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Via e-mail
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Maryland Department of the Environment
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RE: Comments on CSX Transportation, Inc. Draft Fenceline Monitoring Plan and Draft Fugitive Dust Plan for Curtis Bay Piers Terminal (Permit No. 510-2263)

Dear Mr. Hoagland:

The South Baltimore Community Land Trust ("SBCLT"), Community of Curtis Bay Association ("CCBA"), and the Environmental Integrity Project ("EIP") (collectively, "Commenters") respectfully submit the following comments to the Maryand Department of the Environment ("MDE") on the Draft Fugitive Dust Control Plan and Draft Fenceline Monitoring Plan for the Curtis Bay Piers coal terminal owned by CSX Transportation, Inc. ("CSX") located at 1910 Benhill Ave. in Curtis Bay, Baltimore City, MD 21226 ("CSX Terminal"). We appreciate the opportunity to submit these comments.

These plans fall far short of what is necessary to ensure that air pollution from the CSX Terminal is adequately controlled. Multiple substantial improvements are needed to add detail and specificity to these plans as well as stronger pollution controls, reporting, and public notification requirements. It is particularly important that MDE include specific and enforceable requirements in CSX's permit to operate and associated plans given that the U.S. EPA has objected to multiple Title V permits over their failure to include sufficiently specific requirements for the control of fugitive dust.

Lastly, Commenters are limiting their comments to the issue of particulate matter ("PM") control because that is what is addressed in the draft CSX plans. However, these comments should not be interpreted as Commenters' agreement that monitoring for only PM and proxies, such as visible emissions, is appropriate. Commenters may submit additional comments in the future on the need to monitor other pollutants at the CSX Terminal.

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Background

The current comment periods are occurring in the context of a historical failure to set meaningful air pollution control and monitoring requirements for the CSX Terminal. In 2013, forty residents of the Curtis Bay and Brooklyn submitted comments to MDE noting the dust problems from the CSX Terminal and requesting that MDE impose stronger permit conditions on CSX.[1] Many additional complaints have been documented since then. It is important that MDE rectify this failure and help to protect nearby residents by setting the strongest possible standards now.

Comments

IV. MDE Must Ensure Continuous Compliance with Pollution Control Standards for the CSX Terminal

MDE must substantially improve the pollution control and monitoring requirements for the CSX Terminal. MDE has broad authority to establish such conditions in CSX's permit. COMAR 26.11.02.02(H) states that MDE may include "terms and conditions in any permit [to operate] to ensure continuous compliance with" Subtitle 11 (Air Quality) of Title 26 of COMAR. Further, as a recipient of federal funding MDE must ensure compliance in all decisions with the requirements of Title VI of the Civil Rights Act.

Among the requirements to which the CSX Terminal is subject are (1) a federally enforceable limit for visible emissions; (2) federally enforceable limits for particulate matter; and (3) a state-only enforceable prohibition on operation in such a manner that a nuisance or air pollution is created." At bare minimum, MDE must ensure that the Fenceline Monitoring Plan, the Fugitive Dust Plan, and any additional monitoring requirements that are added during the upcoming renewal of the air operating permit meet the standards that the EPA has prescribed for assuring compliance under its Title V regulations.

A. MDE Should Treat Title V Standards as the Floor for Ensuring Compliance

For facilities that must obtain Title V operating permits (often referred to in Maryland as Part 70 permits), EPA has issued standards governing the minimum stringency of the monitoring, testing, recordkeeping and reporting requirements that must be set forth in these permits.[2] While the CSX Terminal's permit is not a Title V permit, MDE has the authority to require that CSX meet the same standards. In fact, Title VI of the Civil Rights Act imposes additional obligations on MDE given the environmental justice concerns at issue in the Curtis Bay community.

It is a fundamental requirement of the Title V program that a permit must "assure[] compliance by the source with all applicable requirements."[3] Among other things, Title V permits must include the following:

[1] Resident Permit Petition submitted by Chesapeake Climate Action Network to MDE in 2013 (Attachment A).
[2] Maryland's rules implementing the Title V program are set forth in Chapter 3 of Subtitle 11, Title 26 of COMAR.
[3] 40 C.F.R § 70.1(b).

With respect to standards: "[e]missions limitations and standards, including those operational requirements and limitations that assure compliance with all applicable requirements at the time of permit issuance."[4]

(i) . . . with respect to monitoring . . .

(A) All monitoring and analysis procedures or test methods required under applicable monitoring and testing requirements, including [the Compliance Assurance Monitoring Plan requirements] . . . . If more than one monitoring or testing requirement applies, the permit may specify a streamlined set of monitoring or testing provisions provided the specified monitoring or testing is adequate to assure compliance at least to the same extent as the monitoring or testing applicable requirements that are not included in the permit as a result of such streamlining;

(B) Where the applicable requirement does not require periodic testing or instrumental or noninstrumental monitoring (which may consist of recordkeeping designed to serve as monitoring), periodic monitoring sufficient to yield reliable data from the relevant time period that are representative of the source's compliance with the permit . . . . Such monitoring requirements shall assure use of terms, test methods, units, averaging periods, and other statistical conventions consistent with the applicable requirement. Recordkeeping provisions may be sufficient to meet the requirements of this paragraph (a)(3)(i)(B) of this section; and

(C) As necessary, requirements concerning the use, maintenance, and, where appropriate, installation of monitoring equipment or methods.[5]

. . .

(iii) With respect to reporting . . .

(A) Submittal of reports of any required monitoring at least every 6 months. All instances of deviations from permit requirements must be clearly identified in such reports. All required reports must be certified by a responsible official consistent with § 70.5(d) of this part.

(B) Prompt reporting of deviations from permit requirements, including those attributable to upset conditions as defined in the permit, the probable cause of such deviations, and any corrective actions or preventive measures taken. The permitting authority shall define "prompt" in relation to the degree and type of deviation likely to occur and the applicable requirements.[6]

(ii) With respect to recordkeeping . . .

[4] 40 C.F.R. § 70.6(a)(l).
[5] 40 C.F.R. § 70.6 (a)(3)(i).
[6] 40 C.F.R. § 70.6 (a)(3)(iii).

(A) Records of required monitoring information that include the following:

(1) The date, place as defined in the permit, and time of sampling or measurements;

(2) The date(s) analyses were performed;

(3) The company or entity that performed the analyses;

(4) The analytical techniques or methods used;

(5) The results of such analyses; and

(6) The operating conditions as existing at the time of sampling or measurement;

(B) Retention of records of all required monitoring data and support information for a period of at least 5 years from the date of the monitoring sample, measurement, report, or application. Support information includes all calibration and maintenance records and all original strip-chart recordings for continuous monitoring instrumentation, and copies of all reports required by the permit.[7]

B. Current Standards Requiring Control of PM

At minimum, CSX's permit must be revised to ensure compliance with the following existing standards for the control of PM.

i. Visible Emissions

CSX must comply with the following federally enforceable standard for visible emissions:

> In [Baltimore City] a person may not cause or permit the discharge of emissions from any installation or building, other than water in an uncombined form, which is visible to human observers.[8]
> except that
>
> [This standard] do[es} not apply to emissions during start-up and process modifications or adjustments, or occasional cleaning of control equipment, if:
> (a) The visible emissions are not greater than 40 percent opacity; and
> (b) The visible emissions do not occur for more than 6 consecutive minutes in any 60 minute period.[9]

ii. Particulate Matter from Unconfined Sources and EPA's Title V Objections

CSX must comply with the following federally enforceable standard for PM:

[7] 40 C.F.R. 70.6 (a)(3)(ii).
[8] COMAR 26.11.06.02(C)(2) (C)(2)(C)(2).
[9] COMAR 26.11.06.02(A)(2).

> D. Particulate Matter from Materials Handling and Construction. A person may not cause or permit any material to be handled, transported, or stored, or a building, its appurtenances, or a road to be used, constructed, altered, repaired, or demolished without taking reasonable precautions to prevent particulate matter from becoming airborne. These reasonable precautions shall include, but not be limited to, the following when appropriate as determined by the control officer:
>
> (1) Use of water or chemicals for control of dust in the demolition of existing buildings or structures, construction operations, the grading of roads, or the clearing of land.
>
> (2) Application of asphalt, oil, water, or suitable chemicals on dirt roads, materials stockpiles, and other surfaces which can create airborne dusts.
>
> (3) Installation and use of hoods, fans, and dust collectors to enclose and vent the handling of dusty materials. Adequate containment methods shall be employed during sandblasting of buildings or other similar operations.
>
> (4) Covering, at all times when in motion, open-bodied vehicles transporting materials likely to create air pollution. Alternate means may be employed to achieve the same results as would covering the vehicles.
>
> (5) The paving of roadways and their maintenance in clean condition.
>
> (6) The prompt removal from paved streets of earth or other material which has been transported there by trucks or earth moving equipment or erosion by water.[10]

The EPA has found that, without permit-specific supplementation, this regulatory approach runs afoul of Title V requirements. In a 2014 Title V order, EPA objected to permits for five Georgia power plants because the permits did not mandate specific actions that could assure compliance with the fugitive dust reasonable precautions standard or the opacity/visible emissions standard. [11] EPA grounded its decision in 40 C.F.R. 70.6(a)(1), which requires that Title V permits set forth "emissions limitations and standards, including those operational requirements and limitations that assure compliance with all applicable requirements at the time of permit issuance."[12] Specifically, EPA stated that:

> While the SIP regulation identifies various fugitive dust control methods that may constitute 'reasonable precautions,' it does not mandate the use of any of these methods. For a title V permit to assure a particular source's compliance with this requirement, consistent with 40 C.F.R. § 70.6(a)(l) and the approved Georgia title V program at Georgia Air Quality Rule 3913-l-.03(1 0), the permit terms must

[10] COMAR 26.11.06.02.

[11] In the Matter of Scherer Steam-Electric Generating Plant Juliette, et. al., EPA Order pp. 18-19 (April 14, 2014), available at https://www.epa.gov/sites/default/files/2015-08/documents/ga_power_plants_response2012.pdf; (hereinafter "Scherer Order): *see also* In the Matter of Alabama Power Company, Barry Generating Plant, EPA Order, pp. 15-16 (June 14, 2022), at https://www.epa.gov/system/files/documents/2022-06/APC%20Barry%20Order_6-14-22.pdf (EPA again objecting to insufficiently specific "reasonable precaution" requirements for the control of fugitive dust in a Title V permit).

[12] *See* 40 C.F.R. § 70.6(a)(1).

> specify the emissions limitations and standards, including those operational requirements and limitations that assure compliance with the applicable requirement in Georgia SIP Rule 391-3-1-.02(2)(n)l.

EPA furthered ordered the Georgia permitting agency to "take action to include in the" five power plant permits "emissions limitations and standards, including those operational requirements and limitations that assure compliance with" the relevant regulation.

iii. Particulate Matter from Confined Sources

CSX must comply with the following federally enforceable standard for PM.

> A person may not cause or permit to be discharged into the outdoor atmosphere from any other installation, particulate matter in excess of 0.03 gr/SCFD (68.7 mg/dscm).[13]

iv. Nuisance/Air Pollution

CSX must comply with the following state-only requirement prohibiting creation of air pollution or nuisance:

> "An installation or premises may not be operated or maintained in such a manner that a nuisance or air pollution is created."[14]

> "[a] person may not cause or permit the discharge into the atmosphere of gases, vapors, or odors beyond the property line in such a manner that a nuisance or air pollution is created."[15]

> "Air pollution," as defined in Environment Article § 2-101, means "the presence in the outdoor atmosphere of substances in quantities, having characteristics, and being of a duration which, from any single source or in combination with other sources, are, or may be predicted with reasonable certainty to be, injurious to human . . . life . . ., or which unreasonably interfere with the proper enjoyment of the property of others by reason of the emission of odors, solids, vapors, liquids, or gases. . . ." [16]

C. CSX's Proposed Plans Fail to Ensure Continuous Compliance

CSX's Draft Fugitive Dust Control Plan and Fenceline Monitoring Plan must be substantially improved as they cannot ensure continuous compliance with state and federal air quality laws. The bulk of the deficiencies in these plans is described in sections II and III below. However, the issue of the visible emissions limit is particularly troubling.

i. Visible Emissions

[13] COMAR 26.11.06.02(b)(2)(a).
[14] COMAR 26.11.06.08
[15] COMAR 26.11.06.09
[16] COMAR 26.11.01.01(B)(2).

As stated above, CSX is subject to a stringent visible emissions limit (no visible emissions) – which is synonymous with opacity - that applies at all times with limited exceptions. However, there are no specific monitoring requirements for demonstrating compliance with this limit in CSX's permit, which would certainly result in an EPA objection to a Title V permit.

CSX's Draft Fugitive Dust Plan includes a plan for a "six month monitoring test for opacity at the facility fence line."[17] Without delving into the fairly sparse details of this section of the plan, it is entirely unclear how a six-month project could ensure continuing compliance with a federally enforceable emissions limit that applies at all times. Typically in Maryland, compliance with visible emissions requirements is demonstrated using Method 9 observations conducted at regular and prescribed intervals or by continuous opacity monitors (COMS). For an example of how another facility handling dry bulk materials tests for visible emissions, please see the extensive protocol set forth in the Fugitive Dust Plan for the S.H. Bell Facility in Chicago, which combines observations performed by trained personnel using Method 9, Method 22, and other observation techniques.[18]

While it is possible that CSX's proposed opacity monitoring program will produce useful information, MDE must also establish monitoring, testing, and reporting requirements that will ensure continuous compliance with CSX's visible emissions limit and will extend for longer than a six-month period.

D. MDE's Obligations under Title VI of the Civil Rights Act

In addition to the standards described elsewhere in these comments, as a recipient of federal funding, MDE has an obligation to ensure that its actions meet EPA's requirements for compliance with Title VI of the Civil Rights Act. Those regulations prohibit a recipient from:

> Us[ig] criteria or methods of administering its program or activity which have the effect of subjecting individuals to discrimination because of their race, color, national origin, or sex, or have the effect of defeating or substantially impairing accomplishment of the objectives of the program or activity with respect to individuals of a particular race, color, national origin, or sex.[19]

EPA has stated that, if a screening analysis raises civil rights and/or environmental justice concerns, a permitting agency, among other things, may "[e]xercis[e] relevant statutory and regulatory authority and discretion under federal, state, and local environmental laws, as well as applicable environmental justice and civil rights laws, to prevent or mitigate any adverse disproportionate impacts that would otherwise violate Title VI."[20]

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[17] CSX Draft Fugitive Dust Control Plan at 7.
[18] SH Bell Plan pp. 50-52, https://www.chicago.gov/content/dam/city/depts/cdph/environmental_health_and_food/SH_BellFugitiveDustPlan_Nov2017.pdf
[19] 40 C.F.R. § 7.35.
[20] EPA, Interim Environmental Justice and Civil Rights in Permitting, Frequently Asked Questions, p. 10, August 2022, https://www.epa.gov/system/files/documents/2022-08/EJ%20and%20CR%20in%20PERMITTING%20FAQs%20508%20compliant.pdf.

E. Part I Conclusion

MDE must require substantial revisions to improve the CSX permit and the Draft Fenceline Monitoring Plan and Draft Fugitive Dust Control Plan. Specific and enforceable conditions must be established that allow for clear measurement of whether CSX is in compliance or in noncompliance. If such conditions are set forth in either or both of the plans, then the permit must clearly require compliance with terms of the relevant plan. The deficiencies in the current drafts of the two plans are addressed in more detail in Sections II and III below. MDE must require improvements in order to "ensure continuous compliance with" Subtitle 11 of Title 26 of COMAR[21] and to meet its obligations as a recipient of federal funding under Title VI of the Civil Rights Act.

V. Specific Comments on the Draft Fenceline Monitoring Plan

CSX's Draft Fenceline Monitoring needs substantial improvement. While CSX's September 2022 permit to construct sets forth certain minimum criteria for this plan, those criteria constitute the floor in terms of requirements for environmental protection. MDE's authority to require improvements to this plan is not limited by the terms of the permit to construct. Our specific recommendations for improving this plan are below.

A. Expeditious Project Schedule and Progress Reports

MDE should require expeditious implementation of the fenceline monitoring project. CSX states that "projected implementation is estimated to be 12-24 months to achieve full capabilities."[22] The outside of this range - 24 months – appears unreasonably protracted, especially as it appears to be measured from the date of installation of the monitors. By comparison, Markwest proposed a time period of 12 months for commencing operations of the monitoring plan at its cryogenics plant in Pennsylvania, and this time period included purchasing of the equipment.[23]

> Upon approval, MarkWest anticipates three months will be required to purchase equipment, six months to install and integrate, and three months to finalize site and power logistics, acceptance test all instrumentation, and begin operation.

CSX should also be required to submit quarterly progress reports to MDE during the initial phase of the project to ensure timely progress through the stages of the process preceding full operations. EIP has seen progress reports required as part of compliance schedules in multiple National Pollutant Discharge Elimination System ("NPDES") permits, and MDE required Energy Answers Baltimore, LLC to submit quarterly construction reports to determine whether it was meeting Clean Air Act requirements relating to the pace of construction.[24]

[21] COMAR 26.11.02.02(H).
[22] Draft CSX Fenceline Monitoring Plan at 4, 14.
[23] Monitoring and Quality Management Plan/Quality Assurance Project Plan for MarkWest's Harmon Creek Processing Plant Air Toxics Stations, Nov. 2018, p. 2-23 (Attachment B) (hereinafter "Harmon Creek Plan").
[24] *See e.g.* Energy Answers March 31, 2014 construction report cover letter (Attachment C).

B. Annual Evaluations and Regular Data Reporting

The fenceline monitoring program is a new – and long overdue -program for CSX. It is also starting with the use of using low-cost sensors rather than than regulatory grade monitors as required in Chicago. CSX's program require periodic evaluation to ensure that it is providing information that is useful in ensuring the effective control of PM. With infrequent or nonexistent oversight, anticipated improvements will be delayed. Therefore, a schedule for regular assessments by MDE, with an opportunity for public comment, should be part of the plan.

It is likely that this program will require improvements as it proceeds. For example, it may be necessary to install additional federal equivalent method (FEM) monitors, which is essentially EPA's silver-standard tier of monitors, or even federal reference method (FRM) monitors, EPA's gold standard. CSX has already forecasted potential future concerns that may require the use of additional monitors. Specifically:

- If the initial data indicates a hotspot but there is a genuine concern regarding the reliability of the data from the low cost sensors, more advanced equipment may be needed.
- CSX references that other pollution sources may be contributing to the particulate levels measured at its own site. If CSX objects to taking corrective action on this basis, it may be necessary to require filter-based FRM monitors capable of speciating for coal constituents. The City of Chicago requires filter-based FRM monitors capable of monitoring for manganese at manganese-bearing bulk material facilities.[25]
- CSX states that most particles from coal dust are larger than 10 microns in diameter (PM10). While CSX has not substantiated this claim,[26] the claim itself indicates that monitors capable of measuring total PM may be needed in the future.

To ensure that the project is functioning effectively and that any needed corrections or improvements are made promptly, the fenceline monitoring plan should evaluated on an annual basis. This is consistent with requirements for dry bulk terminals, including coal terminals, issued by the City of Chicago Department of Public Health ("CDPH"). CDPH mandates that fugitive dust plans, which include fenceline monitoring requirements, "shall be updated on an annual basis and submitted to the Department for review and approval on or before January 31 every year, provided that the first Fugitive Dust Plan shall be due within ninety (90) days of the issuance of these Rules."[27]

[25] City of Chicago Rules, Control of Emissions from Handling and Storing Bulk Materials (hereinafter "Chicago Rule"), Effective January 25, 2019, Section 6.0, available at https://www.chicago.gov/content/dam/city/depts/cdph/InspectionsandPermitting/Control_EmissionsfromHandling&StoringBulkMaterials_January2019.pdf.
[26] ATSDR indicates the opposite for PM, stating "PM10 concentrations . . . generally reflect the contribution of larger particles attributable to local sources." ATSDR." ATSDR PM Guidance p. 3.
[27] Chicago Rule 3.0(3).

In addition, MDE should plan to incorporate this process into CSX's operating permit during its upcoming renewal to make it a permanent air quality requirement for the life of the next permit.

Once monitors are operational, CSX should also be required to report data on a monthly basis. Monitoring reports should be required on at least a quarterly basis. Quarterly reports are part of the Harmon Creek monitoring plan.[28]

C. MDE Should Establish Action Levels and Set Associated Corrective Action and Public Notification Requirements

In the Draft Fenceline Monitoring Plan, CSX contemplates that pollution levels triggering action will eventually be established but describes no specific process or timetable for this assessment, stating:

> Monitoring requirements will be established during FLMP implementation. As the project progresses actionable data will be defined with reliable, repeatable, reproducible data at specific time increments. Data alert levels and subsequent actions will be defined to sustain operations. See Table 9.0 for an example of data alert levels.[29]

This is insufficient. MDE should establish PM values that require corrective actions and trigger the duty to notify the community.

i. Action Levels

Table 9.0 of the Draft CSX Fenceline Monitoring Plan which is titled "Potential Data Checks," identifies alert levels equal to the primary 24-hour National Ambient Air Quality Standards ("NAAQS") for PM2.5 and PM10 (over 35 mcg/m3 for PM2.5 and 150 mcg/m3 for PM10). While it's clear that CSX is identifying these as examples of possible action level alerts, rather than proposing them as such, action levels set at the level of the NAAQS are insufficient.

MDE should establish action levels based on the most protective thresholds that have been established for PM2.5 and PM10. The State of California has a 24-hour air quality standard for PM10 that is far below EPA's. California's daily PM10 standard is 50 mcg/m3.[30] In addition, the federal Agency for Toxic Substances and Disease Registry ("ATSDR")[31] has recommended the following screening values triggering additional action when conducting PM monitoring.[32]

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[28] Harmon Creek Plan p. A-24 (Att. B).
[29] CSX Draft Fenceline Monitoring Plan at 9-10.
[30] California Air Resources Board, Inhalable Particulate Matter and Health (PM2.5 and PM10), https://ww2.arb.ca.gov/resources/inhalable-particulate-matter-and-health
[31] ATSDR, Guidance for Inhalation Exposures to Particulate Matter, April 2022, at 9, https://www.atsdr.cdc.gov/pha-guidance/resources/ATSDR-Particulate-Matter-Guidance-508.pdf ("ATSDR PM Guidance") (Attachment D).
[32] ATSDR PM Guidance at 9.

Table 1. ATSDR PM Screening Values

World Health Organization Particulate Matter Air Quality Guidelines (AQGs)*		
PM Air Pollutant Metric	**WHO**	**ATSDR CV**
PM_{10}	45 µg/m³ (24-hour)[a] 15 µg/m³ (annual)	NA
$PM_{2.5}$	15 µg/m³ (24-hour)[a] 5 µg/m³(annual)	NA

CV - Comparison value; µg/m³ – micrograms per cubic meter; PM – particulate matter.
NA – Not Available: ATSDR does not have CV for PM.
*WHO 2021
[a] These screening levels reflect the numeric value of the WHO AQGs for 24-hours

These values are particularly appropriate in the context of fenceline monitoring for a source that is located adjacent to an environmental justice community. ATSDR states that:

> Perimeter or fenceline monitors are generally considered a proxy for the highest exposure estimate for a nearby community from fugitive or short stack emissions. With increasing stack height, combined with atmospheric transport and chemical reactions, health assessors should keep in mind that the area of maximum impact may be further within the adjacent community, not at the fence line.[33]

Given that emissions at the CSX Terminal is located close to a residential area and emissions can be expected from both ground-level sources (e.g. rail unloading and bulldozing) as well as sources at elevated height (e.g. high coal piles and conveyors), use of ATSDR's recommended screening values is appropriate to set action levels for the CSX Terminal. With respect to these values, ATSDR explains that:

> While regulatory values exist, such as U.S. EPA's National Ambient Air Quality Standards (NAAQS) for PM, their purpose is to set regulatory limits for six criteria pollutants, including PM, for ambient air in the United States. However, as a general practice, ATSDR uses the most health-protective comparison value available for screening purposes. For PM, the most health-protective screening valuesestablished are the Air Quality Guidelines(AQGs) from the World Health Organization (WHO) in Geneva.[34]

It is particularly important to set meaningful action levels for the CSX Terminal that correspond with its permit to operate, which prohibits <u>any</u> visible emissions with very limited (6-minute) exceptions and states that the reasonable precautions requirements are to "<u>prevent</u> particulate matter from becoming airborne."

ii. Corrective Actions

[33] ATSDR PM Guidance at 4.
[34] ATSDR PM Guidance at 8.

Exceedance of the action levels, if they are set using protective values, must trigger the duty to take corrective action and to notify the public and MDE.

With respect to which corrective actions to require, this will depend in part on what is already required under the final Fugitive Dust Control Plan. The current plan is in need of significant improvement. However, MDE can look to the corrective actions required for the S.H. Bell Facility[35] in Chicago, which is discussed in more detail in Section III below. Exceedances and corrective actions must be documented and reported to MDE.

Failure to follow the take actions, including corrective action, in accordance with the requirements of the final Fenceline Monitoring Plan should constitute violations. The permit lacks provisions to ensure continuous compliance and the Fenceline Monitoring Plan is one one way that MDE can establish a method for measuring compliance with standards requiring no visible emissions with limited exceptions and prevention of particulate matter from becoming airborne.

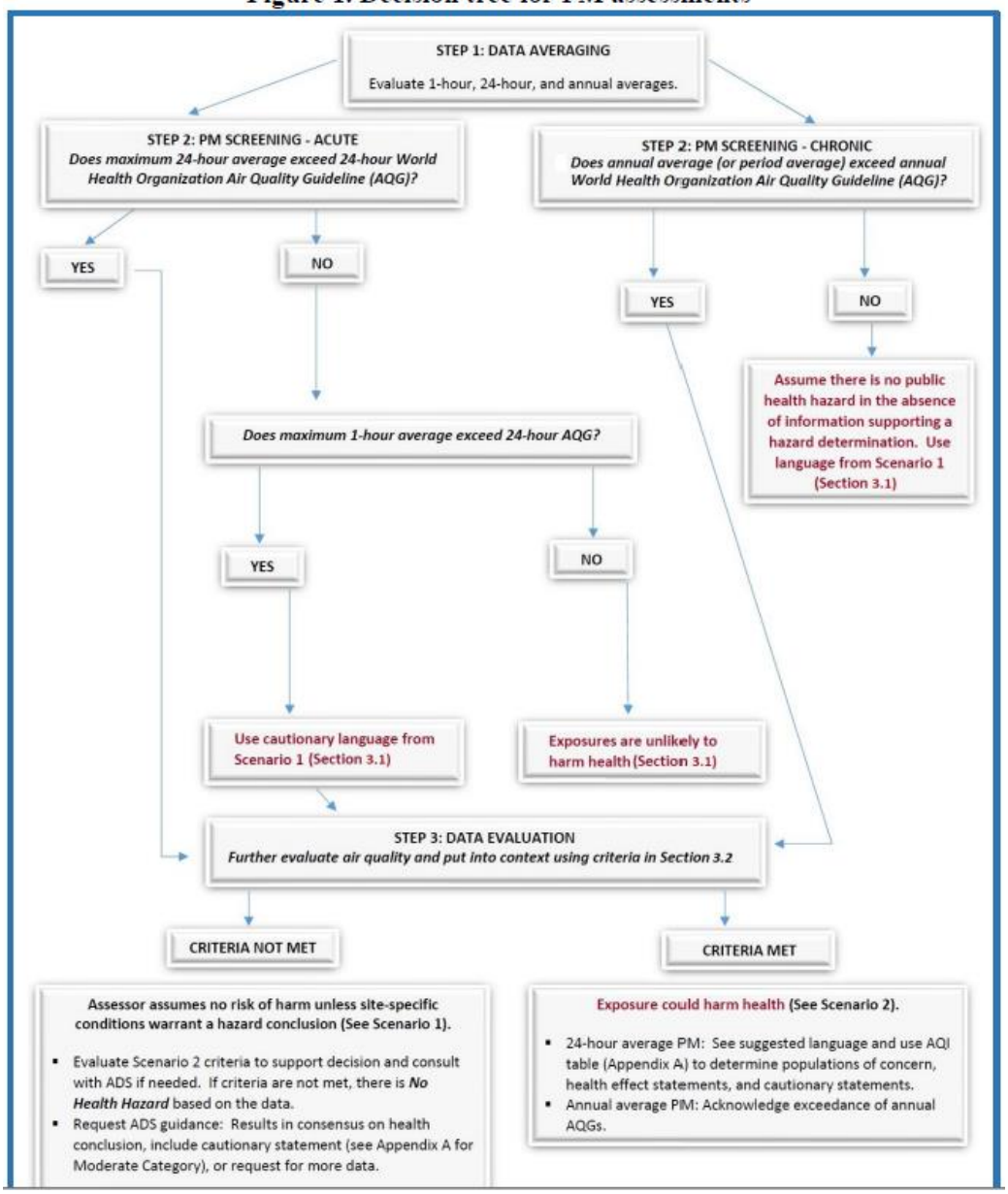
MDE may also find ATSDR's decision-making tree below instructive with respect to interpreting the screening values that ATSDR recommends for PM monitoring. One of the criteria referenced in the tree for consideration when an exceedance is measured is whether the nearby community is especially vulnerable to air pollution.[36] That criterion is already met in the case of the CSX Terminal as Curtis Bay and Brooklyn, which have historically had rates of severe asthma that are even high within Baltimore City and much higher than state and national rates.[37]

[35] S.H. Bell Fugitive Dust Control Plan, pp. 54-55, https://www.chicago.gov/content/dam/city/depts/cdph/environmental_health_and_food/SH_BellFugitiveDustPlan_Nov2017.pdf.

[36] ATSDR PM Guidance, Section 3.2, p. 15 (Assessor to consider whether "[s]ensitive individuals have an increased likelihood of experiencing health effects as a result of exposures (e.g., persons with severe asthma, COPD, and pre-existing respiratory or cardiovascular disease)").

[37] *See, e.g.*, EIP, Air Pollution and Asthma in Baltimore City, p. ix, https://environmentalintegrity.org/wp-content/uploads/2017/12/Baltimore-Asthma.pdf.

Figure 1. Decision tree for PM assessments[¶]



iii. *Public Notification*

In addition to corrective actions, exceedances measured at the fenceline monitors must trigger the duty to notify the public. MDE already has some examples of source-specific public notice requirements for pollution exceedances in its blowdown notification plans for natural gas facilities.[38]

[38] MDE Air Regulation Stakeholder Meetings, Methane Emissions at Natural Gas Compressor Stations Blowdown Notification Plan Public Feedback Period, https://mde.maryland.gov/programs/regulations/air/pages/armaregulationsstakeholders.aspx.

Commenters request that CSX's plan include the following requirements with respect to public notification:

- SBCLT and CCBA request that they and the Councilperson for Baltimore City's District 10 receive email notice each time an exceedance is measured and that individual residents have the option to opt in to receive notices via email or phone.
- SBCLT and CCBA request that CSX also be required to provide notice of measured exceedances via other types of media, which can include on social media, online, and/or in hard copy via regular mail.
- Commenters request that data from the fenceline monitoring project be made available on a website, either maintained by CSX or on a separate webpage on MDE's site. Once the project is fully operational, the data should be available in real time or as close thereto as possible with exceedances clearly identified. There are numerous examples of other companies making monitored pollution data available online.

D. Identification of Responsible Personnel

CSX's plan should identify the specific personnel responsible for carrying out key compliance obligations under both the Fenceline Monitoring Plan and the Fugitive Dust Plan, as is done in the Harmon Creek Plan and both the S.H. Bell and KCBX plans cited in the section below.

III. Specific Comments on Draft Fugitive Dust Control Plan

The Draft Fugitive Dust Control Plan also needs substantial improvement. MDE should require stronger pollution control and reporting requirements.

B. MDE Must Establish Strong and Specific Fugitive Dust Control Requirements that Allow Measurement of Noncompliance

The EPA has stated that Title V of the Clean Air Act requires that specific actions must be mandated for the control of fugitive dust. To ensure continuous compliance with pollution control requirements, the combination of CSX's permit and the fugitive dust plan must identify specific actions that CSX must take to control fugitive dust in a way that can be monitored to clearly identify noncompliance. The permit must also state that failure to comply with a requirements of the fugitive dust control plan constitutes a violation.

CSX's current permit states:

(3) The Permittee shall comply with the following operational requirements of the currently approved Fugitive Dust Plan:

(a) Unpaved roadways:
(i) Watering as required; and
(ii) Posted speed limits.

(b) Paved roadways and parking areas:
(i) Sweeping as required;
(ii) Flushing with water as required; and
(iii) Posted speed limits.

(c) Railcar unloading:
(i) Partial enclosure; and
(ii) Water spray as required.

(d) Material storage piles:
(i) Tower water sprays; and
(ii) Water sprays at grade around the entire storage pile perimeter

(e) Material conveying:
(i) Covered conveyors; and
(ii) Enclosed transfer points.

(f) Ship/barge loadout:
(i) Telescoping chute; and
(ii) Water sprays as required.

By contrast, even a recently issued Title V permit for a municipal waste landfill in Alabama includes more specificity regarding fugitive dust control. The Jefferson County Health Department ("JCHD") recently renewed the permit for the New Georgia Landfill, which includes the following requirements[39]:

[39] JCHD, Title V Operating Permit for New Georgia Landfill, pp. 22-23, Nov. 28, 2022, https://www.jcdh.org/SitePages/Misc/PdfViewer?AdminUploadId=2562.

	accepted.	
6.	**Fugitive Dust** The permittee shall take reasonable precautions to prevent dust from any operation, process, handling, storage, or transportation activity, including from dust from paved and unpaved roads and landfill areas from becoming airborne. The permittee shall not cause or allow the discharge of visible emissions which travel beyond the property line of the landfill. Specific dust control measures for this emission unit include: A. Use vegetative cover to minimize fugitive dust from closed landfill cells. B. Plant roads may be paved to minimize fugitive dust. C. Use wet suppression to minimize fugitive dust from roads, active landfill areas and any area or activity observed or expected to cause fugitive dust. Wet suppression shall not be required during natural wet conditions. Wet suppression means using water trucks or any other means of spraying or applying water. Mixing of water with material during handling also constitutes wet suppression. 1. The indicator that water application is required is the visual observation of fugitive dust from vehicle traffic and/or act of wind. 2. Wet suppression is effective when the application of water prevents visible fugitive dust from crossing property lines. 3. Inspect the water truck on each day of use prior to operation and initiate corrective action with 24 hours of the inspection if any condition observed prevents the water truck from being used to apply sufficient water to prevent fugitive dust. 4. On a daily log (which may be in the form of a checklist), record the results of the water truck inspection, the amount of water applied, and the areas to which the water was applied, or, if the water truck was not used on a given day, the reason it was not used. 5. For the semi-annual report, maintain a record of the days when the water truck was not able to be used effectively for wet suppression, including the reason it was not used. It is not necessary to list wet days in the report. D. Use compaction of daily cover materials and minimize material drop heights for active landfilling operations. 1. Train employees who participate or supervise daily cover activities in work practices to minimize material drop heights and to attain and maintain adequate compaction to prevent fugitive dust. 2. Maintain records of training in fugitive dust management techniques.	6.2.1 6.2.2 18.2.4
	3. For the semi-annual report, maintain a record of the date and a brief description of each time when a work practice was not properly performed and the corrective action(s) taken.	

CSX's Draft Fugitive Dust Control Plan adds very little to the vague list of practices in its permit. The repetition of "as required" in the permit implies that the Fugitive Dust Control Plan fleshes out what is required by establishing a frequency or objective standard for performing many of these practices, which it does not do.

In addition, CSX's permit requires it to include in the Fugitive Dust Control Plan:

> (1) A log of actions implemented to mitigate fugitive dust for each source of fugitive emissions that includes the date, time, and action taken; and (2) An evaluation of measures that could be utilized to further ensure dust is controlled. At a minimum, the evaluation should consider the possible use of screens or tree plantings at strategic locations within CSX's facility, lowering the wind speed set point currently used to activate the spray nozzles, and minimizing coal pile height.[40]

The Draft Plan does not address these requirements in a meaningful way. The Draft Plan lacks information about how frequently information will be logged, who is in charge of logging or verifying information, or how frequently information logs must be submitted. [41] The Draft Plan also fails to distinguish between current measures and measures being evaluated for additional dust control and does not appear to address at all the possibility of installing more wind screens. At minimum, this evaluation should be clearly identified in the plan. It should also

[40] CSX Permit pp. 9-10.
[41] See Draft Fugitive Dust Control Plan at 8.

be far more thorough. As a point of comparison, MDE may want to review again the much more comprehensive feasibility study for additional NOx pollution controls that Wheelabrator Technologies, Inc. submitted in 2020 for its Baltimore waste incinerator.[42]

The Fugitive Dust Control Plan must establish objective standards allowing clear measurement of compliance and noncompliance, and the permit must be revised to state that deviation from the practices identified in the Fugitive Dust Control Plan constitute violations.

C. Dust Suppression System and Existing Wind Screen

There is some specificity in the Draft Fugitive Dust Control Plan regarding operation of the dust suppression system and operation of a wind screen. CSX states that it operates a wind screen on the south side of the facility and that standard operating mode for the wet suppression system is operation of sprays once every four hours with frequency increasing to once per hour when winds are above 12 miles per hour.

This part of the Fugitive Dust Control Plan can be improved with even greater specificity, as explained below. Commenters expect to submit additional information on whether 12 miles per hour is an appropriate threshold for increasing the frequency of sprays. When MDE has determined the operational practices that CSX must implement, MDE should require CSX to describe those practices with specificity and incorporate the entirety of the Fugitive Dust Control Plan into the permit by reference as part of the compliance demonstration method so it is clear that the practices therein are what is "required" as referenced in the permit. Currently, the wind screen is not mentioned in the permit and the Draft Fugitive Dust Control Plan does not state that the frequency of water sprays described is "required."

D. MDE Should Incorporate and Require Best Practice from Other Jurisdictions

MDE should require CSX to follow best practices for fugitive dust control at dry bulk materials terminals that have been established in other jurisdictions. Many of these requirements were developed by the South Coast Air Quality Management District ("SCAQMD") and/or the City of Chicago Department of Public Health ("CDPH"). The sections on specific practices below discuss requirements established by SCAQMD and CDPH. Two specific Dust Control Plans that MDE may find useful to review are for dry bulk terminals located in Chicago: the KCBX Terminal and the S.H. Bell Facility Links to materials relating to these terminals are below:

[42] *See* Babcock Power Environmental, Waste to Energy NOx Feasibility Study, Prepared for Wheelabrator Technologies Baltimore Waste to Energy Facility Baltimore, Feb. 20, 2020, available at Attachment C to EIP and Earthjustice 2022 Comments to EPA on Proposed Rule for Cross-State Air Pollution Federal Implementation Plan, at https://environmentalintegrity.org/wp-content/uploads/2022/06/FINAL-Group-MWC-Ozone-Transport-FIP-Comments-w-attachments.pdf.

- S.H. Bell Facility
  - Fugitive Dust Control Plan - https://www.chicago.gov/content/dam/city/depts/cdph/environmental_health_and_food/SH_BellFugitiveDustPlan_Nov2017.pdf
  - EPA Region 5 Facility Page - https://www.epa.gov/il/sh-bell-chicago-facility
- KCBX Terminal
  - Fugitive Dust Control Plan - https://www.chicago.gov/content/dam/city/depts/cdph/environmental_health_and_food/KCBXFugitiveDustPlan_10730SBurleyAve_May182016.pdf

i. Full Enclosure of Storage Piles and Transfer Points

For coal shipment terminals, SCAQMD and the CDPH require enclosure of piles of coal and transfer points within the terminal unless the facility operator obtains a variance.

In Chicago:

> Fully enclosed structures or buildings [are required} for all . . . Coal handling, storage, and transfer operations must meet the following requirements:
>
> a) They shall be completely roofed and walled, entirely surround . . . Coal Bulk Materials, and be designed, permitted, and constructed in accordance with applicable Building Code requirements.
>
> b) They shall be properly maintained.
>
> c) They shall use a permitted air pollution control system and/or have the ability to apply water to materials within the structure or building in order to control Fugitive Dust emissions sufficiently at designed vents and at any other openings, including entrances and exits; and
>
> d) Any entrances or exits for material or Vehicles shall have overlapping flaps or sliding doors, which shall remain closed except to allow material or Vehicles to enter and leave or to allow people to enter and exit. Devices other than overlapping flaps or sliding doors may be used instead if the Fugitive Dust Plan demonstrates that the performance for dust control at the openings will be equivalent or superior to that of overlapping flaps and sliding doors.[43]

Facility operators may petition for a variance from any of of Chicago's bulk materials rules, including the enclosure requirement for coal facilities. In 2015, CDPH denied a variance submitted by KCBX seeking to extend the deadline for its enclosure of coal and petcoke piles at its terminal, finding that KCBX did not establish that more time was necessary or that interim measures were adequately protecting the nearby community.[44]

[43] Chicago Rule 4.0(2).
[44] CDPH letter denying KCBX variance request (Feb. 13, 2015) at https://www.chicago.gov/content/dam/city/depts/cdph/environmental_health_and_food/CDPHResLtrKCBXReqExt_2132015.pdf.

In California, SCAQMD requires the following for coal piles:

> The facility operator shall maintain all piles in enclosed storage.
> (ii) Structures or buildings used for enclosed storage shall be properly maintained, equipped with and use as needed, a water spray system or permitted air pollution control equipment sufficient to control fugitive dust emissions at designed vents and at entrances or exits for material or vehicles so as not to violate the provisions of paragraph (d)(1).
> (B) Any entrance or exits for material or vehicles shall have overlapping flaps, sliding doors or other devices(s) approved by the Executive Officer, which shall remain closed except to allow material or vehicles to enter and leave or when people are inside. Plan, pursuant to subdivision (f).[45]

SCAQMD allows a variance for coal piles existing before June 11, 1999 if the facility operator submits and obtains approval of an open pile control plan. [46] An open coal storage pile control plan is to be disapproved unless the facility operator makes certain demonstrations, including that that the plan requires the facility operator to implement best available control measures on the pile(s)"

For rail unloading, SCAQMD requires that:

> (4) The facility operator shall only conduct railcar material unloading in an enclosed structure that is either equipped with a water spray system operated to prevent visible dust emissions, or vented to permitted air pollution control equipment that is operated during unloading activities. <u>The ends of the structure shall have overlapping flaps, sliding doors or other equally effective devices as approved by the Executive Officer, which shall remain closed except to allow the railcars to enter and leave</u>.[47]

CSX's plan falls short of these requirements. Its coal piles are not even partially enclosed and its railcar dumpers are open at either end of the building without flaps or devices that remain closed except as the railcars enter and leave.[48]

ii. <u>Venting Enclosed Emissions Sources to Baghouses</u>

Both SCAQMD and CPHD's regulations recognize that, not only can sources of fugitive dust at dry bulk material terminals be enclosed but they can also be vented to pollution controls. Baghouses are also required as a fugitive dust control measure in a 2019 permit issued by the Indiana Department of Environmental Management ("IDEM") to Riverview Energy Corporation ("Riverview") for the construction and operation of a stationary direct coal hydrogenation

[45] SCAQMD Rule 1158(d)(2).
[46] SCAQMD Rule 1158(d)(2)(C)
[47] SCAQMD Rule 1158(d)(3) (emphasis added).
[48] Draft CSX Fugitive Dust Control Plan at 4.

facility to convert coal to liquid fuels.[49] Riverview's fugitive dust control plan is appended hereto as Attachment E.[50] That plan states that baghouses are used to control emissions from multiple transfer points within the facility, including enclosed rail unloading facilities and gravity chutes.

In addition, Watco Companies, which owns a bulk materials company in Chicago, submitted a fugitive dust control plan to CDPH as part of a variance request. That plan identifies the use of baghouses at the following points in the facility:

- Conducting outbound loading of trucks inside of Building F which contains a 60,000 CFM dust collector equipped with two hoods used to control dust during loading activities. The hoods are connected to a Camfil Farr Model GS72 baghouse . . .

- The use of dust collectors and baghouses for packaging and bagging operations in Buildings E and H. Building E is equipped with a Camfil Farr Model GS24 baghouse which is rated at 18,000 CFM. Building H is equipped with an Amtech Model ATY-24 which is rated at 18,000 CFM.[51]

iii. Operation of Dust Suppression System

CPHD requires the following for dust suppression systems:

> (5) Dust Suppressant System. The Facility Owner or Operator must apply Chemical Stabilizers and/or maintain and operate water spray bars, a misting system, water spray systems and/or water trucks to prevent Fugitive Dust emissions in violation of 3.0(2), in accordance with the following requirements:
> a) Except pursuant to 7.0(5)(c) below, the dust suppressant system shall be operable and able to dispense water, water-based solutions, and/or Chemical Stabilizers at all times unless all bulk storage material piles are covered.
>
> b) When the temperature falls below 32 degrees Fahrenheit, the Facility must use Chemical Stabilizers and/or water heating systems to ensure that dust suppression continues.
>
> c) If any part of the dust suppressant system is undergoing maintenance or otherwise becomes inoperable, the Facility Owner or Operator must suspend disturbance of Bulk Material piles that would be controlled by the inoperable portion of the dust suppressant system until such time as the system becomes operable again.[52]

As described above, there are no hard and fast requirements established for the operation of CSX's dust suppression system.

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[49] IDEM Title V/New Source Constriction Permit for Riverview Energy Corporation, Permit No. 147-39554-00065, June 11, 2019, available at https://permits.air.idem.in.gov/39554f.pdf (hereinafter "Riverview Permit").
[50] Riverview Fugitive Dust Control Plan, Attachment A to Riverview Permit (Attachment D).
[51] Watco Fugitive Dust Control Plan, Section 5.0, pdf p. 24 https://www.chicago.gov/content/dam/city/depts/cdph/InspectionsandPermitting/CDPH.Determination.VarianceRequest_Watco.Transloading_Aug32020.pdf.
[52] Chicago Rule 3.00.

iv. Paved and Unpaved Roadways

In California, SCAQMD requires that certain types of roadways within a coal terminal's boundaries must be paved, specifically:

> (iii) All ground surfaces within the facility where material accumulations routinely occur; and, (B) All roads and vehicle movement areas within the facility that are used for transporting or moving material excluding. . . permitted material enclosures and areas approved by the Executive Officer for material storage pursuant to other sections of this Rule.

To reduce particulate accumulation on roadways, the following numerical silt loading values are established

> A silt loading value, for all silt particles, of 0.05 grams/meter2 for any trackout road, excluding freeways and railroad tracks; and (ii) A silt loading value, for all silt particles, of 0.25 grams/meter2 for all roads and vehicle movement areas excluding railroad tracks within the facility that are used for transporting or moving material.

Street sweeping must be conducted at a minimum frequency and there are associated record keeping requirements:

> (i)The street sweeping shall be sufficient so that not more than 4 hours elapses between each street sweeper cleaning or after every 100 truck material receipts or dispatches, but not less than one time daily when the facility is open for business.
> (ii) Each 24-hr. day, the day beginning at 12:01 A.M., the facility operator shall designate and record whether for that day the facility operator is street sweeping every four hours or every 100 trucks. The record shall show the date and time when street sweeping was performed and the truck count.[53]

In Chicago, CDPH has an almost identical set of requirements for paving all of internal roadways, and minimum street sweeping frequency and recording thereof.[54] Chicago does not have a numerical silt accumulation standard but does require a speed limit of 8 miles per hour within the facility for vehicles transporting bulk materials.[55]

Conversely, CSX's plan does not require roadway paving, lacks numerical standards for silt accumulation and the frequency of roadway sweeping, and does not require recordkeeping or reporting of any related information. In addition, CSX's speed limit within the facility is 15 miles per hour, higher than Chicago's 8 mile/hour limit.

[53] SCAQMD Rule 1158.
[54] Chicago Rule 3.00(15)(16).
[55] Chicago Rule 3.00(9)(a).

v. Minimum Moisture Content

Both SCAQMD and CPHD establish a minimum moisture content that can be used as a mechanism for compliance. SCAQMD's minimum moisture content for coal is 7.6% and CDPH's for all materials is 3% by weight. MDE should require periodic testing of minimum moisture content at all transfer points and piles at the CSX Terminal, with results to be reported biannually.

vi. Recordkeeping and Reporting

MDE must drastically improve the recordkeeping and reporting requirements for the CSX Terminal. Its permit currently requires minimal information under either category, especially reporting. Given the history of dust problems reported by the nearby community coupled with the terminal's location in an environmental justice area, MDE must require CSX to submit on a regular and frequent basis information that can be used to assess its compliance with air quality standards. Logs of corrective action and dust control measures should be submitted quarterly at minimum. Additional reporting requirements are addressed above. Finally, MDE should look to CDPH's recordkeeping requirements, noting that, for CSX, keeping records on site is not sufficient. CSX must be required to submit important information to MDE.

In Chicago, all facilities subject to CDPH's regulations for dry bulk material terminals must:

> keep and maintain Facility logs as follows:
> a) Record daily, all cleaning and street sweeping;
> b) Record daily, the weather conditions, including wind speed and direction, documented by the weather station or other device installed pursuant to 3.0(6);
> c) Record the application of water and/or Chemical Stabilizer pursuant to paragraphs 3.0(7), 3.0(9), 3.0(11), 3.0(12), 3.0(13), and/or 5.0(7), as applicable, and note any instances when such application is suspended for any reason, including but not limited to, weather conditions;
> d) Record any instances when activities are suspended due to high winds as required by paragraph 7.0(4), as applicable;
> e) Record the results of the continuous monitoring for Fugitive Dust as required in paragraph 3.0(4), indicate any instances when a monitor detects Fugitive Dust that exceeds the Reportable Action Level set forth in the Fugitive Dust Plan, and record the action taken to respond to the detection of Fugitive Dust;
> f) Record quarterly, the results of the tests of visual Fugitive Dust and opacity as required in paragraph 3.0(2)(d);
> g) Record the results of the filter-based metals monitoring as required in paragraph 3.0(5) or 6.0, as applicable;
> h) Maintain a schedule for routine inspection, maintenance, and testing of all control measures, devices, and technologies, including a schedule for inspection of Bulk Solid Material piles, inspection of all monitors, and inspection of off-site areas for the presence of dust; and identify the person or persons responsible for such inspections, maintenance, and testing;

i) All records required to be kept pursuant to these Rules shall be kept and maintained at the Facility and be available for inspection for a minimum of three (3) years from the date the record is created.[56]

Thank you for considering these comments.

Respectfully submitted,

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[56] Chicago Rule 3.0(18);