

# Southeast Side Coalition to Ban PetCoke

---

**nopetcokechicago@gmail.com**

---

*Sent via email to: [petcokecomments@cityofchicago.org](mailto:petcokecomments@cityofchicago.org)*

February 7, 2014

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

Re: Proposed Regulations For the Handling and Storage of Bulk Material Piles

Dear Responsible Officials:

I am writing on behalf of the Southeast Side Coalition to Ban PetCoke (“the 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. Consistent with that goal, the Coalition submits the following comments in response to the Chicago Department of Public Health’s proposed regulations for the handling and storage of bulk material piles.

## Statement of Interest

The Coalition consists of residents of the neighborhood surrounding the bulk material piles along the Calumet River. Some members live within a block of the KCBX site at 10730 South Burley. Coalition members have been personally affected by the storage of bulk materials near their homes. Many members have witnessed material blowing off piles and onto residential property. Coalition members have experienced bulk material blowing into their eyes and mouths and have had their food tainted by airborne material when they eat outdoors. Coalition members witness bulk material accumulation on their property on a daily basis and have to clean frequently to remove distinctive black dust from their homes. Coalition members experience respiratory health problems that may be related to, or exacerbated by, close proximity to the bulk material piles.

Coalition members are deeply interested in the proposed regulations because of the many ways the bulk material piles affect their daily lives. The Coalition is invested in strict regulation of these materials because, as long as these piles are on the Southeast Side, their health and their enjoyment of the neighborhood depends on these regulations.

## General Comments

The Coalition recognizes the necessity of more closely regulating bulk material piles and appreciates the Department’s initial steps toward better control of this source of pollution. However, the Coalition objects to the general presumption underlying these proposed regulations that a densely populated

residential community is an appropriate location to store tens of thousands of tons of bulk material. Bulk material storage is inconsistent with the community's vision of a healthy, thriving neighborhood. The members of the Coalition urge the Department to recognize that bulk material storage would be an unacceptable proposition in many neighborhoods throughout Chicago. The Coalition questions why their neighborhood should be asked to bear the burden.

To be clear, this is an environmental justice issue. The Southeast Side is home to blue collar workers, struggling families, and a significant immigrant and minority population. Coalition members are exceptionally burdened by environmental problems that they feel powerless to address. They are exhausted by the environmental battles they have had to fight over and over in their neighborhood. The Chicago Department of Public Health should follow the lead of the US EPA in making environmental justice a priority consideration in their decision-making processes. Environmental problems should not disproportionately affect those citizen least equipped to protect themselves.

Though bulk material piles have existed on the Southeast Side for many years, they persist now as a relic of an industrial heyday that is unlikely to return. The future of the Calumet River is not industrial, but natural and recreational. Industry no longer economically sustains the Southeast Side as it did in the days of the steel mills. Coalition members no longer reap the benefits of industry, but they are nevertheless saddled with an industrial legacy that they struggle to escape. Members of the Coalition will no longer tolerate bearing disproportionate health and aesthetic burdens at the expense of better opportunities. They envision a greener, healthier future for their neighborhood. That future is impossible when the Calumet River, which should be an environmental gem on the Southeast Side, is wasted as a store house for bulk materials like petroleum coke. While the Coalition recognizes the need for strong regulation of bulk materials, regulation without removal will allow environmental oppression to continue on the Southeast Side.

Coalition members do not support enclosure as a solution. The Coalition is sensitive to the fact that regulations requiring enclosure of bulk material piles will force facilities to invest in these sites and create an incentive for industry to remain in their neighborhood. Coalition members are particularly skeptical about enclosure as a solution because other enclosure rules, like Rule 1158 in Southern California, which bears a striking resemblance to these proposed rules, seem to have yielded equivocal results.<sup>1</sup> Dust and particulate pollution have decreased, but continue to be a problem. Enclosure is a necessary, but not sufficient, step toward protecting human health and the environment. Though members of the Coalition cannot support maintaining bulk material piles in their neighborhood, they offer the following comments on the proposed regulations in an effort to support safe control of bulk material piles stored elsewhere.

#### Specific Comments

##### 1. Inappropriate exemptions for "small" operations

Under Section 3.0(5) of the proposed regulations, existing facilities are exempted from the requirement to enclose bulk material piles if the facility meets minimal setback requirements and if they fall below certain thresholds for receiving bulk material and storage capacity. This is an excessive exemption that does not adequately protect the community.

---

<sup>1</sup> South Coast Air Quality Management District, Rule 1158 Follow-Up Studies. *Available online at:* <http://www.aqmd.gov/tao/Rule1158Studies.htm>

These exempted facilities can store up to 100,000 cubic yards of bulk material and can receive up to 10,000 tons of material in any 5 consecutive working days. These quantities are not small. To visualize this quantity of bulk material, consider that the City of Chicago rents 175,057 square feet of office space in the DePaul Building at 333 S. State Street for its Departments of Public Health, Water Management, Finance, and Innovation and Technology. One hundred thousand cubic yards would fill this entire office space to a height of over 15 feet. One hundred thousand cubic yards of bulk material, left open in a residential neighborhood, will still generate significant dust. The additional requirements for these exempted facilities, including wind screens and dust suppression, are little better than the current dust controls. This is a densely populated residential community with parks and schools. A facility with 100,000 cubic yards of uncovered bulk material is still a hazard in this neighborhood.

## 2. Lax regulations for enclosed facilities

Section 3.0(4) of the proposed regulation mandates enclosure of the piles at large facilities. The regulations do not require sufficient regulation of these facilities. First, section 6.0(4) does not require enclosure for two years. This is an excessive compliance period. Additionally, under the proposed regulations, enclosed facilities will be exempted from many necessary requirements that protect human health, such as setback requirements and fugitive dust monitoring.

## 3. Excessive allowance of variances

Section 3.0(18) allows variances for almost all regulatory requirements and leaves essential protections up to the discretion of the Commissioner of the Chicago Department of Public Health. Based on this allowance, a facility could seek a variance to excuse itself from meeting requirements for height limits, setbacks, creating and following a Fugitive Dust Plan, monitoring dust, erecting a wind barrier, dust suppression, and every requirement relating to transport, loading, and unloading of bulk material. This is unreasonably permissive. If these variances are allowed, there are few controls left to protect the community.

If the Chicago Department of Public Health determines that these regulations are sufficient to protect human health and the environment, then these regulations should be applied uniformly to all facilities. The regulations include an extremely generous compliance schedule. Facilities regulated under these proposed rules should be required to make every effort to comply in the time given rather than being allowed inordinate latitude to seek variances. If facilities cannot meet these minimal requirements, set by the Department to protect the community, they should not be allowed to operate until they come into compliance. The Chicago Department of Public Health should treat *public health* as the priority.

## 4. Lack of quantifiable standards that will protect human health

In the proposed regulations, Section 3.0(2) prohibits visible fugitive dust emissions that cross property lines and airborne dust with opacity greater than 10% for three minutes within an hour. These limitations are insufficient for numerous reasons.

First, problematic pollution may not be visible. Even on calm days when the air appears clear, Coalition members find black dust on and around their property. This winter, Coalition members have observed

black dust accumulation on snow in their yards, far from roads and other obvious sources of pollution.<sup>2</sup> Coalition members know this black powder, though invisible, is present in the air they breathe and accumulates in their homes. Additionally, there is no basis given by the Department to indicate that a visibility standard is sufficient to protect human health. Particulate matter presents a danger to human health in quantities that are not visible.<sup>3</sup>

Secondly, visible dust emissions are difficult to record. Despite industry claims to the contrary, fugitive dust emissions are not rare, isolated events. Since the August, 2013 wind storm that raised community awareness of the hazards posed by these bulk material piles,<sup>4</sup> Coalition members have been attempting to document the fugitive dust violations that they witness. Coalition members have met with indifference and bureaucratic difficulty when they attempt to verbally report violations to regulatory authorities. Photographic documentation is often even more difficult. Not all residents of the Southeast Side are equipped with cameras or smartphones. Even when Coalition members have access to a camera at the right moment to capture a fugitive dust violation, cameras are not always able to capture the details that are clear to the human eye.

Thirdly, opacity is difficult to measure. Measuring opacity requires specialized equipment or rigorous training. Citizens of the Southeast Side are not capable of measuring opacity, let alone recording a violation. The regulations make no mention of who at the facility will monitor opacity, how opacity will be recorded, or whether opacity violations shall be reported.

A lack of quantifiable standards makes enforcement almost impossible. Even when the regulations require monitoring of particulate matter (PM10), pursuant to the Fugitive Dust Plan described in Section 3.0(3)(f), the “reportable action level” is not a designated numerical limit, but a level set by the facility based on background sampling and their own discretion. This does not create a reliable basis for the Chicago Department of Public Health to know whether these bulk storage piles are operating in a way that protects the health of the surrounding community.

Another notable shortcoming is the failure to require monitoring of fine particulate matter (PM2.5). Fine particulate matter is recognized as harmful and is accordingly monitored by US EPA and local regulatory authorities.<sup>5</sup> Chicago is a non-attainment area for PM2.5 based on 2012 monitoring data from Washington High School, which is less than a mile from the KCBX bulk storage piles at 10730 S. Burley Avenue.<sup>6</sup> We don’t have sufficient information to know how PM2.5 pollution is connected to the bulk storage piles on the Calumet River, but there are enough data to indicate that failure to address PM2.5 in these regulations is a significant oversight.

## 5. Lack of enforcement mechanisms

Lack of enforcement of the current fugitive dust regulations is a frustrating problem for Coalition members; these proposed regulations do not provide any assurance of improved enforcement. There is

---

<sup>2</sup> See photographs in attachment.

<sup>3</sup> See, e.g. <http://www.epa.gov/pm/health.html>.

<sup>4</sup> See photographs in attachment.

<sup>5</sup> See, e.g. <http://www.epa.gov/pm/health.html>.

<sup>6</sup> Illinois Environmental Protection Agency, RECOMMENDED ANNUAL PM2.5 NONATTAINMENT AREA DESIGNATIONS IN ILLINOIS, October 2013. Available online at [http://www.epa.state.il.us/public-notices/2013/pm25-nonattainment/Chi\\_annualPM25\\_Oct\\_23\\_2013.pdf](http://www.epa.state.il.us/public-notices/2013/pm25-nonattainment/Chi_annualPM25_Oct_23_2013.pdf)

little information about how violations will be detected and no mechanism for enforcing violations that are discovered.

The proposed regulations require some minimal self-reporting by facilities, including submission of an annual Fugitive Dust Plan and notification of the Department “each time the [fugitive dust] monitors exceed the reportable action level” determined by the facility in the Fugitive Dust Plan. These requirements leave monitoring decisions to the discretion of the facility. Coalition members are concerned about this arrangement because they have not experienced vigilant monitoring from their industrial neighbors. On the contrary, when representatives of the facilities communicate with Coalition members, they deny that there is a dust problem.

This leaves much of the responsibility for monitoring and enforcement to the residents of the neighborhood. Coalition members have been repeatedly asked by regulatory bodies to take responsibility for catching and reporting violations in their neighborhood. This is unfair. Residents of other parts of the city are not routinely asked to assume a regulatory role in order to protect their own health. Not only that, but this method of enforcement is clearly ineffective. As described above, even when Coalition members witness violations, they struggle to get the attention of the proper regulatory authorities. To the Coalition’s knowledge, since community members began recording violations in August 2013, only the Illinois Attorney General’s office has taken enforcement action. Many reported violations have been completely ignored.

Regulations without consequences are meaningless. There is no description of enforcement measures or mention of penalties in the proposed regulations. The Chicago Department of Public Health should include a penalty provision so that fugitive dust violations can be enforced adequately. If the City of Chicago has established a fine for weeds,<sup>7</sup> surely a fine for fugitive dust is appropriate. Human health is at least as important as weed control. Stricter enforcement would encourage facilities to take seriously the requirements of these proposed regulations.

#### 6. Insufficient setback requirements

The failure to apply setbacks to all bulk storage piles is the clearest shortcoming of the proposed regulations relating to setbacks. Section 3.0(5)(c) applies only to outdoor facilities. Enclosed facilities will still pose a hazard and a nuisance to residential neighborhoods and should be subject to the same setback requirements as outdoor facilities.

Section 3.0(5)(c) of the proposed regulations dictates that facilities with open piles must be at least 300 feet from homes and most buildings and 660 feet from hospitals many areas where children are present. These setback limitations appear to be derived from Chicago Zoning Ordinance sections 17-6-0407 and 17-9-0117 respectively. The proposal for a 300-foot setback from any home appears to be less stringent than the current ordinance, which requires enclosure or screening for “all storage of goods and materials” “within 300 feet of any R district.”<sup>8</sup> By contrast, the proposed regulations require a 300-foot setback from “the closest exterior wall” of a residential building. The 660-foot setback proposed for childcare facilities, preschools, primary and secondary schools, outdoor recreational areas, and hospitals presents a slight improvement. The zoning ordinance that serves as the source for this setback,

---

<sup>7</sup> Chicago, Illinois, Municipal Code title 7, § 28-120.

<sup>8</sup> Chicago, Illinois, Municipal Code title 17, § 6-0407.

however, applies the 660-foot limit to “R zoning district boundaries,”<sup>9</sup> not only sensitive areas like schools and hospitals.

A different setback requirement can be found in the Chicago Department of Public Health’s rules regarding landfills.<sup>10</sup> These regulations require a setback of at least 800 feet from any occupied dwelling, residential-zoned property, school, or hospital. Additionally, these regulations require that waste be a minimum of 100 feet from the property boundary. The proposed regulations set no clear limits regarding how near to the property boundary bulk material may be stored. The Chicago Department of Public Health should require at least this minimal setback: all facilities must be at least 800 feet from all residential property, schools, and hospitals and no material can be stored within 100 feet of the property boundary.

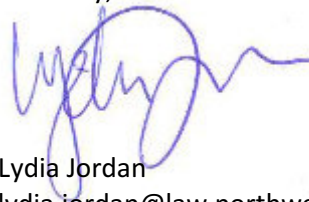
Section 3.0(6)(b) of the proposed regulations provides an ambiguous setback requirement for waterways. The description of a “distance sufficient to ensure that no material will [enter] the waterway” is meaningless because such a distance is impossible to know until the regulation is violated and the distance is found to be insufficient. The Chicago Department of Public Health should set clear, numerical setback limits that protect our waterways.

#### Conclusion

The Coalition does not accept that their community must bear the burden of these piles and it does not believe that any level of regulation is sufficient to protect the community’s health, wellbeing, and future prosperity. Even so, the Coalition recognizes the need for improved regulation and urges the Chicago Department of Public Health to revisit the proposed regulations and to dramatically strengthen them. To protect the citizens of Chicago, the Department must close loopholes in the regulations, create enforceable numerical limitations, add a mechanism to detect and penalize violators, and increase setback requirements.

The Coalition appreciates the opportunity to be involved in this process and looks forward to working with the Chicago Department of Public Health to find ways to better protect the residents of the Southeast Side. Thank you for your time and consideration.

Sincerely,



Lydia Jordan  
lydia.jordan@law.northwestern.edu  
Environmental Advocacy Center  
Bluhm Legal Clinic  
Northwestern University Law School

Enclosure:  
Attachment with 4 photographs

---

<sup>9</sup> Chicago, Illinois, Municipal Code title 17, § 9-0117.

<sup>10</sup> Rules and Regulations for Landfills, Liquid Waste Handling Facilities and Transfer Stations Operated Within the City of Chicago, § 5.0.

Attachment:

Photograph taken by Coalition member Anthony Martinez at 6:23 PM on August 30, 2013. The location was 109<sup>th</sup> Street and Buffalo Avenue. Mr. Martinez reported that the black cloud of particulate matter was visibly coming from the KXBX facility at 10730 S. Burley.



Photograph of tainted food from a family picnic on August 30, 2013. The location was approximately 108<sup>th</sup> Street and Buffalo Avenue. Notice black specks.





Photographs taken by Coalition member David Barboza at 12:11 PM on January 30, 2014. The location was 109<sup>th</sup> Street and Mackinaw. Notice black specks in the snow on the porch railing.



Notice black specks on the surface of the snow.

