

February 7, 2014

KCBX Proposed Revisions to Proposed Chicago Bulk Material Ordinance

KCBX Terminals Company (“KCBX”) hereby submits the following in further explanation of its proposed revisions to the City of Chicago, Department of Public Health’s proposed regulations in Article II (Air Pollution Control Rules and Regulations) specifically related to the “Handling and Storage of Bulk Material Piles.”

1.0 Scope and Purpose.

KCBX proposes to strike the word “transport” from this Section, as “transportation” does not occur inside the boundaries of a Facility, but rather occurs to and from a Facility. Thus, the proposed regulations would apply to owners and operators of Facilities, not to owners and operators of “transport” vehicles.

2.0 Definitions.

Sec. 2.0(2) “BLEND or MIX”

KCBX proposes to add a definition of the terms “Blend” and “Mix,” which are used in the proposed regulations but not defined.

Sec. 2.0(9) “FUGITIVE DUST”

KCBX proposes to clarify the definition of “fugitive dust” by excluding particulate matter from engine combustion exhaust from the definition. KCBX does not believe it was the Department’s intent to include engine combustion exhaust within the scope of the proposed regulations.

Sec. 2.0(13) “MOIST MATERIAL”

KCBX proposes to add a definition of “Moist Material,” which is used in the proposed regulations but not defined. The proposed three-percent water content requirement is taken from KCBX’s air permit issued by the Illinois Environmental Protection Agency.

Sec. 2.0(17) “PROCESS OR PROCESSING”

KCBX proposes to revise “Process or processing” to make the definition consistent with Section 3.0(5). Section 3.0(5) provides that certain existing facilities “may maintain outdoor bulk solid material storage,” but that “no material processing, including but not limited to blending, mixing, crushing, and screening may occur outdoors.” As proposed, however, the definition of “process or processing” includes “handling, blending, mixing, screening, transferring, loading, unloading, and stockpiling.” That definition, in conjunction with the prohibition on “processing ... outdoors,” would prohibit Facilities from “maintain[ing] outdoor bulk solid material storage,” which Section 3.0(5) expressly allows.

Sec. 2.0(18) "REPORTABLE ACTION LEVEL"

KCBX proposes to add a definition of "Reportable Action Level," which term is used in the proposed regulations but not defined. Under KCBX's proposal, the Reportable Action Level would be determined as follows.

First, the Reportable Action Level would be calculated based on the difference between the levels of PM10 blowing onto a Facility as detected at the upwind monitors at the Facility (the "background levels" referenced by the Department in proposed Section 3.0(3)(f)) and the levels of PM10 blowing off of a Facility as detected at the downwind monitors at the Facility. As is true everywhere, PM10 in Illinois is produced by innumerable sources, including but not limited to electric generation, industrial and commercial/institutional fuel combustion, food/agriculture industrial processes, metal production, process cooling, surface coating operations, and solid waste disposal. See 2012 Illinois EPA Air Quality Report, Table C3, enclosed. (The entire report is available at <http://www.epa.state.il.us/air/air-quality-report/2012/index.html>.) Further, PM10 concentrations in ambient air swing widely, even day to day, as demonstrated by the enclosed PM10 monitoring data from USEPA PM10 monitoring site 17-031-002, which is located approximately 1/2 mile southeast of KCBX's South facility (data downloaded February 7, 2014 from http://www.epa.gov/airquality/airdata/ad_data_daily.html). For example, for the first seven days of each quarter of 2013, Daily Mean PM10 Concentrations at this monitor were:

Jan. 1	14	Apr. 1	17
Jan. 2	49	Apr. 2	26
Jan. 3	57	Apr. 3	16
Jan. 4	109	Apr. 4	63
Jan. 5	27	Apr. 5	13
Jan. 6	34	Apr. 6	95
Jan. 7	28	Apr. 7	25
Jul. 1	20	Oct. 1	36
Jul. 2	15	Oct. 2	27
Jul. 3	28	Oct. 3	24
Jul. 4	55	Oct. 4	34
Jul. 5	63	Oct. 5	23
Jul. 6	30	Oct. 6	13
Jul. 7	30	Oct. 7	29

Note, for example, that on April 4, the Daily Mean PM10 Concentration at this monitor was **63 ug/m3**. The following day, April 5, the Daily Mean PM10 Concentration was **16 ug/m3** – almost 80% lower than the preceding day. The third day, April 6, the Daily Mean PM10 Concentration was **95 ug/m3** -- more than 700% higher than the preceding day.

Utilizing background levels of PM10, as the Department proposes, and comparing those background levels entering a Facility with the levels of PM10 leaving a Facility, would enable Facilities and the Department to determine whether, and to what extent, a Facility might be contributing PM10 to the air leaving the Facility based on actual conditions.

Second, a Reportable Action Level could vary based on the concentrations of PM10 leaving a Facility. By way of example only, a Facility's plan could provide that:

- where PM10 concentrations leaving a Facility are at or below incoming PM10 concentrations, no action is necessary;
- where PM10 concentrations leaving a Facility are above incoming levels, action is necessary only when the difference between the oncoming and outgoing concentrations are greater than XX% or greater than a certain YY number.

Such a "relative" Reportable Action Level would appropriately focus response actions where PM10 concentrations are not so low as to cause no concern, and are being elevated to a sufficiently higher level than current background levels.

Sec. 2.0(19) "ROAD"

KCBX proposes to revise the definition of "road" to apply only to areas used by vehicles (as redefined – see discussion below) transporting material to or from a Facility, and not to bulk material storage areas. The proposed regulations should not require bulk material storage areas to be paved. See proposed revisions to Section 3.0(10) below. Paving such areas would be so extraordinarily costly (in the millions of dollars) as to jeopardize the commercial viability of Facilities subject to the proposed regulations. Further, paving bulk material storage areas would increase runoff of stormwater from those areas, and would not in any way reduce the potential for fugitive dust emissions from those areas. Also for facilities which will enclose piles, paving expenses would be wasted.

Sec. 2.0(20) "SEPARATION POND"

KCBX proposes to revise the definition of "separation pond" to allow an "in-ground basin" as well as a "container" to serve as a separation pond. In addition, KCBX proposes to strike the phrase "which has a liquid water surface at all points," to account for the fact that some or all of the surface of a separation pond may freeze in the winter, and to account for the fact that a separation pond may on occasion have low water levels that expose part of the bottom of the pond due to the need to use water for dust control.

Sec. 2.0(21) "TRANSFER POINT"

KCBX proposes to strike the words "transport" and "transported" from the definition of "transfer point" to clarify that transportation does not occur inside the boundaries of a facility. See discussion of Section 1.0 above.

Sec. 2.0(22) "VEHICLE"

KCBX proposes to remove "off-road mobile heavy equipment" from the definition of "vehicle" to make that definition consistent with the discussion of paving above, and to clarify that a "road" does not include an area on a storage pad or other areas inside a Facility where off-road mobile heavy equipment operates.

Sec. 2.0(23) "WATER SPRAY SYSTEM"

KCBX proposes to clarify the definition of "water spray system" by using the word "system" rather than "technique" and by adding "cannons, bars, [and] misters" to the list of mechanisms by which water can be applied for dust suppression.

3.0 Operating and Maintenance Practices.

KCBX proposes to revise the opening paragraph of Subpart 3.0 to include the terms "handles, transfers, loads, unloads, [and] stockpiles," consistent with KCBX's proposal to remove those terms from the definition of "processing," discussed above. KCBX also proposes to remove the word "transport" from the opening paragraph, consistent with KCBX's proposed revisions to Sections 1.0 and 2.0(21).

Sec. 3.0(2)(b) Fugitive Dust – Prohibited.

KCBX proposes to revise this Section 3.0(2)(b) to utilize the opacity measurement protocol required by the State of Illinois rather than the protocol proposed by the Department. See 35 Ill. Admin Code 212.107. KCBX also proposes to revise this Section to provide that only opacity "greater than 10%" is relevant, not opacity "equal to or greater than 10%." This change would make the Department's proposed regulations consistent with the most stringent State of Illinois requirement that particulate matter from bulk material storage piles "not exceed an opacity of 10%." See 35 Ill. Admin Code 212.316(d). KCBX proposes these changes because the Department's proposed standard that opacity may not be "equal to or greater than 10%" is impossible to meet, especially when coupled with the Department's proposed opacity measurement technique requiring that opacity not be equal to or greater than 10% "for a period or periods aggregating more than three minutes in any one hour." That is, as proposed, Section 3.0(2) is an effective ban on outdoor storage.

Sec. 3.0(3)(f) Fugitive Dust Plan – Required.

KCBX proposes to revise Section 3.0(3)(f) to incorporate KCBX's proposed definition of Reportable Action Level above.

Sec. 3.0(4)(a) Enclosure of Bulk Solid Material.

KCBX proposes to revise Section 3.0(4)(a) to allow water application in addition to "air pollution control equipment" in order to "control fugitive dust emissions at designed vents and at any other openings." The air pollution control equipment specified in the proposed regulations would be prohibitively expensive, in light of the vacuum that would have to be created inside an enclosure, and water application would be just as efficient to control potential dust emissions and also could be used to moisten material prior to transfer.

Sec. 3.0(4)(b) Enclosure of Bulk Solid Material.

KCBX proposes to revise Section 3.0(4)(b) to provide that enclosures for coal and pet coke do not need to be "situated on an impermeable base or pad" where a Facility is located on fill material and the groundwater beneath a Facility "is Class 2 groundwater pursuant under 35 Ill. Admin. Code 620.220." Presumably, the Department's reason for proposing that enclosed storage be constructed on an impermeable base or pad is related to groundwater, as the enclosure would eliminate any potential air

emissions. For the following reasons, KCBX submits that it is unreasonable to require an impermeable base or pad, at least where a Facility is located on fill material and has Class 2 groundwater.

First, KCBX submits that constituents in coal and pet coke do not pose a risk to groundwater quality. That especially would be true inside an enclosure where the product and ground would only have minimal water applied to them to control dust (and thus, minimal if any ability to come into contact with groundwater).

Second, even if enclosed coal and pet coke could pose a risk to groundwater, the City of Chicago prohibits the use of groundwater within City limits for potable purposes. Chicago Code 11-8-390. Thus, no one in the City of Chicago will come in contact with any groundwater underlying a bulk material handling facility in the City.

Third, even if the City of Chicago did allow the use of groundwater for potable purposes, the State of Illinois has recognized that it is unreasonable to require measures to prevent exposure to groundwater where a facility is located on fill material and has Class 2 groundwater. Pursuant to its authority under Section 8 of the IGPA and Section 27 of the Act, the Illinois Pollution Control Board promulgated “regulations establishing comprehensive water quality standards which are specifically for the protection of groundwater.” 415 ILCS 55/8; see also Opinion and Order of the Board, In the Matter of: Groundwater Quality Standards (35 Ill. Adm. Code 620), R89-14(A), at 1 (Ill.Pol.Control.Bd. Sept. 27, 1990) (citing IGPA at Section 8(a)). Specifically, the Board promulgated groundwater quality standards (“GQSs”) for four different classes of groundwater: Classes I, II, III, and IV. See 35 Ill. Admin. Code §§ 620.201, 620.410 – 620.440. The Class II GQSs apply to General Resource Groundwater. Id. at §§ 620.201, 620.420. Class II General Resource Groundwater is, *inter alia*, “[g]roundwater which does not meet the provisions of Section 620.210 (Class I), Section 620.230 (Class III), or Section 620.240 (Class IV).” Id. at § 620.220(a).

The groundwater underlying both of KCBX’s facilities constitutes Class II General Resource Groundwater because the groundwater does not meet the provisions of Class I, III, or IV. Class I is Potable Resource Groundwater, which does not apply to the KCBX site because the groundwater underneath the site is not used for potable water, nor will it be in the future given the City of Chicago’s passage of its May 1997 groundwater ordinance prohibiting the installation of new potable water supply wells. See id. at § 620.210; see also Municipal Code of Chicago, Illinois, § 11-8-390. Class III is Special Resource Groundwater, a category reserved for very high quality groundwater, which clearly does not apply to the highly industrial area surrounding and including the KCBX North facility. See 35 Ill. Admin. Code § 620.230. Finally, Class IV does not apply to the KCBX site because Class IV only applies if the groundwater meets at least one of the listed Class IV categories, but none of the listed Class IV categories applies to KCBX’s facility. See id. at § 620.240. Therefore, the groundwater underlying the KCBX facilities qualifies as the catch-all Class II General Resource Groundwater.

The Board promulgated specific groundwater quality standards applicable to Class II General Resource Groundwater. See id. at § 620.420. However, for sites such as KCBX’s facilities where the area consists of fill material, the Board exempted “groundwater within fill material or within the upper 10 feet of parent material under such fill material on a site not within the rural property class for which . . . [p]rior

to November 25, 1991, surficial characteristics have been altered by the placement of such fill material so as to impact the concentration of the parameters listed in subsection (a)(3) of this Section, and any on-site groundwater monitoring of such parameters is available for review by the Agency.” Id. at § 620.420(a)(3)(A). For purposes of this fill exemption, the Board defines the term “fill material” as “clean earthen materials, slag, ash, clean demolition debris, or other similar materials.” Id. at § 620.420(a)(4).

It is well known that the area of Chicago in which the KCBX facilities are located was used by the steel industry for over 100 years, including for the deposit of steel slag and other fill material. Prior to KCBX’s acquisition of the facility in late March/April 1990, KCBX’s predecessor had used the facility for storage and handling of coal and other bulk materials since the mid-1940s, and for handling of pet coke since the mid-1960s. KCBX’s south facility was used for handling of coal and pet coke for approximately 3 years before KCBX’s purchase, and before that was part of a steel mill. Due to the site-specific, historical uses of the area, the KCBX facilities sit on land that is made up of fill material -- “clean earthen materials, slag, ash, clean demolition debris, or other similar materials” -- as defined by the Board for purposes of the Class II GQS fill material exemption. 35 Ill. Admin. Code § 620.420(a)(4).

Pursuant to the Board’s Class II GQS fill material exemption, the State of Illinois Class II groundwater quality standards for inorganic chemical constituents and pH, which are the constituents included in KCBX North’s NPDES permit (KCBX South operates under a no discharge permit), do not apply to groundwater within the fill material underneath the KCBX facility, or within the upper ten feet of parent material under such fill material. See 35 Ill. Admin. Code §§ 620.420(a)(3)(A) and (a)(4).

Building an impermeable base for an enclosure of any size would be very costly. For the reasons stated above, no basis exists to require such an impermeable base, especially where a facility is located on fill material and has Class 2 groundwater.

KCBX proposes the same changes to Sections 3.0(6)(b) and 3.0(6)(i).

Sec. 3.0(5)(c) Setbacks.

KCBX proposes several revisions to Section 3.0(5)(c). First, KCBX proposes that setbacks apply from the edges of bulk material storage piles rather than from “property boundaries.” Setbacks from property boundaries would be unachievable for current facilities that are – measuring from property boundaries - within 660 feet of residential buildings, 300 feet of other buildings, or 100 feet from a road or water body. (By definition, a Facility has to be adjacent to a road and/or a water body so that it can receive and ship out product.) Further, it is the distance from a bulk material pile that is arguably relevant to the issue of potential dust emissions, not the distance from the boundary of property on which a pile is located.

Second, KCBX proposes to add a reference in 3.0(5)(c) to KCBX’s proposed interim provisions, specifically KCBX’s proposed Section 6.0(7)(e). See further discussion below.

Third, KCBX proposes that the setback between storage piles and public ways that are navigable waterways be 50 feet, except where material is in the process of being unloaded from or loaded to a barge, in which case such material would be allowed to be located less than 50 feet from the waterway for up to 24 hours. This proposed revision reflects the reality that piles of bulk material often must be

located close to a waterway during the process of loading or unloading due to the type of equipment (e.g., a clamshell unloader) that is used for such activities. In addition, bulk materials that are unloaded from barges are often staged between 50 and 100 feet from waterways in order to facilitate their later loading onto other barges or onto ships. Requiring such materials to be staged at least 100 feet from waterways would mean that facilities must engage in additional movement of these products, which would produce additional potential emissions from transfer points during such movement. Further, KCBX submits that 50 feet is a sufficient distance to address potential discharges of material from staging piles to waterways.

Section 3.0(6)(a) Height Limit.

KCBX proposes that Section 3.0(6)(a) be revised such that bulk material pile height limits apply only to “finished, dressed” piles. Piles of bulk materials are shaped after they are built in order to eliminate sharp edges, so as minimize potential dust emissions. During this building and shaping process, a pile may temporarily become higher than a desired height limit as material is added to or moved on the pile. KCBX does not understand that the Department’s intent was to address such temporary pile heights while a pile is being built.

KCBX further proposes that Section 3.0(6)(a) provide that, if a Facility implements “water sprays or other alternate measures ... to effectively control dust at a ... pile height” greater than 30 feet, the Commissioner shall, upon application, grant the Facility a variance allowing a greater pile height. However, in no event could pile height be greater than 45 feet.

Section 3.0(6)(b) Protection of Waterways.

KCBX proposes that Section 3.0(6)(b) be revised to specify a distance of 50 feet between bulk material piles and waterways. As currently drafted, this section includes a vague standard of “a distance sufficient to ensure that no materials will fall, erode, ... [etc.] in the waterway at any time.” If no set distance is specified, it would be impossible for KCBX or any other regulated Facility to know whether it is in compliance with this requirement. Further, KCBX submits that a distance of 50 feet is consistent with the current practices of bulk material handling facilities in staging piles, and that 50 feet is a sufficient distance to protect waterways. See further discussion of setbacks above.

KCBX also proposes to exempt facilities located on fill material with Class 2 groundwater from the requirement that outdoor storage piles be placed on an impermeable base or pad. See the discussion of Section 3.0(4)(b) above.

Section 3.0(6)(e) High Wind Events.

KCBX proposes that Section 3.0(6)(e) be revised to provide that disturbance of bulk material piles does not need to be suspended during High Wind Conditions (i.e., 15 mile per hour winds) where “alternate measures are implemented to effectively control dust.” This is consistent with the Section 11-4-760(c) of the Chicago Code, which provides:

Material piles: Owners of construction sites or any general contractor or subcontractor working on construction sites shall employ dust control measures for material piles. These measures shall ensure that no visible dust or dirt from material piles migrates off the construction site or onto the public ways. Work with material piles shall be

suspended as necessary during high winds (in excess of 15 miles per hour) unless alternate measures are implemented to effectively control dust.

According to records KCBX has reviewed, wind speeds in Chicago exceed 15 mph more than 40 percent of the time. Thus, not allowing KCBX and other similar Facilities to operate at winds greater than 15 miles per hour – if those Facilities have the ability to implement alternate measures to effectively control dust – would significantly reduce the capacity of the Facilities and jeopardize the commercial viability of the Facilities. KCBX further submits that its cannon systems are effective in controlling potential dust emissions at winds above 15 mph.

3.0(6)(h) Dust Suppression System.

KCBX proposes to revise Section 3.06(h)(i) to use the defined term “water spray system” rather than the undefined term “dust suppression system.” KCBX further proposes to revise this Section to state that water spray systems “shall be operable and able to dispense” at all times rather than such systems “shall be operating and dispensing” at all times. As proposed, this Section would require that water spray systems must be applying water to piles even when it is raining, when product moisture levels are already high based on past precipitation or water application, when snow covers a pile, etc. This would only create additional runoff from bulk material piles for no reason. KCBX proposes a corresponding change to Section 3.06(h)(ii).

3.0(6)(i) Runoff Management.

See the discussion of 3.0(4)(b) above.

3.0(9) Barge and Boat Loading and Unloading.

KCBX proposes to strike the words “and unloading” from the heading and the text of this Section. This Section requires “loading and unloading only through an enclosed chute.” Equipment for loading through an enclosed chute exists for loading boats and barges, but does not exist for unloading such vessels. Rather, unloading of barges is accomplished through use of equipment such as a clamshell unloader. Furthermore, barge and boat unloading activities are not a major source of potential emissions.

3.0(10) Paving.

KCBX proposes to revise Section 3.0(10) to only require paving of roads within a facility that are used for transporting or moving material, and not to require paving of storage areas. Paving storage areas would be so extraordinarily costly (in the millions of dollars) as to jeopardize the commercial viability of Facilities subject to the proposed regulations. Further, paving storage areas would increase runoff of stormwater from those areas, and would not in any way reduce the potential for fugitive dust emissions from those areas which are covered with bulk material piles. Finally, at Facilities that build an enclosure, pavement would become obsolete – and paving expense would be wasted – once the enclosure is completed.

3.0(11) Roadways.

KCBX proposes to revise Section 3.0(11) to clarify that the water spray on a street sweeper may only be used during non-freezing weather. Applying water to roads during freezing weather would create a safety risk. In addition, KCBX proposes to revise this Section to clarify that street sweeping only needs to be conducted on paved roads. It is not possible to sweep unpaved roads, which may be located adjacent to an Existing Facility. See 3.0(15)(b).

3.0(12) Accumulations.

KCBX proposes to revise Section 3.0(12) to clarify that bulk material storage areas need not be free of accumulations. Further, KCBX proposes to allow Facility Owners and Operators up to 24 hours to remove accumulations.

3.0(13) Conveyors.

KCBX proposes to revise Section 3.0(13) to provide that conveyors “shall be covered or enclosed.” Covered conveyors are depicted on slide 14 of the PowerPoint presentation made by the Department during the January 13, 2014 public meeting on the proposed regulations, and KCBX agrees that such covered conveyors are sufficient for the purposes of this Section of the proposed regulations.

3.0(15)(d) Transport.

KCBX proposes to revise Section 3.0(15)(d) to provide that wheel washes need not be operated during freezing conditions. Operating wheel washes during such conditions may not even be possible, and if it were possible, would result in ice on roads inside and adjacent to facilities, creating a safety hazard.

3.0(16) Vehicle Tarping.

KCBX proposes several changes to Section 3.0(16). First, KCBX proposes to delete the requirement that Facilities “not accept any materials delivered to the Facility unless the delivery Vehicle is covered.” Covered railcars are simply not used in the bulk coal and pet coke business, and KCBX has no mechanism by which to require its customers to ship only in covered railcars. KCBX receives the majority of product that comes to its Facilities by rail. If this provision is included in the final regulations, KCBX would not be able to receive that product and would have to shut down.

Second, KCBX proposes to add barges to the list of transport vehicles in 3.0(16)(a) that can use solid sliding covers or stacked fiberglass covers. Covered barges commonly use these types of covers.

Third, KCBX proposes to revise Section 3.0(16)(a) to clarify that covers need not be “kept completely closed” during loading.

Fourth, KCBX proposes to revise Section 3.0(16)(a) to allow barges to remain uncovered while being transferred to fleeting locations to be covered. Covering and uncovering of barges that carry coal and pet coke are typically performed at nearby fleeting locations rather than at bulk material storage handling facilities. Such locations have specialized equipment for conducting such covering and uncovering, which equipment KCBX does not have at its location. Further, KCBX does not have room adjacent to its facilities to stage barges for covering and uncovering. Finally, conducting the covering

and uncovering process at KCBX’s locations would take time, which would reduce the number of barges that KCBX could load or unload, and thus would reduce the efficiency and capacity of KCBX’s Facilities and jeopardize the commercial viability of the Facilities.

Fifth, KCBX proposes to strike the requirement in 3.0(16)(c) that tarps on truck trailers “not contact the material within the trailer.” Such a requirement would not reduce potential dust emissions. Further, trailers with such tarps do not exist in the Chicago-area marketplace.

3.0(17) Leaking.

KCBX proposes to revise Section 3.0(17) to provide that only leaks onto roads need to be cleaned. A leak could occur onto a storage pad, but it makes no sense to clean a storage pad which, by definition, is covered with product and with water applied for dust suppression purposes. Further, KCBX notes that truck trailers that are water-tight and cannot leak inside a Facility are not available in the Chicago market.

6.0 Implementation Schedule.

KCBX first proposes to revise Sections 6.0(1)-(3) (in KCBX’s markup, 6.0(1)-(4)) to push back the dates on which several of the proposed regulations will go into effect, as follows:

Section	Effective Date as Proposed	KCBX Proposed Effective Date
3.0(6)(b) Outdoor Bulk Solid Material Storage – Protection of Waterways	Immediate	90 days
3.0(6)(i) Outdoor Bulk Solid Material Storage – Runoff Management	Immediate	90 days
3.0(11) Roadways	Immediate	90 days
3.0(12) Accumulations	Immediate	Six months
3.0(16) Vehicle Tarping	Immediate	Six months
3.0(17) Leaking	Immediate	One year
3.0(5)(c) Outdoor Bulk Material Storage - Setbacks	90 days	Six months
3.0(6)(a) Outdoor Bulk Material Storage – Height Limit	90 days	Six months
3.0(6)(g) Outdoor Bulk Material Storage – Time Limit	90 days	Six months
3.0(14) Transfer Points	90 days	One year

KCBX submits that it simply is not possible to move piles, pave roadways, viably operate with reduced pile heights, etc., within the timeframes proposed in the regulations. KCBX also proposes to extend effective dates for related recordkeeping requirements, as well as to add several references to proposed new Section 6.0(7).

KCBX also proposes to add references to proposed new Section 6.0(7) in proposed Sections 6.0(4) and (5) (in KCBX’s markup, 6.0(5) and (6)).

Finally, KCBX proposes to add a new Section 6.0(7), Interim Relief. This new Section is intended to provide a “bridge” that would enable owners and operators of current Facilities who choose to

construct an enclosure to continue to operate their businesses, without risk to human health and the environment, while the construction process takes place. Without this interim relief, the proposed rules will force KCBX and owners and operators of other existing facilities out of business without ever giving them a chance to build an enclosure.

Pursuant to this new Section, Facility owners and operators would have to notify the Department within six months as to whether they intend to build an enclosure at their Facilities. If an owner or operator does intend to enclose, such notification would have to include (1) an execution schedule with estimated dates for the completion of different phases of design, permitting, and construction; (2) the identification of any Associated Facility to which the owner or operator planned to relocate operations during construction; and (3) a planned deadline for completion of construction. In no event could the planned deadline for completion be more than 36 months after the notification of intent to enclose is made. However, if due to events beyond the owner or operator's control – such as natural disaster or government permitting delays – the completion deadline became unattainable, the owner or operator would be required to submit a new completion deadline to the Department, and the Department would confer and set a new, official completion deadline.

During the process of designing, permitting and constructing an enclosure, the Sections identified in proposed Section 6.0(7)(d) would not apply at the Facility and, as applicable, the Associated Facility. This would allow Existing Facilities that have chosen to build an enclosure to remain in operation by allowing them to handle a volume of material sufficient to support a viable business. This also would enable Facilities that have elected to build an enclosure to focus their time and resources on building that enclosure rather than building things like wind breaks, which would be obsolete once an enclosure is built, and to avoid having to build certain operations such as truck and railcar loading and unloading stations – which must be incorporated into an enclosure – before such incorporation is possible given construction timelines.

Finally, Proposed Section 6.0(7)(f) would provide that if a Facility owner or operator that has elected to enclose changes its decision after making that election, the owner or operator must notify the Department, and the provisions listed in 6.0(7)(d) go into effect sixty days later.