

Southeast Side Coalition to Ban Petcoke

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Sent by post and email to: otis.omenazu@cityofchicago.org

May 30, 2014

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

Re: Comments on Variance Requested by Gulf Sulphur Services Ltd., LLLP

Dear Responsible Official:

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 request for variance submitted by Gulf Sulphur Services Ltd., LLLP (“GSS”).

The Coalition urges the Chicago Department of Public Health (“the Department”) to deny the variance request made by GSS to allow noncompliance with Air Pollution Control Rules and Regulations For Control of Emissions from the Handling and Storage of Bulk Material Piles (“regulations”). The Coalition fundamentally opposes the variance process and believes that the health of the citizens should be the highest priority of the Department. The Coalition commented in opposition to the variance process when the Department was considering the regulations and the Coalition’s position has not changed. The Coalition maintains that the regulations are already too lax and contain too many loopholes. It is not in the best interest of the residents of Chicago for the Department to grant exemptions to the minimal regulations that they have in place.

The Department should also deny this request for variance because GSS did not follow all the necessary procedures in applying for the variance. Section 8.0(2)(b) requires the application for variance to include “pertinent data on...the population and geographic area affected by, or potentially affected by, the process or activity[.]”¹ GSS entirely ignores this requirement. The application does not even mention the neighborhood, let alone remotely address the potential effects on nearby residents of the southeast side—a working-class and minority-populated area—or the proximity to important natural resources and recreation space, all of which are already negatively affected by current GSS operations in the area. Despite GSS’s “oversight,” the Department is obligated to consider these people, their rights to a healthy environment, and the Department’s duty to protect them.

Furthermore, the application falls short of the regulatory requirements because GSS cannot demonstrate that “issuance of the variance will not create a public nuisance or adversely impact the

¹ City of Chicago Department of Public Health, Article II. Air Pollution Control Rules and Regulations For Control of Emissions from the Handling and Storage of Bulk Material Piles, Section 8.0(2)(b).

surrounding area, surrounding environment, or surrounding property uses[.]”² Despite its claim to the contrary, GSS does process and store bulk materials that are, and should be, targeted by these regulations. While GSS attempts to distinguish its products from coal, petroleum coke, and metallurgic coke by arguing that prilled sulfur has higher density and lower particulate emissions, GSS’s assertions are unsupported by any citations.³ GSS may claim that prilled sulfur creates “virtually no” dust,⁴ but this is simply an unsupported claim. Material Safety Data Sheets available for prilled sulfur paint a very different picture. These documents consistently warn that prilled sulfur presents an inhalation danger.⁵ Additionally, GSS only considers the prilled form of sulfur and fails to address how dust will be controlled when their product is pulverized under truck tires or on rail lines.

Even if the Department does rely on GSS’s own unsupported “evidence” that their product is less dusty than some other materials covered by these regulations, creating less dust does not ensure that there will not be a nuisance. GSS will emit particulates, though it’s unclear how much particulate matter it will emit and what effect these emissions will have on the community. Though this facility is not directly in the backyard of the southeast side residents, it is still burdening the same blighted neighborhood. The facility sits directly on the banks of the Calumet River, it is approximately a half mile from William W. Powers State Recreation Area and less than a mile from homes and Washington High School. This area is already in noncompliance for fine particulate matter⁶ and there is nothing in the application for variance that assures residents or the Department that GSS will not exacerbate this problem. Any additional fine particulate emissions have the potential to negatively impact the health and safety of residents.

The application also fails to meet its burden of proving that the regulations impose “an arbitrary or unreasonable hardship.”⁷ The South Coast Air Quality Management District Rule 1158, which provides a model for the handling of bulk materials, including a model for the regulations promulgated by the Department, specifically includes sulfur as a regulated material.⁸ As discussed above, prilled sulfur does create and emit dust, specifically particulate matter, just like other materials controlled by these regulations. This particulate matter presents the same danger of respiratory harm that is presented by coal, petroleum coke, and metallurgic coke and GSS is located in the same area where fine particulate matter has already been determined to exceed safe levels. It is within the duty of the Department to regulate GSS and other bulk storage facilities in the manner that will best protect the health of Chicagoans. The regulations are not unreasonable or arbitrary simply because they are not convenient for the regulated parties.

² City of Chicago Department of Public Health, Article II. Air Pollution Control Rules and Regulations For Control of Emissions from the Handling and Storage of Bulk Material Piles, Section 8.0(2)(d).

³ Application for variance submitted by Gulf Sulphur Services Ltd. LLLP dated April 23, 2014, page 2.

⁴ *Id.*

⁵ See, e.g., Chemtrade Material Safety Data Sheet for Prilled Sulfur, available online at: http://www.chemtradelogistics.com/main/wp-content/uploads/Prilled_Sulfur-English.pdf; Martrex, Inc. Material Safety Data Sheet for Sulfur Prills, available online at: http://www.martrexinc.com/msds/MSDS_Sulfur_Prills.pdf.

⁶ 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

⁷ City of Chicago Department of Public Health, Article II. Air Pollution Control Rules and Regulations For Control of Emissions from the Handling and Storage of Bulk Material Piles, Section 8.0(2)(e)(iii).

⁸ South Coast Air Quality Management District Rule 1158. Storage, Handling, and Transport of Coke, Coal, and Sulfur, available online at: <https://www.aqmd.gov/rules/reg/reg11/r1158.pdf>.

As a policy matter, the Department should not be swayed by GSS's argument that it "relied in good faith on the prior regulatory environment in Chicago"⁹ when it moved into the southeast side neighborhood. This "regulatory environment" was dysfunctional and dangerous to the residents of Chicago—and that is the very reason these regulations were promulgated. Bulk storage facilities like GSS are imposing a cost on the City of Chicago in the form of pollution to the air and water and until now they have not been held accountable for that cost. It has been paid by the people who live and work nearby and by the City itself. These regulations are not "arbitrary" or "unreasonable." They reflect what the City has determined is the fair cost for a facility to impact the air and water that are shared by the City of Chicago and all its residents. It does not matter that GSS relied on the previous, grossly inadequate "regulatory environment" where facilities were allowed to send clouds of dust billowing over neighborhoods. That "regulatory environment" should be abandoned without looking back. The Department has shown the conviction to protect the residents of Chicago and there is no reason to take a step backward just because GSS would prefer to keep doing "business as usual."

Perhaps most disturbing is GSS's request to be exempted from the requirement to monitor their own dust emissions. Protecting the health of the residents, families, workers, and students in closest proximity to the facility should be the primary goal of these regulations and this objective cannot be realized if there is no clear picture of the threat posed by the facility. This requirement should be considered a bare minimum for any facility that may emit dangerous particulates in the City of Chicago.

In conclusion, the Coalition urges the Department to deny this application for variance. The Coalition is not satisfied with a "less dusty" facility operating in their neighborhood when research indicates that there is no safe level of particulate matter.¹⁰ The Coalition is unmoved by GSS's complaints that their customers may be upset when the Coalition members are concerned about their lives and the health of their children.

The Coalition appreciates the opportunity to comment on the variance process. The residents of Chicago's Southeast Side will continue to be engaged and will continue to pursue ways to work with the Chicago Department of Public Health in their mission to protect the health and welfare of all Chicagoans. Thank you for your time and consideration.

Sincerely,



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Environmental Advocacy Center
Bluhm Legal Clinic
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Cc: Jennifer Hesse

⁹ Application for variance submitted by Gulf Sulphur Services Ltd. LLLP dated April 23, 2014, page 8.

¹⁰ The Lancet Oncology, Volume 14, Issue 9, Pages 813 - 822, August 2013.