

# **Southeast Side Coalition to Ban Petcoke**

**banpetcoke@gmail.com**

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***Via email to: EnvComments@cityofchicago.org.***

March 19, 2015

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

Re: Carmeuse Lime, Inc. Variance Request

To Whom It May Concern:

Thank you for the opportunity to comment on the application of Carmeuse Lime, Inc. (“Applicant” and “facility”) for variances from the City of Chicago, Department of Public Health’s Rules and Regulations for Control of Emissions from the Handling and Storage of Bulk Material Piles (“Rules”). These comments are submitted on behalf of the Southeast Side Coalition to Ban PetCoke (“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. For the reasons set forth below, the Applicant’s application is incomplete and fails to demonstrate that the requested variances will not have an adverse impact on the community and environment. Therefore, the application to allow noncompliance with the Rules should be denied.

Carmeuse Lime, Inc.’s South Chicago Facility conducts lime receiving, handling, grinding, crushing, bagging, storage, and transfer operations.<sup>1</sup> The Applicant’s facility at 3245 E. 103 St. operates in close proximity to and is bordered on the East side by residential housing.<sup>2</sup> The Applicant’s facility is bordered by the Calumet River immediately to the West side.<sup>2</sup> The application lacks a description of and “pertinent data” related to the “population and geographic area affected by, or potentially affected by, the process or activity,” as required by requests for variance under Part E, 8.0.<sup>3</sup> Although the application provides census/population data by zip code in (b)<sup>4</sup>; the application fails to adequately give the community an understanding of the effects of its operations on the specific individuals within the

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<sup>1</sup> Variance application from Carmeuse Lime, Inc. 3245 E. 103 St., Chicago, IL, 60617, *available online at:* [http://www.cityofchicago.org/content/dam/city/depts/cdp/health\\_and\\_food/VariReqCarmeuseLime\\_3245E103rdStreet.pdf](http://www.cityofchicago.org/content/dam/city/depts/cdp/health_and_food/VariReqCarmeuseLime_3245E103rdStreet.pdf).

<sup>2</sup> <https://www.google.com/maps/place/3245+E+103rd+St,+Chicago,+IL+60617/@41.7061972,-87.5410834,17z/data=!4m2!3m1!1s0x880e27890af4710d:0x89ced2a1daed4d29>.

<sup>3</sup> City of Chicago Department of Public Health, *Rules and Regulations for Bulk Materials Storage*, Part E, 8.0(2)(b).

<sup>4</sup> Variance application, *supra* note 1.

affected zip codes.<sup>5</sup> The Applicant also notes that the population density of the affected-community is less than Chicago.<sup>6</sup> The Coalition maintains that our lives are just as important as the residents of Chicago-proper – regardless of how close our homes are to each other. Ultimately, the application lacks “a demonstration that the issuance of the variance will not create a public nuisance or adversely impact the surrounding area, surrounding environment, or surrounding property uses.”<sup>7</sup>

Without adequate supporting information, the Applicant requests a number of permanent variances from the Rules as analyzed below:

### **SECTION 3.0: OPERATING AND MAINTENANCE PRACTICES**

#### **OBJECTION TO VARIANCE FROM FUGITIVE DUST MONITORING**

The Applicant requests variance “from the installation and maintenance of permanent fugitive dust monitors” because: (1) the facility does not “anticipate off-site emissions of fugitive particulate matter,” (2) the facility already conducts “visible emissions observations,” (3) the facility adheres to best management practices outlined in a facility-specific Fugitive PM Operating Program – a document that is not attached to the application, and (4) the installation and maintenance of monitors is “economically infeasible.”<sup>8</sup>

Stone “stockpiles near the barge dock” exist at the facility.<sup>9</sup> Because the stockpiles of materials regulated under the Rules are outdoors and uncovered, it is unclear how it’s possible that the risk of fugitive particulate matter escaping remains “low.”<sup>10</sup> Without a description of best management practices or a copy of the “Fugitive PM Operating Program,” it’s difficult to determine if the community is adequately protected.

Further, the Applicant provides an unsupported “cost estimate” of monitor installation and operation, while also noting that monitors are ineffective.<sup>11</sup> Because this is an unsubstantiated assertion, it is difficult to determine how the best management practices, specifically that the Applicant “believes that these measures should ensure that emissions standards...are met,” offer the same or comparable advantages of mandated Fugitive Dust Monitoring required by the Rules.<sup>12</sup> The Applicant fears that monitor readings “might arbitrarily trigger response activities” not attributable to the facility.<sup>13</sup> Without monitor readings, the Coalition fears that industrial facilities in the community will keep blaming adjacent facilities, and the pollution will continue to exist without polluters taking responsibility for their actions.

The Rules were promulgated to ensure governance over industrial facilities, to document pollution, and to streamline monitoring processes used by facilities. To circumvent these Rules by relying on “best

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<sup>5</sup> Variance application, *supra* note 1.

<sup>6</sup> *Id.*

<sup>7</sup> City of Chicago Department of Public Health, *Rules and Regulations for Bulk Materials Storage*, Part E, 8.0(2)(b).

<sup>8</sup> Variance application, *supra* note 1.

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

management practices” is not an alternative measure that is preferable to the Fugitive Dust Plan and Fugitive Dust Monitoring processes meticulously drafted within the Rules.

#### OBJECTION TO VARIANCE FROM VEHICLE LEAKING

The Applicant requests variance from Part B, 3.0(10)’s requirement to clean, within one-hour, leaked material or liquid that contains material from Internal Roads.<sup>14</sup> The Applicant maintains that: (1) they make “every effort” to prevent vehicle leaks, (2) loading is conducted indoors, (3) “material spills” are promptly cleaned up, (4) the loading area is inspected once per work-shift, and (5) the requirement would cause an “undue burden” on staff.<sup>15</sup> The Applicant fails to describe its definition of “material spills.” The community has a right to know which spills will be cleaned up and how the spills will be cleaned up by industrial facilities in the area. There is no evidence supplied to suggest that the Applicant’s operation practices have been sufficient to protect the community and environment from dust and spill emissions in the past. This shortcoming in current operational practices may illustrate why this provision was included in the Rules. The transport requirements in the Rules provide an important mechanism to ensure the public has minimal contact with materials that leave facilities during transport. The Applicant failed to demonstrate that road cleaning within one hour of a spill are unduly burdensome to the facility. As a result, the Coalition requests that a variance from Part B, 3.0(10)’s immediate cleanup requirement be denied.

#### OBJECTION TO VARIANCE FROM ROADWAY CLEANING

The Applicant requests variance from Part B, 3.0(15)(b)’s requirement to use a street sweeper every four hours or after every 100<sup>th</sup> truck material receipts or dispatches.<sup>16</sup> The Applicant maintains that paved surfaces are cleaned once per day with a wet street sweeper as agreed upon by the United States Environmental Protection Agency (EPA).<sup>17</sup> The Applicant failed to provide documentation of this agreement with the EPA. There is no evidence supplied to suggest that the Applicant’s operation practices outlined in the, referenced but not provided “Fugitive PM Operating Program,” have been sufficient to protect the community and environment from dust emissions in the past. This shortcoming in current operational practices may illustrate why this provision was included in the Rules. The transport requirements in the Rules provide an important mechanism to ensure the public has minimal contact with materials that leave facilities during transport. As a result, the Coalition requests that a variance from Part B, 3.0(15)(b) be denied.

#### OBJECTION TO VARIANCE PROVISIONS, GENERALLY

Section 11-4-770 of the Municipal Code of Chicago specifically provides the Department of Public Health with the authority to prescribe rules and regulations for the purpose of minimizing air pollution. The Rules were promulgated in response to complaints regarding substantial air pollution with a purpose to “prescribe reasonable, specific operating and maintenance practices to minimize emissions of airborne

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<sup>14</sup> Variance application, *supra* note 1.

<sup>15</sup> *Id.*

<sup>16</sup> City of Chicago Department of Public Health, *Rules and Regulations for Bulk Materials Storage*, Part B, 3.0(15)(b).

<sup>17</sup> Variance application, *supra* note 1.

particulate matter..."<sup>18</sup> Due to the (1) area's history of pollution; (2) purpose of the Rules; and (3) documented respiratory and visibility problems encountered on the Southeast Side of Chicago<sup>19</sup>, the Coalition fundamentally opposes the variance process and believes that the health of the citizens should be the highest priority of the Department of Public Health. The Coalition commented in opposition to the variance process when the Department of Public Health was considering the Rules, and the Coalition's position has not changed. The Coalition maintains that the Rules are already too lax and contain too many loopholes. The Department of Public Health should not grant exemptions to hard-fought regulatory protections that provide meager safeguards to the City's most vulnerable citizens. Further, industrial facilities, including Carmeuse Lime, Inc., should not be allowed to pick and choose which regulations they wish to comply with.

For these reasons, the Coalition respectfully requests that the Commissioner deny this application for variance.

Sincerely,



Shelby Buettner  
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Environmental Advocacy Center  
Bluhm Legal Clinic  
Northwestern University Law School

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<sup>18</sup> City of Chicago Department of Public Health , *Rules and Regulations for Bulk Materials Storage*, Part A, 1.0.

<sup>19</sup> City of Chicago Department of Public Health , *Official Response to Public Comments on the Proposed Rules and Regulations For the Handling and Storage of Bulk Material Piles*, March 13, 2014.