

July 14, 2014

Stacy Passmore, AICP, LEED AP, Project Manager  
Housing, Economic & Infrastructure Planning  
NYC Department of City Planning  
22 Reade Street  
New York, NY 10007

Re: Open Industrial Uses Study Draft Report

Dear Ms. Passmore:

Thank you for the opportunity to comment on the draft Open Industrial Uses Report. Sims Metal Management (SMM) and Sims Municipal Recycling (SMR) have the following comments regarding the draft recommendations:

**Recommendation 2: Require existing and new OIUs to comply with new physical design standards for effective onsite pollution prevention controls.**

SMM and SMR support the comments submitted by the New York Chapter of the Institute of Scrap Recycling Industries (ISRI) regarding this recommendation. We agree that the Zoning Resolution does not seem to be an appropriate regulatory mechanism in which to codify specific design standards, primarily because such standards appear to duplicate the standards provided for under existing federal and state programs, most notably those under the existing storm water and air quality management programs, and do so in a way that is less amenable to revision with advances in technology and new information than is available under existing federal and state programs. Existing programs provide for the identification, development and implementation of best management practices (BMPs) that are most appropriate for a specific facility. They also allow for the implementation of improved BMPs with advances in technology and understanding of site conditions. Codifying specific generic approaches for all facilities reduces the opportunity for flexibility as conditions and knowledge change. It also is our understanding that it would require an act of City Council to make a change to standards if embedded in a Zoning Resolution.

**Regarding specific recommendations:**

Paving/Grading: While paving and grading certain areas associated with certain activity or storage areas may be most appropriate, the means for determining the need for paving and grading currently exists within the stormwater permit requirements. Those requirements look to site information to determine whether paving and grading or other improvements are appropriate BMPs to respond to specific potential sources of pollutant discharge. The process in the stormwater permit is iterative based on site-specific data. Our concern with the proposed approach is that it is a one-size-fits-all approach. For instance, it may be an appropriate BMP to maintain a portion of a facility without paving or grading to a drainage system in order to reduce to potential for runoff. It also may be true that paving reduces the potential for emissions of fugitive dust. There however may be equally effective approaches, such as by use of misting and wetting devices and equipment. There may be one area of activity where paving/grading uniformly is the most appropriate approach: it may be appropriate for all truck traffic areas to be paved and properly graded if it is determined through a technical assessment that such paving

and grading is the most appropriate BMP for areas of truck traffic activity.

Drainage/Treatment: The recommendation that every OIU must install an appropriate drainage, treatment, filtration and detention system arbitrarily pre-supposes the site-specific evaluation that is supposed to precede a determination of BMPs. As noted above, it appears to conflict with the federal and state stormwater industrial general permit program, which sets up an identification and review of potential sources of pollution, and identification and implementation of BMPs appropriately addressing such sources.

Containment Wall/Fencing: While SMM and SMR understand and support the need for fencing to secure a facility, we do not understand what the Report is recommending here. It appears that the Report is recommending a containment wall or fencing around each area of activity or storage. If so, that would effectively prevent the facility from operating. As noted in the Report, OIU facilities in NYC necessarily operate on small footprints. Placing a maze of high (or even low) fencing in key operating or storage areas would preclude the safe movement of trucks and operating equipment. If the Report is just referring to perimeter fencing as a dust management BMP, then our issue is that it hard-wires containment wall/fencing as the only appropriate BMP, rather than allowing the facility to determine the most appropriate BMP to meet the specific issue. As noted above, the same mitigation of dust may be achieved by wetting and/or misting appropriate areas of activity and storage. There also may be other BMPs equally suitable. In addition, the marine nature of some OIU activities would not lend themselves to using a containment wall/fencing alone the area needed for marine uses. To the extent that fencing is required there is the separate question of what type of fencing would be appropriate (e.g. mesh size).

Material Pile Height Limits: Aligned with our above comments, limiting material pile heights as a BMP for dust management may not be the most appropriate BMP for such purpose. Given the relatively small footprints within which many OIU facilities operate, unreasonably limiting pile heights also would have a significant impact on the ability to engage in certain activities such as those recycling activities in which SMM/SMR engage. For example our metals recycling business needs to stockpile a sufficient amount of scrap metal to load a barge for shipment to the processing facility. In addition, we may find that limits on a single day's intake would force some facilities to turn away recyclable material when the pile limit is met, even though the limit would not be environmentally justified.

#### **Recommendations to Amend City Codes:**

Covering Piles: The Report recommends amending the NYC Air Pollution Control Code to require covering of all open material piles except when active operations are underway. While this may be acceptable for salt piles, it is impractical and unnecessary for scrap metal piles. The integrity of the cover could not be maintained due to the ragged nature of scrap metal. In addition, fugitive emissions are not a significant issue for scrap metal piles. Even if they were, as noted above there may well be more appropriate alternative BMPs such as wetting or misting if needed for dust management. It is also not clear what constitutes "active operations". We are effectively working our piles at all times, either adding new materials received or shipping materials out. However, it should be clear, for example, that if a business is closed on a Sunday that does not constitute a break in "active operations".

Signage: The report recommends changing the Building Code to require signage posted at all entrances to indicate the business name, hours of operation, types of material accepted and not accepted, types of permits to operate pursuant to City and State regulations and the expiration dates of the permits, and the phone number of the business. While a signage requirement

generally may or may not be appropriate, it would impractical to post the numerous permits required of each facility and constantly change the expiration dates of each permit after renewals.

Thank you for your consideration.

Sims Metal Management and Sims Municipal Recycling