



DEPARTMENT OF PUBLIC HEALTH
CITY OF CHICAGO

February 13, 2015

Stephen A. Swedlow
Quinn Emanuel Urquhart & Sullivan, LLP
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stephenswedlow@quinnemanuel.com

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

Dear Mr. Swedlow:

The Chicago Department of Public Health ("CDPH") is in receipt of KCBX Terminals Company's ("KCBX") December 17, 2014 letter requesting a variance from Sections 6.0(5) and 6.0(6) of CDPH's Rules and Regulations for Control of Emissions from the Handling and Storage of Bulk Material Piles ("Bulk Material Regulations"), and supplemental materials in support of the variance request provided by KCBX dated January 27, 2015. In its variance request, KCBX seeks an extension of the deadlines for full enclosure of petcoke and coal piles provided in Sections 6.0(5) and 6.0(6) of the Bulk Material Regulations, from June 9, 2016 to August 24, 2017.

As further described below, KCBX's variance request is **not** granted due to inadequacies in the information provided by KCBX in its request. Based on its submittals, KCBX has not established that more time is needed to comply with Sections 6.0(5) and 6.0(6) of the Bulk Material Regulations. Furthermore, KCBX has not provided sufficient detail regarding steps it will take to ensure that the community will be adequately protected during any delay in coming into full compliance with the regulations. Given the close proximity of KCBX's operations to residences, parks, and schools – in particular, the North Facility is less than one city block away from a residential neighborhood – it is especially important that KCBX identify the strongest possible measures to protect the community. Accordingly, if KCBX chooses to continue to

pursue its variance request, it must explain how it will prevent the South and North Terminals from causing a public nuisance or having an adverse impact on the surrounding community during any delay, including impacts from the transportation of material to and from the facilities.

DISCUSSION

Section 6.0(5) of the Bulk Material Regulations provides that the enclosure requirements set forth in Section 4.0(2) take effect within two years from the issuance of regulations. The Bulk Material Regulations were issued on March 13, 2014; therefore, the enclosure requirements take effect on March 13, 2016. Further, Section 6.0(6) requires all coke and coal bulk materials to be either fully enclosed or removed within two years from the submission of the required enclosure plan. Based on KCBX's submission of an enclosure plan on June 9, 2014, the enclosure deadline is June 9, 2016. KCBX states that two years is not achievable and requests an additional year and two months to fully enclose all coke and coal bulk material, specifically until August 24, 2017.

For technical assistance in reviewing and analyzing KCBX's proposed construction schedule, CDPH consulted with the Chicago Department of Buildings ("DOB"). In November and December 2014, at the request of the City and roughly five months after the enclosure clock began ticking, DOB and other City departments held preliminary permit meetings with KCBX and its private design professionals regarding KCBX's proposed enclosure project. Following these preliminary meetings, DOB and the Chicago Fire Department ("CFD") raised a number of issues regarding which KCBX would need to provide more detail in order for the City to evaluate and understand the project, including the reasonableness of the timetable proposed in the variance request. These issues include, but are not limited to, the following:

- i. As currently described, the building/structure exceeds the height limitation for Type 2, Non-Combustible Construction. (*See* Section 13-48-030 of the Chicago Building Code ("Code").)
- ii. As currently described, the building/structure exceeds the area and/or the restrictions that apply to an unlimited building area. (*See* Section 13-48-070 of the Code.)
- iii. The automatic building/structure sprinkler system shall comply with the water supply requirements. (*See* Section 15-16-270 of the Code.)

- iv. The applicant must provide adequate water supply for firefighting purposes (such as hydrants).
- v. The applicant must demonstrate proper ventilation and control of exposition dust hazard.
- vi. The applicant must comply with stormwater management requirements.
- vii. The applicant must demonstrate whether the electrical power and fixtures are listed for hazardous use.

Thus, based on the information KCBX provided to DOB, which at this time does not include architectural drawings, it is difficult for DOB to advise CDPH as to an appropriate timeframe for the project.

In addition, Section 8.0(2)(d) of the Bulk Material Regulations requires a demonstration that issuance of any variance will not create a public nuisance or adversely impact the surrounding area, surrounding environment, or surrounding property use. In this regard, KCBX states that it will continue to utilize its dust suppression system and follow its Fugitive Dust Plan during the time period of the variance. KCBX further states that its operations have not affected its neighbors in the past,¹ and that it has “put extensive measures in place to ensure that its operations will not affect its neighbors during the period of construction.” (December 17, 2014 Variance Petition, p. 14.) However, the City’s consultant earlier determined that the soil sampling study performed by KCBX’s environmental consultant and previously cited by KCBX in support of its claims regarding absence of off-site impacts was unlikely to detect petroleum coke (“petcoke”) even if it were present. In fact, using a different approach, the City’s consultant found evidence that petcoke particles had migrated to residential areas, as set forth in CDPH’s December 9, 2014 determination regarding KCBX’s June 9, 2014 variance request.

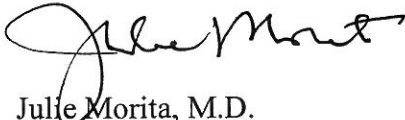
Therefore, KCBX must provide more details regarding the steps it will take to provide strong protections for the community. In particular, KCBX must identify additional measures it will take to protect residents who live near the North Terminal. KCBX must also provide the Department with a plan for minimizing the risk of fugitive dust from the South Terminal should

¹On January 27, 2015, KCBX submitted a supplement to the instant variance application, in which KCBX responded to CDPH’s December 9, 2014 determination on KCBX’s June 9, 2014 variance request. In this response, KCBX set forth arguments against CDPH’s reliance upon certain technical evaluations provided by the City’s consultant, CDM Smith, Inc. Those materials are under review and are available on the City’s website at www.cityofchicago.org/environmentalrules.

it be granted additional time to build the enclosure facility. Such a plan could include options such as the removal of petcoke piles until the completion of the enclosure facility.

Please contact Assistant Commissioner Dave Graham at (312) 745-4034 if you have any questions regarding the above.

Sincerely,

A handwritten signature in black ink, appearing to read "Julie Morita". The signature is fluid and cursive, with the first name "Julie" written in a larger, more prominent script than the last name "Morita".

Julie Morita, M.D.
Acting Commissioner

cc: Mort Ames, DOL