



DEPARTMENT OF PUBLIC HEALTH  
CITY OF CHICAGO

July 18, 2018

Jeryl L. Olson  
Seyfarth Shaw LLP  
233 S. Wacker Drive  
Chicago, IL 60606

RE: North America Stevedoring, 9301 S. Kreiter Avenue  
Request for Reconsideration of Variance Denial

Dear Ms. Olson,

The Chicago Department of Public Health ("CDPH") is in receipt of your February 28, 2018 letter on behalf of North America Stevedoring Company, LLC ("NASCO"), requesting reconsideration of a portion of CDPH's January 26, 2018 variance determination ("Request for Reconsideration"). Previously, NASCO requested a variance from Section 3.0(4) of the Rules and Regulations for Control of Emissions from the Handling and Storage of Bulk Material Piles ("Bulk Material Regulations" or "regulations"), which requires the installation, operation, and maintenance of four permanent, continuous Federal Equivalent Method (FEM) real-time PM<sub>10</sub> monitors around the perimeter of the facility in accordance with specified requirements. CDPH denied the variance application and requested NASCO to install dust monitors within ninety (90) days.

CDPH reviewed the Request for Reconsideration and supporting documents, including NASCO's February 2018 updated Fugitive Dust Plan (FDP)<sup>1</sup>. While CDPH appreciates the measures NASCO has implemented to increase dust control, NASCO has still not met the requirements for issuance of a variance as set forth in Sections 8.0(2) and 8.0(3)(a) of the regulations. Accordingly, the variance determination stands.

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<sup>1</sup> On page 3 of the Request for Reconsideration, NASCO refers to the FDP as an "approved Fugitive Dust Plan." Please note that CDPH has not approved the FDP at this time. We request that a revised FDP be submitted to include the dust monitoring plan required under Section 3.0(3) of the Bulk Material Regulations.

Specifically, Section 8.0(2)(d) of the regulations requires a demonstration that issuance of a variance will not create a public nuisance or adversely impact the surrounding area, environment, or property uses, and Section 8.0(2)(g) requires applicants to describe alternate methods of compliance. In addition, Section 8.0(3)(a) requires the Commissioner to give particular consideration to the following information in any variance request:

- i. Inclusion of a definite compliance program;
- ii. Evaluation of all reasonable alternatives for compliance;
- iii. Demonstration that any adverse impacts will be minimal.

Although NASCO implemented certain site improvements, such as new paving, and further described certain measures to minimize dust emissions, such as indoor storage of bulk materials and the use of a wind screen and water cannon, such measures are not failsafe. In fact, the facility's operations, which are not fully enclosed, present many opportunities for the generation of uncontrolled fugitive dust. According to the Fugitive Dust Plan, thousands of tons of fluorspar and ferromanganese are unloaded every year, during 24-hour periods. This material is unloaded to a dock, staged outdoors for several hours, and then disturbed again when it is loaded and transported to the indoor storage location. When it leaves the facility, according to NASCO, "Truck loading is mostly done inside the warehouse." (FDP, page 7). This implies that loading is sometimes done outside.<sup>2</sup>

Notably, when material is transferred at night, it is more difficult for operators to gauge opacity levels and conduct visible observations to ensure no dust is leaving the site. However, it is not clear from the FDP or Request for Reconsideration whether operators are visibly monitoring for fugitive dust at all, in either the daytime or at night. Furthermore, while the FDP stated that the facility "performs visual tests of fugitive dust emissions and opacity on a quarterly basis utilizing Method 22 testing," there were no details given, nor any sample opacity logs. In fact, NASCO's January 11, 2018 letter to the U.S. Environmental Protection Agency ("EPA"), on which CDPH was copied, contained the statement below in response to the following request from EPA:

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<sup>2</sup> The FDP also notes that pig iron is stored outdoors. As stated in CDPH's January 26, 2018 variance determination, CDPH maintains that pig iron has the potential to create fugitive dust and therefore must be treated as a bulk solid material under the regulations.

8. *For the time period January 1, 2016, through October 31, 2017, provide copies of any Method 9 opacity readings or Method 22 visible emissions readings conducted at the NASCO facility.*

**Response to Request No. 8:** There are no SIP requirements, or requirements of the facility ROSS registration that require NASCO to conduct visible emissions monitoring, and no such monitoring has been conducted by NASCO during the relevant time period.

CDPH notes that NASCO did not submit a variance request from the City's requirement to conduct periodic tests of visual fugitive dust and opacity and that failure to conduct such testing is a violation of Section 3.0(2)(d) of the Bulk Material Regulations. Nevertheless, even if the facility performed visible observations and opacity testing as required, this would still not be a substitute for permanent PM10 air monitors. The regulations require both perimeter air monitors and quarterly opacity and visibility observations. (*See* Section 3.0(f)(ii) of the Bulk Material Regulations.) As mentioned in the Department's original variance determination, routine visible monitoring, though important to ensure that dust controls are working on a localized level, do not take the place of permanent fence line monitors which operate continuously, regardless of weather conditions or the hour of the day or night.

In support of the Request for Reconsideration, NASCO pointed to three CDPH inspection reports which confirmed the existence of dust suppression systems and noted that no dust emissions were observed. These reports, attached as Exhibit A to the Request for Reconsideration, were dated December 1, 2017, February 2, 2018, and February 20, 2018, which were slow periods of little activity at the facility. In the February 2, 2018 report, the inspector noted that it: "Currently is a 'dead' season till March." In any event, as mentioned above, point-in-time observations do not replace the information collected by continuous air monitoring devices.

Furthermore, the Department's inspection of February 1, 2018 (which, as NASCO mentioned, occurred jointly with EPA) revealed some operational practices that present opportunities for the release of fugitive dust. The inspection report noted, in pertinent part:

"Manganese is loaded out of the facility in super sacks and trucks;

The facility load out 8 to 10 trucks per day (Monday to Friday), and each truck can take 20 to 23 tons of manganese;

The loading of manganese into trucks is done outside except when it is raining, when it rains it will be done inside the building at the manganese storage area,

There is no control device for the manganese dust from loading operations, either when loading is done outside or inside of the building.

Today inspection revealed the following:

Manganese storage building doors were observed wide open, Stevedoring men who took us around for today inspection, both said there was no plan to install doors (see photo # 2), Photo number 1 shows manganese storage area exhaust fans, no control device in this area." [See attached inspection report.]

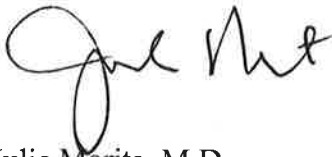
In summary, while NASCO has taken steps to control dust generated at its facility, it has not proffered any alternate methods of complying with the dust monitoring requirement and has not demonstrated that failure to monitor will not cause a nuisance or other adverse impacts.

Accordingly, CDPH hereby reiterates its decision that NASCO must submit a dust monitoring plan to CDPH and install dust monitors in accordance with the requirements of Section 3.0(4) of the Bulk Material Regulations. CDPH requests compliance as soon as possible, no later than thirty (30) days from the date of this letter.

If a year's worth of monitoring data demonstrates that there are no off-site adverse impacts from the site, NASCO is, of course, free to submit a new variance request.

If you have any questions, please contact CDPH Assistant Commissioner Dave Graham at (312) 745-4034.

Sincerely,



Julie Morita, M.D.  
Commissioner

cc: Mort Ames, DOL