|
| CAA | 1703102203 | AES | STATE CONDUCTED I/C ON SITE | | IL | | 07/05/2012 | |
| CAA | 1703102203 | AES | STATE CONDUCTED I/C ON SITE | | IL | | 04/09/2010 | |
| CAA | 1703102203 | AES | EPA I/C ON SITE | | IL | | 08/19/2014 | |

Entries in italics are not considered inspections in official counts.

Compliance Summary Data

| Statute | System | Source ID | No. | Current SNC/IPP? | Description | Current Act Of | Qtrs in NC (of 12) |
|---------|------------|-----------|-----|------------------|-------------|----------------|--------------------|
| CAA | 1703102203 | | 0 | | | 0 | 0 |
| CWA | ILR10J329 | | 0 | | | 0 | 0 |
| CWA | ILR000730 | | 0 | | | 0 | 0 |

Three Year Compliance Status by Quarter

| Statute | Program | Violation Type | QTR 1 | QTR 2 | QTR 3 | QTR 4 | QTR 5 | QTR 6 | QTR 7 | QTR 8 | QTR 9 | QTR 10 | QTR 11 | QTR 12 |
|---------|-------------------------|----------------|------------------|------------------|------------------|------------------|------------------|------------------|------------------|------------------|------------------|------------------|------------------|------------------|
| CAA | (Source ID: 1703102203) | | 07/01-09/30/2011 | 10/01-12/31/2011 | 01/01-03/31/2012 | 04/01-06/30/2012 | 07/01-09/30/2012 | 10/01-12/31/2012 | 01/01-03/31/2013 | 04/01-06/30/2013 | 07/01-09/30/2013 | 10/01-12/31/2013 | 01/01-03/31/2014 | 04/01-06/30/2014 |

