MARK A. LAROSE *
JOSEPH A. BOSCO *
DAVID KOPPELMAN
DAVID ROSEMEYER
DAVID J. ARON
COSTA DIAMOND
MARISSA R. ALASKA
NATALIE MARTELLO

OF COUNSEL
HON. ANTHONY J. BOSCO (1928-2008)
JOSEPH G. ALIOTO **
ALBERTO QUIROS JAEN***

* ADMITTED IN MICHIGAN ALSO
** ADMITTED IN WISCONSIN ONLY
*** ADMITTED IN PANAMA ONLY

LAROSE & BOSCO, LTD.
ATTORNEYS AT LAW

200 N. LASALLE STREET
SUITE 2810
CHICAGO, IL 60601
P: (312) 642-4414
F: (312) 642-0434

135 S. WHITTAKER
NEW BUFFALO, MI 49117
P: (269) 469-8440
F: (269) 469-8442

June 20, 2019

By Hand Delivery & E-Mail Julie.morita@cityofchicago.org
Dr. Julie Morita
Commissioner
Chicago Department of Public Health
333 S. State Street, Room 200
Chicago, IL 60604

RE: Proposed Rules for Large Recycling Facilities

Dear Dr. Morita,

I represent Sims Metal Management (SMM). SMM operates industrial metal recycling facilities in the City of Chicago at 2500 S. Paulina, and 350 N. Artesian. This letter sets forth SMM's comments to the proposed recycling rules for large recycling facilities (Proposed Rules).

BACKGROUND

SMM facilities in the Chicago area recycle thousands of tons of steel (ferrous) material and non-ferrous material, producing specification grade commodities. Much of the recyclable steel shipped from our Chicago-area facilities is delivered by barge, deep-water vessel, or rail to domestic and global steel mill customers for use as raw material in the production of new steel.

Shipping steel in bulk shipments and using barge, ocean-going vessel and rail to move material is not only economically efficient, but also an environmentally responsible way to move material – significantly reducing truck traffic in the communities where we are located.

More than 129 men and women, many of whom are members of the Teamsters Local 731 Union, are employed at the Chicago-area metal recycling facilities of SMM.

During the past five years, SMM has made numerous investments in its Chicago-area facilities to improve recyclability and to benefit our workers, the community and the

environment. This includes new non-ferrous metal separation technology, other mobile and stationary equipment, and equipment to improve dust and storm water management.

SMM has a strong commitment to the environment, sustainability and the health of the communities in which we do business. In all aspects of the business, SMM strives to implement best practices and fulfill the ideals of our Safety, Health, Environment and Community (SHEC) Policy. SMM is also committed to the community, supporting local educators, schools, churches, charity, and community organizations throughout the Chicago area. Each employee of SMM is encouraged to become an active member of the community in which we are located.

GENERAL COMMENTS

The Proposed Rules are a laudable goal and attempt to protect the public health, safety and environment. There are many elements of the Proposed Rules which SMM fully supports. However, certain elements of the Proposed Rules represent drastic changes to the existing rules and recycling permit application process, even though the public health and safety benefits are either not apparent or appear to be *de minimis*. In some respects, certain elements of the Proposed Rules are so onerous as to adversely affect the ability of recycling facilities to continue to operate, again –without apparent or with *de minimis* benefits for public health and safety.

The specific comments below only address those proposed provisions that SMM finds are both onerous and either duplicative of existing requirements, unnecessary for the protection of public health and safety, potentially inconsistent with existing law, or potentially substantially and adversely affecting its ability to do the business of recycling.

In general, the comments can be categorized as: unnecessary duplication with other proposed provisions; unnecessary burden to the operation of SMM's business; infringing on the authority of other local, state or federal agencies; infringing on confidential business information; unnecessary to protect the public health and safety. The comments generally follow numerically the organization of the Proposed Rules.

Before providing specific comments addressing specific provisions of the Proposed Rule, we must mention a few over-arching considerations reflecting the above categories and informing many of the specific comments set out below.

Proposed Rules Need Not Derive From Those Required For The Solid Waste Industry: While the metal recycling industry plays a vital role in the economies of Chicago, the State and the United States, as well as in benefits for global trade, the environment, and sustainable development, generating nationally nearly $117 billion annually in economic activity and more than half a million jobs, it is not a waste industry. As stated by our national trade association, the Institute of Scrap Recycling Industries (ISRI), recyclables are commodities, not waste, and recycling is not disposal. ISRI further notes that recyclable materials do not require management as solid waste and thus do not require regulation as solid waste. While the efforts of the private sector recycling industry do contribute significantly to the reduction of solid waste,

recycling and solid waste management are two different activities. The goal of our industry is to produce and sell commodities. The goal of the waste industry is to collect and dispose of a broad range of wastes (even though incidentally and importantly it does work to divert recyclable materials from the waste stream whenever possible, so that these materials may enter the commodity stream as recyclable materials).

There are residual wastes from the various recycling processes (e.g. automobile shredder residue) that require proper management, handling and disposal. SMM has and continues to be committed to following all applicable laws, rules and regulations with respect to the proper management, handling and disposal of any residual waste from the recycling process.

There are several provisions in the Proposed Rules that appear to derive from waste industry requirements, but would not be appropriate for the metal recycling industry. These include those Operating Plan elements seeking detailed reports on types and daily quantities of recyclable materials (3.11.1, 3.11.2) and the Closure Plan requirements (3.11.12).

Proposed Rules Duplicate Rules In Place Under Other Agency Jurisdictions: There are several elements in the Proposed Rules addressing air emissions, storm water discharges, fire risks, and building and land use requirements. Most if not all of the key requirements of those elements have been in place for years if not decades under the competent jurisdiction of USEPA, Illinois EPA, MWRD, and the local planning, building and fire departments, among others. Those agencies already address many of the risks that the Proposed Rules apparently are seeking to address. There is risk that this duplication of effort adds administrative and operational burdens on the industry with no apparent reduction in risks to public health or safety or the environment beyond those which current requirements provide. Elements that this general comment would apply to include 3.9.11 (Structures & Fixed Equipment), 3.9.13, 4.7 & 4.15 (Water Drainage, Water Quality Standards and Monitoring, and Pavement Maintenance and Cleaning), 3.9.14 (Traffic), 3.9.20 & 4.6 (Noise Impact Assessment & Noise Monitoring and Standards), 3.9.21 (Storage Tanks), 3.9.22 & 4.8 (Air Quality Impact Assessment & Air Quality Standards and Monitoring), and 3.11.4 & 4.14 (Fire Prevention & Accident Safety Plan).

We propose that DPH just incorporate existing requirements into the Proposed Rules, so that DPH may have an opportunity to review the programs already in place upon request, rather than requiring each facility to recast and expand on the effective programs already in place. Furthermore, wherever the applicant is required to demonstrate compliance with a requirement, we propose that the document properly prepared or submitted in response to the comparable requirements of another agency be deemed sufficient to satisfy the comparable requirements of this Proposed Rule.

The Proposed Rules Risk Undermining the Long-standing Grandfathering Right: The extensive set of requirements set out in the Proposed Rules related to zoning and land use may undermine and impinge on grandfathered rights which are based on the legal existence of a use prior to a modification of a zoning ordinance or building code. We propose that DPH clarify up-front that it is not the intent of the Proposed Rules to infringe on these rights and that any

such element of the Proposed Rules which appears to infringe on these rights will not pre-empt such rights.

The Proposed Rules Risk Disclosure of Confidential Business Information: Some information sought is commercially intrusive and sensitive. The proposed rule should provide for a declaration that certain information may not be discoverable under a public information request (as Confidential Business Information). This would include information sought under 3.11.1 and 3.11.2 (Types and Quantity of Recyclable Material) and 4.18 (Quarterly Reporting) among other provisions. There also are other reasons for limiting the scope of such reporting in addition to this confidentiality issue.

Timing: With the extensive amount of detail required for the Application submittals and the potentially limited resources for DPH to process Applications, it could take more than a year for DPH to issue a Permit. The Rule should clearly state that the Facility may operate when the Application is pending.

Due Process; Regulatory Taking: Various elements use numerical or other standards that do not appear to have been vetted through a rule-making process with respect to such standards and further where no scientific basis is provided in the record for use of such standards. This appears to be the case for example for certain pollutant and noise standards. In the absence of the implementation of any such due process or administrative procedure requirements, we propose that the DPH use standards which have been developed based on such process and procedures.

We also propose that where DPH uses terms that have not been developed and accepted through such a rule-making process that the DPH use comparable terms which have been developed based on such process and procedures. Such an approach would reduce the risk that such terms may be found to be unduly vague. This may be the case for example with the term "Toxic Air Pollutant" where the term Hazardous Air Pollutant, already defined through regulation, may accomplish the same objective for DPH.

In the same vein, we further propose that wherever the applicant is required to demonstrate compliance with a requirement, the document properly prepared or submitted in response to the comparable requirements of another agency be deemed sufficient to satisfy the comparable requirements of this Proposed Rule. Not only will this avoid duplication but it will reduce the due process and administrative procedure risk.

Regarding the regulatory taking risk, various elements of this Proposed Rule (especially noise and air elements) may result in the inability of a Facility to engage in meaningful operations.

SPECIFIC COMMENTS

Definitions: In response to the General Comments regarding due process, administrative procedure and avoidance of duplication, we propose revising the following definitions as follows:

"**Criteria Pollutants"** is wrong. Nitrogen dioxide, course and fine PM_{10} and $PM_{2.5}$ are pollutants for which EPA has established National Ambient Air Quality Standards.

"**Demonstrate**" would state that a document properly prepared or submitted in response to the comparable requirements of another agency be deemed sufficient to Demonstrate compliance with the requirements of this Proposed Rule. For example, applicable provisions of a Stormwater Pollution Prevention Plan (SWPPP) under the NPDES permit program would be deemed to satisfy applicable storm water requirements under the Proposed Rule.

"**Hazardous Waste**" would mirror the definitions under applicable federal or State regulations (e.g. under the RCRA regulations, 40 CFR 260.10, or applicable State regulations, e.g. 35 IAC 720.110). The proposed definition is from 35 IAC Part 856, "Procedures for Collection of Permit and Inspection Fees" which does not apply to all of the IAC parts.

"**Toxic Air Pollutants**" is overly broad and should be reworded such that a Toxic Air Pollutant is a chemical defined as a Hazardous Air Pollutant. Hazardous Air Pollutants are explicitly vetted and defined by EPA.

"**Waters**" would be consistent with the definition of "Navigable Waters" included in the SPCC regulations at 40 CFR 112. The proposed definition appears to be overly broad, even though the examples would be covered under the Navigable Waters definition.

1. §§ 3.1 – 3.9 all relate to the requirements of the recycling permit application.

§ 3.9.5 requires a scaled drawing of the General Layout of the Facility; § 3.9.1 requires a Plot Plan; § 3.9.6 requires a Site Survey. These plans/survey must be signed by a P.E. and/or licenses surveyor.

These provisions are duplicative and therefore unnecessary as proposed. We suggest that only a site survey depicting all of the site conditions and features should be sufficient. Any site features that cannot be fully depicted in a survey can be put in a supplemental plot plan. No certification by a P.E. should be necessary, as the survey will be stamped and signed by a licensed surveyor.

2. § 3.5, § 3.11.1.1, 3.11.2.5 require reporting on the types of materials and sources of materials to be recycled, and maintenance of daily records regarding volumes and types of material.

These provisions are intrusive to confidential business information, and unnecessary to protect the public health and safety. We suggest that the rule be revised to require one time (per permit) identification of unacceptable materials and categories and sources of materials to be recycled, e.g. "end of life autos, sheet iron, industrial ferrous and non-ferrous metals, all purchased from the public, or street peddlers, or industrial customers." The maximum allowable quantities will be the daily limit in the applicable permit.

3. § 3.9.5.5 also requires pertinent features of storm water management to be identified.

This information is already in the facility's federally required Storm Water Pollution Prevention Plan (SWPPP). The Proposed Rules should only require a current SWPPP.

4. §§ 3.9.7.1 – 3.9.7.4 – Pavements. These provisions regarding pavements are in some respects unnecessary, overly burdensome, and unrelated to the public health and safety. The site survey set forth in § 3.9.6 above, can and should identify paved or improved surfaces. The rest of this section/subsection should simply not be applicable to the recycling permit process.

5. § 3.9.8., 3.9.8.1 – 3.9.8.3 - Utilities. The survey discussed in § 3.9.6 above can include a drawing of the location of utilities within the facility. Identifying utilities adjacent to the facility should not be the applicant's responsibility. Moreover, the provisions in § 3.9.8.2 and 3.9.8.3 regarding calculations for utility capacities are not related to the public health and safety, are overly burdensome, and should not be part of the recycling permitting process.

6. §§ 3.9.9 – 3.9.9.5 - Water Sources. The site survey discussed in § 3.9.6, above, can and should depict the locations of water sources and fire extinguishing materials or other chemical dust suppressants.

The permit application could also require certification that there are sufficient water sources or other fire suppressant materials on-site to suppress and control any fire or fugitive dust situation that might arise. The remainder of this section is not related to the public health and safety, is overly burdensome, and should not be part of the recycling permit process.

7. §§ 3.9.11.1, 3.9.11.3, 3.9.11.4 - These Proposed Rules relate to design drawings for all structures and fixed equipment, and operating and maintenance plan for all structures and fixed equipment.

These provisions are unrelated to the public health and safety and are overly burdensome. In many cases, most structures and equipment (e.g. the shredder) were constructed decades ago

and modified over time. Detailed design drawings of many of these structures simply do not exist.

8. § 3.9.11.2 – Fire prevention requirements.

This section should be qualified to exempt structures that are grandfathered and exempt from current fire code provisions.

9. §§ 3.9.12, 3.9.12.2, 3.9.12.3, 3.9.12.4, 3.9.12.5 – Tipping Floor and Storage Capacity. The survey discussed above can identify the tipping floor and the area for storage of unauthorized materials. Other than that, these provisions are not related to public health and safety, are overly burdensome, and should not be part of the recycling permit process.

10. §§ 3.9.14 – 3.9.14.8 - Traffic. The design report and/or survey mentioned above can and should identify the existing traffic flows and points of ingress and egress. So long as these matters meet Illinois Department of Transportation standards, nothing else should be required.

11. §§ 3.9.15 – 3.9.15.2 – Expected Waste Generation. These provisions would require additional and unnecessary generation of paperwork and reporting. All that should be required is that the facility maintain records during the life of the permit for all liquid or solid waste generated by or disposed of by the facility. *See* comments to paragraph 30, below, (Record Keeping and Quarterly Reporting).

12. §§ 3.9.18, 3.9.18.1 (A-E) - Perimeter Barriers. The height and composition of the perimeter barriers can and should be depicted on the site survey discussed in § 3.9.6, above. In addition, the applicant can certify that the barriers along with other structural and non-structural best practices and controls proposed for the site will control noise, dust, blowing litter and unauthorized action. Beyond this, these provisions are not related to public health and safety, are overly burdensome, and should not be part of the recycling permit process.

13. § 3.9.19 – Stormwater Pollution Prevention. Sims proposes that the Proposed Rules be revised to state that the requirements for preparation and implementation of a Stormwater Pollution Prevention Plan (SWPPP) and best management practices (BMPs) in the Proposed Rules shall be satisfied by a SWPPP and related BMPs prepared in accordance with the applicable NPDES permit requirements.

14. § 3.9.20, 3.9.20.4 – Noise Impact Assessment.

§ 3.9.20.4 – This provision requires that the applicable noise impact assessment for a Facility that conducts shredding of automobiles must include a noise monitoring plan to continuously record sound pressure levels at the Facility and collect the data required in 4.6.1 of these rules, and that such monitoring plan shall be designed to distinguish noise from onsite and offsite sources.

In this section the Proposed Rules go well beyond current noise requirements with no evidence that current requirements are not sufficient. They also do not distinguish between a residential area and an industrial area or consider the effects of the presence or absence of sensitive receptors. The Proposed Rule monitoring plan is impossible to implement with respect to the distinction between on-site and off-site noise sources.

We propose that the Proposed Rule be revised to reflect existing noise requirements and provide for an exemption for Facilities with reasonable separation distances from receptors.

Even if there were a reasonable basis for these expanded noise requirements, the cost of the equipment and labor required to collect and assess the data would be substantial and security for the outdoor meters an issue especially given the required location near property boundaries.

For all the above reasons, we propose revision of these requirements to be consistent with current law.

Finally these requirements are insensitive to the scope of the variance sought. A one hour variance request for a single portion of the Facility would trigger the same requirement as a four hour variance request over the entire Facility. We propose a more reasonable threshold.

15. § 3.9.22 – Air Quality Impact Assessment.

§ 3.9.22.1 We propose omission of this section due to the onerous nature of this requirement, the lack of a reasonable basis for such a requirement, the scope of such requirement substantially exceeding that of any existing law for similar emissions sources and the lack of any evidence that dispersion modeling would result in any meaningful outcome vs. less onerous methods for determining emissions risk in this instance. Furthermore there is no evidence as to its effectiveness in the context of fugitive emissions.

The reference to "All criteria pollutants" poses additional unreasonable obstacles due to the scope of constituents included. In addition the term "Toxic Air Pollutants" should be replaced by a term already vetted through the rule-making process at either the federal or state level, or risk introducing more uncertainty into this process, in addition to the issues identified in the General Comments provisions.

Furthermore, diesel engines are not fugitive dust sources and should not be included with this requirement.

Aside from all the above, for a number of reasons there are no apparent benefits in the use of dispersion modeling with respect to protection of public health or safety or the environment, while the burdens are extensive. There is no evidence that dispersion modeling will provide any additional benefit beyond that which would be provided by the collection of the data that would be used in the model. Yet the burdens of cost, time, effort and substantial uncertainty in the results are significant. There are other more reasonable means for developing

an effective dust control plan. For these reasons and the others stated above, we propose deletion of this provision.

Relatedly and in addition, and for reasons stated in the General Comments, we propose that a dust control plan approved by the pertinent federal or State agencies be deemed to satisfy the requirement in the Proposed Rules for a dust control plan.

§ 3.9.22.3 We propose deletion and reconsideration of the requirements set out in this section, insofar as the use of monitoring data is only as effective as the data collected. A general risk with PM monitoring is the inability to clearly be able to separate Facility sources from off-site sources, due to the variability in climatological factors such as wind speed and direction. The contribution of PM10 from nearby and distance off-site sources may frequently be above the City's proposed RAL levels.

In addition, in general, we propose for reasons stated above in the General Comments that when testing is required, that testing protocols and results for sampling performed for the pertinent federal or State agency in the last five year period suffice to satisfy a comparable requirement of these Proposed Rules.

Furthermore, this provision requires 8 monitors to be installed (every 45 degrees) from the center of the Facility. The burdens of such requirement would appear to substantially outweigh the benefits to public health and safety and the environment. This requirement would risk substantial disruption to Facility operations and result in substantial costs (for 8 FEM monitors and related power installation costs), without any reasonable basis that the monitoring would provide any meaningful data.

§ 3.9.22.4 – For reasons stated in the General Comments (avoiding duplication, due process, respecting the administrative process of federal and State rule-making for existing rules on the same subject matter), the requirements regarding the emissions sampling plan of the shredder stack should be satisfied by a sampling plan and/or sampling results approved by a pertinent federal or State agency within the prior five years, either at this Facility or at a comparable facility operated by the same business (or its affiliates). Due to the lack of such requirement at either the federal or State level, after extensive rule-making, the five year frequency should only be required in the event of a material change in operating conditions resulting in such emissions.

16. § 3.10 - Environmental Impact Assessment. This whole section seems to be duplicative and overkill and should be deleted. The application process is all related to public health and the environment, and a separate environmental impact assessment should not be required.

17. §§ 3.11, 3.11.1 – 3.11.1.4 – Operating Plan. These provisions have good and rational basis for protection of public health, safety and welfare. However, they should be tailored to protect confidentiality of the sources of material purchased by the applicant facility.

They also should be narrowed in scope consistent with those concerns raised in the General Comments.

18. §§ 3.11.3 – 3.11.3.3 Devices, Apparatus, and Processes. This section requires detailed process flow diagrams and OSHA safety devices.

All that should be required here is compliance with OSHA requirements. The process flow diagrams do not relate to the public health and safety and are over burdensome.

19. §§ 3.11.4 – 3.11.4.6 - Fire Prevention. This section requires compliance with the requirements of the municipal code and all other local, state and federal laws relating to fire prevention.

This is all that should be required – a simple certification that the facility is in compliance with the municipal code and all applicable local, state and federal laws, rules and regulations regarding fire prevention.

20. §§ 3.11.9 – 3.11.9.3 - Disposal Facilities. This section proposes identification – the name and location of the disposal facilities plus traffic routes, estimated distances, frequencies, etc.

All that should be required is identification of the disposal facilities, and only as Confidential Business Information (as which disposal facility an operator uses is often a competitively sensitive issue). Identifying traffic routes to each disposal facility, estimated travel distances, frequencies and times to each disposal facility are over burdensome and not related to the public health and safety.

21. §§ 3.11.12 – 3.11.12.5 - Closure Plan. This section would require a closure plan, including closure plan activities, materials removed, equipment decommissioning, cost estimates, and closure financing.

This is a drastic departure from the existing permitting regulations. These recycling facilities are not landfills or transfer stations or disposal facilities. If the facility does cease operations, a simple certification by the applicant that all remaining materials on site will be removed and any waste properly disposed of should suffice. Please also see the General Comments pertinent to this provision.

22. §§ 4.4.1 - 4.4.1.2 – Stockpile Heights and Barriers. This section proposes to put new height regulations on some stockpiled material. The current regulations allow for a uniform pile height maximum of 30 feet. That uniform height should remain in place in any new recycling regulation.

23. § 4.4.2 - Staging Areas. The requirements of this proposed regulation that stockpiles be limited to the amount of material that could be processed in two working days, that all stockpiled material be processed within 48 hours, and that the facility submit stockpile mass-

balance calculations on forms provided by CDPH are all unnecessary to protect the public health and safety and over burdensome. Many times material cannot be processed within 48 hours. Calculation of daily stockpile mass-balance is simply not related to the public health and safety and should not be required.

24. §§ 4.5 – 4.5.1 - All Vehicles tarped. Not all vehicles coming in and out of the facility are tarped. Vehicles carrying end of life vehicles are surrounded on all sides by solid barriers that prevent the cars from falling off the vehicles. Industrial scrap that is off-loaded out of the facility is in industrial containers and/or semi-tractor trailers that often are not tarped. Very few of the street peddlers that come into the facilities with loads have their loads tarped. The tarping requirement is over burdensome and not related to public health and safety. Requiring all vehicles in and out of the facility to be tarped would virtually bring the scrap metal recycling business in the city of Chicago to a grinding halt.

25. § 4.6.1 – 4.6.1.3 - Noise Monitoring.

In this section the Proposed Rules go well beyond current noise monitoring requirements with no evidence that current requirements are not sufficient. They also do not distinguish between a residential area and an industrial area or consider the effects of the presence or absence of sensitive receptors. The feasibility of the Proposed Rule also is in question due to the technical challenge with distinguishing between onsite vs. offsite noise sources.

We propose the deletion of this section of the Proposed Rule and that the Proposed Rule be revised to reflect existing noise monitoring requirements and provide for an exemption for Facilities with reasonable separation distances from receptors.

Even if there were a reasonable basis for these noise monitoring requirements, the cost of the equipment and labor required to purchase, operate and maintain the equipment and to collect and assess the data, especially on a weekly basis, would be substantial, and security for the outdoor meters an issue especially given the required location near property boundaries. There is no reasonable basis in terms of benefit to public health and safety and the environment by such frequent and detailed monitoring to justify such substantial burdens, especially given the uncertainty in the usefulness of such data.

For all the above reasons, we propose deletion of these provisions and revision of these requirements to be consistent with current law.

26. §§ 4.7 – 4.7.1.3 - Water Quality Standards and Monitoring. This proposed section overlaps with the requirements imposed by the Metropolitan Water Reclamation Water District (MWRD). All that should be required here is compliance with any applicable MWRD standard.

§ 4.7 – This section to be clarified to state that only Industrial Users (IU) that meet the definition of a Significant Industrial User (SIU) under MWRD requirements would be required to monitor their discharges. This section of the Proposed Rule appears to unduly expand the

applicability of monitoring under 4.7.1.1. to include facilities well beyond the set of current SIUs, without a reasonable basis for such expansion.

27. § 4.8.3 In this section the Proposed Rules go well beyond current dust and wind monitoring requirements with no evidence that current requirements are not sufficient. They also do not distinguish between a residential area and an industrial area or consider the effects of the presence or absence of sensitive receptors. The feasibility of the Proposed Rule also is in question due to the technical challenge with distinguishing between onsite vs offsite dust sources.

We propose the deletion of this section of the Proposed Rule and that the Proposed Rule be revised to reflect existing noise monitoring requirements and provide for an exemption for Facilities with reasonable separation distances from receptors.

Even if there were a reasonable basis for these dust monitoring requirements, the cost of the equipment and labor required to purchase, operate and maintain the equipment and to collect and assess the data, especially on a continuous basis, would be substantial (potentially well in excess of $500,000 including annual O&M costs). There is no reasonable basis in terms of benefit to public health and safety and the environment by such frequent and detailed monitoring to justify such substantial burdens, especially given the uncertainty in the usefulness of such data.

In addition, an RAL of 50 ug/m3 (or 100ug/m3 on in lieu of upwind data) is very low for 15-minute concentrations and may cause unrealistic and excessive reporting of elevated concentrations inconsistent with current law and that will overburden DPH for responding to reports and cause undue concern by the public for short-term concentrations over a threshold that is well below health-based standards, which are set on a 24-hour and/or annual basis for PM10 and PM2.5.

There is no basis provided for the use of a 15 minute concentration differential of 50 µg/m3 as an appropriate standard. Likewise, same for 100 µg/m3 if no upwind data.

In accordance with the General Comments, DPH should use existing standards which had been subject to the due process and administrative procedures and afforded a full notice and comment period focused on the scientific basis for setting such standards.

For all the above reasons, and the reasons stated in § 3.9.22 we propose deletion of these provisions and revision of these requirements to be consistent with current law.

§ 4.8.3.11 The RALs in this Proposed Rule are so low (unsubstantiated in the Proposed Rule by any scientific basis) that exceedances may be sufficiently frequent so as to potentially result in fundamental disruption of the business (an issue also raised in the General Comments).

28. § 4.12 – Material Handling, Paved Surface. This section purports to require that any recyclable material that may leak fluids or leave oily residue be stored indoors on dedicated

impermeable concrete pads. SMM has no objection to storing any materials that might have residual oils or leak on impermeable pads; however, it would be highly impracticable to put those materials indoors considering that they may be intermixed in stockpiles within a large volume of other inbound scrap materials.

29. §§ 4.15.1, 4.15.1.1 – Sweeping and Street Sweeper. This requirement that a street sweeper should be equipped with a water spray and a vacuum system is over burdensome and not necessary. Existing street sweeping equipment and water spray trucks are sufficient to control the issue this section is designed to address – cleanliness and dust control. A street sweeper of the kind proposed to be required would range in cost in excess of $200,000.

30. §§ 4.17 and 4.18 - Record Keeping and Quarterly Reporting.

§ 4.17 requires all records to be kept at the facility for a minimum of three years unless otherwise specified in the permit, and shall be made available to CDPH upon request.

That is all that should be required. The proposed sections of 4.18 to 4.18.1.7 are unnecessary quarterly reporting requirements that are over burdensome and not related to the public health and safety.

We want to reiterate our support for the general objectives of the Proposed Rules and several of the proposed requirements. However, we have raised a number of fundamental concerns regarding several aspects of the very broad set of requirements imposed by the Proposed Rules, both in our General Comments and in the Specific Comments, which we urge that DPH seriously consider so as to find a fair and reasonable balance between the need to protect public health, safety and the environment and the need to ground such requirements in generally accepted science and to recognize the substantial body of rule-making engaged in by other Federal, State and local agencies and with consideration to the need of the affected businesses to operate.

Thank you for your consideration. We welcome the opportunity to discuss this matter with you or your staff at your earliest convenience and before any rule is finalized.

In the meantime, if you have any questions or are in need of additional information, please do not hesitate to contact me.

Very truly yours,

Mark A. LaRose

MAL/mk

cc: Dave Graham, Assistant Commissioner Dave.graham@cityofchicago.org
Sims Metal Management