

# RELIABLE

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## Materials Corporation of Illinois

May 22, 2020

Dr. Allison Arwady, M.D., M.P.H.  
Commissioner  
Chicago Department of Public Health  
City of Chicago  
333 South State Street, Room 200  
Chicago, Illinois 60604

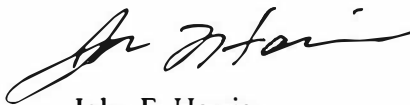
Dear Commissioner Arwady,

Thank you for the opportunity to provide comments concerning the City of Chicago Amended Proposed Rules for Large Recycling Facilities dated May 12, 2020 (“Amended Proposed Rules”). We respectfully submit the attached comments, which are limited to several specific areas of the Amended Proposed Rules, for your consideration. These comments seek further clarification on several definitions, in addition to emphasizing that certain requirements are not applicable to Class V recycling operations and are essentially unwarranted.

Changes of this undertaking are significant and require thorough review and analysis – it is our hope that the Department of Public Health will engage in meaningful discussions and meetings with industry stakeholders who can provide valuable input regarding the unintended consequences of this proposal before such time that the rules become effective.

These comments aim to find a fair and reasonable balance between the protection of human health, safety, and the environment and a science-based set of requirements that facilitate recycling without increased costs borne to the City and associated economic impacts associated with reducing employment opportunities in this sector.

Respectfully submitted,



John F. Harris  
President  
Reliable Asphalt Corporation

## COMMENTS TO THE AMENDED PROPOSED RULES DATED MAY 12, 2020

1. Definitions: Large Recycling Facility – In the first round of comments, Reliable Asphalt suggested that Department of Public Health (DPH) should treat all similarly situated facilities the same. Although DPH has adjusted the thresholds to distinguish General Recycling Facilities from Large Recycling Facilities, Reliable resubmits this comment.

If DPH's objective is to "promulgate rules for the proper management of *any* substance or material that may become airborne or be scattered by the wind" (emphasis added; see Whereas clause #5, Amended Proposed Rules page 1), then the same regulations should apply to all facilities without regard to size or location.

DPH has not referenced any study or scientific analysis that would support variations in the regulations applicable to General Recycling Facilities, Large Recycling Facilities, and Consequential Facilities. DPH acknowledges the gap by noting that regulators intend to include "common sense environmental regulations" in a future rulemaking for General Recycling Facilities (see Responsiveness Document page 6). Regulations should be based on scientific studies, not "common sense," a subjective standard that will vary based on the perspective of the regulator or industry operator.

As to the definition of Large Recycling Facility, there is no rational basis for distinguishing between facilities on the basis of volume processed. Distance from a Sensitive Area is a much better measure of whether a facility should be subject to heightened scrutiny. Rock-crushing equipment situated within a roadway at a job site may have a worse environmental impact on a neighborhood than an operation located in a planned manufacturing district away from homes. All facilities that are likely to create environmental impacts should be subject to the same requirements for monitoring, reporting, and mitigation.

2. Definitions: Consequential Facility - DPH should not make all Class V processors Consequential Facilities regardless of location. The regulations for Consequential Facilities appear to be designed to protect Sensitive Areas. Regulations that impose restrictions on Class V operations that are in the middle of an industrial park (or planned manufacturing district) and away from Sensitive Areas are not required to protect Sensitive Areas.

DPH should expand the category of Consequential Facilities to recycling facilities of any kind that are within 660 feet of a Sensitive Area and should amend the definition to exclude Class V processors that are more than 660 feet from a Sensitive Area.

Class V facilities and auto shredders are both included in the definition of Consequential Facility, regardless of location. Reliable reiterates its original comment

that DPH should not include rock crushing in the same category as automobile shredding. Type D material is not hazardous, and processing this material does not create the same kind of potential for environmental impacts as the other kinds of operations included in the definition of Consequential Facility. DPH justifies imposition of monitoring regulations on Class V recyclers because, “Fugitive emissions from recycling facilities can contain harmful pollutants such as lead, manganese, crystalline silica, and asbestos,” yet the nature of Type D materials inherently excludes these substances (see Responsiveness Document page 48).

3. Definitions: Modification – DPH should remove from the definition of modification changes that will result in an operator processing a lower volume of material. The regulations that apply to modifications should not be imposed on operations where – as a result of the changes - processing will be reduced.

“Capital improvements” should be excluded from the definition of Modification. The term is too general and inclusive. Improvements designed to mitigate environmental impacts may be “capital improvements” that would trigger increased regulation, creating a disincentive for an operator to make such improvements.

Similar to the above, Reliable reiterates its comments concerning Changes in Facility Operations (6.3). From time to time, operators may desire to adjust locations of stock piles or equipment to improve workflow. DPH should allow such adjustments without requiring adjustments to variances.

4. Definitions: Staging Area – DPH should amend the definition of staging area to accommodate Class V facilities. Unlike the other kinds of operations included in the definition of Consequential Facilities, Class V operations must store and stage materials for more than five days.

Reliable’s raw stockpiles are driven by demolition activity, and its processed material inventories are driven by construction activity. Neither stockpiles nor inventories are within the control of the operator. If a Class V facility reduces intake to conform to the limits on Staging Areas, DPH will increase the likelihood of “fly dumping,” which results from unscrupulous contractors endeavoring to avoid the expense of traveling long distances to find a facility that is able to accept materials into its Staging Area. This would also increase truck traffic on local highways, thereby increasing the City’s carbon footprint.

The five (5) day limit does not at all account for how the City performs its construction activity. For example, the City typically grinds its streets to prepare for resurfacing starting in March or April of each year but may not actually begin repaving these surfaces until May or June. The grindings are stored and reprocessed into new hot-mix asphalt material, thus making up the recycled materials component

of the mix design. Class V facilities, such as in the case of Reliable Asphalt Corporation, are co-located with the hot mix asphalt plants where these stockpiles need to be positioned. Similarly, in the Department of Water Management, some projects last for weeks or months between demolition and restoration. Then, specifically in the case of these Department of Water Management projects, the demolition materials become the restoration materials after they have been reprocessed. These construction and material handling practices have saved Chicago taxpayers millions of dollars over the years and have reduced environmental impacts through the greater use of recycled building materials.

Furthermore, we believe the significant bonding required to operate a Class V facility ensures that the finished recycled stockpiles can and will be removed under these financial assurances in the unlikely case of the closure of the business.

5. General Comment: Multiple Permits – The rulemaking should clarify that an operation need only secure one type of permit, which will cover all operations. At this time it is unclear whether a recycling facility may be required to secure multiple DPH permits for one operation. The rules should clarify whether a Consequential Facility will be required to secure a DPH Air Permit, Large Recycling Facility Permit, and Consequential Facility Permit.
6. Noise Impact Assessment (3.9.20) – DPH should not require all Class V facilities to demonstrate compliance with or exemption from the Chicago Noise Ordinance. Reliable reiterates its previous comment that the noise limits are too low to permit any outdoor operation, rendering all enforcement arbitrary and capricious. If DPH were to enforce the regulations, every facility engaged in outdoor processing would receive a violation. DPH should work with the City Council to revise the Chicago Noise Ordinance or should eliminate the requirement for a Noise Impact Assessment.
7. Air Quality Impact Assessment (3.9.22) – DPH should not require all Class V facilities to collect and report information about air quality other than generalized examination of the presence of particulate matter. The Amended Proposed Rule requires Applicants to have samples analyzed for Hazardous Air Pollutants (1.1.1.10.3). Class V Facilities process only Type D materials, and these materials do not release metallic Hazardous Air Pollutants such as lead, cadmium, chromium, manganese, and nickel.

The requirement to provide background data concerning heavy metals imposes an unnecessary and burdensome requirement that is not reasonably related to the City's objective of reducing fugitive dust from Class V operations. DPH acknowledges that, "it is unclear how the collection of baseline data, as suggested by the NGOs, will strengthen the emission and air modeling study" (see Responsiveness Document page 30). DPH indicates that the information may be needed for calibration of the equipment. DPH should allow the air monitor company to determine what is

required to secure accurate readings; data about metals in the ambient air may not be necessary to calibrate monitors designed to detect particulate matter.

8. Reportable Action Level (RAL) (4.8.3.5) and RAL Notification (4.8.3.9) - In response to the Proposed Rules regarding air monitors, Reliable suggested that DPH reference U.S. EPA air dispersion modeling methods. We respectfully request that Section 4.8.3.5 and 4.8.3.9 be further revised to provide that in accordance with 40 CFR 60.11(c) RAL Notification shall be required for exceedance of RALs “at all times except during periods of startup, shutdown, malfunction, and as otherwise provided in the applicable U.S. EPA and IEPA standards.”

Operators should not be required to transmit RAL data to DPH within 15 minutes of any exceedance of emissions standards. DPH justifies this requirement by commenting that the notice to DPH differs from a violation, so transmitting the data is inconsequential.

Recyclers should not be required to transmit information to DPH about events that – taken out of context - do not violate standards. Information transmitted to DPH becomes subject to FOIA. Members of the public will have access to this data, which will be reported out of context and can be mischaracterized as causing harm to public health.

DPH should follow state and federal standards which require reporting within 24 hours of an RAL (inherent in such reporting standard is the application of state and federal modeling standards, which do not use a 15-minute modeling window).

The RAL should also take into consideration typical background conditions pertaining to air quality. For instance, ambient site background levels during non-operating hours may be 25 micrograms per cubic meter. Accordingly, the RAL should then be 175 micrograms per cubic meter for such a site as this incorporates the background and limit into a complete standard for compliance.

9. Notice of Variance Applications (6.40) and Coordination with other legislation – DPH should delay application of the Amended Proposed Rules until the City Council has acted on proposed Ordinance 2020-2017. If that ordinance is adopted, then the provisions thereof should be coordinated with the Amended Proposed Rules. Applicants should not be required to engage in multiple repetitive public hearings related to the same proposal.