

1 (NB)

SUMMARY

This ordinance amends Chapter 22 of the 1984 Detroit City Code, *Handling of Solid Waste and Prevention of Illegal Dumping*, by amending Article I, Division 1, *Definitions and Enforcement*, to provide for additional definitions; by amending Article I, Division 2, *Civil Fines for Violations*, to provide for civil fines for bulk solid material violations and to establish criteria to be considered when assessing fines; by amending Article II, Division 5, *Illegal Dumping* to establish that handling, transporting or storing of bulk solid materials in violation of the provisions is illegal dumping; by adding Article V, *Bulk Solid Material*, Division 1, *In General*; Division 2 *Bulk Solid Material Facilities*; Division 3, *Carbonaceous Bulk Solid Material Facilities*; Division 4, *Outdoor Storage Of Bulk Solid Materials Other Than Carbonaceous Bulk Solid Materials*; Division 5, *Variances*; and Division 6, *Implementation and Compliance*, to provide for regulation of storage and transporting, including loading and unloading, of bulk solid material, including but not limited to asphalt millings and carbonaceous bulk solid materials such as petroleum coke; to prohibit excess fugitive dust from bulk solid material; to provide guidance for businesses which produce or store petroleum coke and other bulk solid material to do so properly; to provide a mechanism for variances from the specific provisions of Article V, after notice, public hearing, and opportunity for public comment; to provide an implementation schedule; to create a fund; and to provide for enforcement mechanisms and penalties.

1 **BY COUNCIL MEMBER _____:**

2 **AN ORDINANCE** to amend Chapter 22 of the 1984 Detroit City Code, *Handling of Solid*
3 *Waste and Prevention of Illegal Dumping*, by amending Article I, Division 1, *Definitions and Enforcement*, to
4 provide for additional definitions; by amending Article I, Division 2, *Civil Fines for Violations*, to provide
5 for civil fines for bulk solid material violations and to establish criteria to be considered when assessing
6 fines; by amending Article II, Division 5, *Illegal Dumping* to establish that handling, transporting or
7 storing of bulk solid materials in violation of the provisions is illegal dumping; by adding Article V,
8 *Bulk Solid Material*, Division 1, In General; Division 2 *Bulk Solid Material Facilities*; Division 3,
9 *Carbonaceous Bulk Solid Material Facilities*; Division 4, *Outdoor Storage Of Bulk Solid Materials Other Than*
10 *Carbonaceous Bulk Solid Materials*; Division 5, *Variances*; and Division 6, Implementation and Compliance,
11 to provide for regulation of storage and transporting, including loading and unloading, of bulk solid
12 material, including but not limited to asphalt millings and carbonaceous bulk solid materials such as
13 petroleum coke; to prohibit excess fugitive dust from bulk solid material; to provide guidance for
14 businesses which produce or store petroleum coke and other bulk solid material to do so properly; to
15 provide a mechanism for variances from the specific provisions of Article V, after notice, public
16 hearing, and opportunity for public comment; to provide an implementation schedule; to create a
17 fund; and to provide for enforcement mechanisms and penalties.

18 **IT IS HEREBY ORDAINED BY THE PEOPLE OF THE CITY OF DETROIT**
19 **THAT:**

20 **Section 1.** Chapter 22 of the 1984 Detroit City Code, *Handling of Solid Waste and Prevention of Illegal*
21 *Dumping*, is amended by amending Article I, Division 1 by amending section 22-1-1, *Definitions*, to add
22 several new definitions and make technical corrections to several existing definitions, and by amending
23 section 22-1-3 for technical corrections, by amending Article I, Division 2, by adding Section 22-1-17;
24 by amending Article II, Division 5, Section 22-2-83 by adding *bulk solid material* to the title to Division

24 5 and by adding subsections 22-2-83(g) and 22-2-83(h); and by adding Article V, BULK SOLID MATERIAL, Division 1, *In General*, sections 22-5-1 through 22-5-9; *Division 2 Bulk Solid Material Facilities*, sections 22-5-10 through 22-5-39; Division 3, *Carbonaceous Bulk Solid Material Facilities*, sections 22-5-40 through 22-5-49; Division 4, *Outdoor Storage Of Bulk Solid Materials Other Than Carbonaceous Bulk Solid Materials*, sections 22-5-50 through 22-5-59; Division 5, *Variances*, sections 22-5-60 through 22-5-69; and Division 6, *Implementation and Compliance*, sections 22-5-70 through 22-5-79 to read as follows:

**CHAPTER 22. HANDLING OF SOLID WASTE, BULK SOLID MATERIAL, AND
PREVENTION OF ILLEGAL DUMPING**

ARTICLE I. IN GENERAL

DIVISION 1. DEFINITIONS AND ENFORCEMENT

Sec. 22-1-1. Definitions.

For purposes of this chapter, ~~the following~~ words and phrases shall have the meanings respectively ascribed to them by this section or in the additional definitions in section 22-5-5.

Approved means that equipment, method or procedure which, for article II, the director of the department of public works, for article III, the chief of police, and for articles IV and V, the BSEED director, designates as acceptable, having been, by demonstration or test, proven workable and safe for its intended purpose.

Approved containers means receptacles designated for use in specific areas or for specific uses by the director of the department of public works, which are limited to Courville containers, large movable or stationary containers, and portable containers as defined in this section.

Authorized local official means a Detroit police officer, or other City of Detroit personnel, who is authorized by the director of the department of public works in accordance with Chapter 8.5 of this Code to issue a blight violation in accordance with this chapter and provisions of this

1 Code that are designated as blight violations.

2 *Blight violation* means any unlawful act, or any omission or failure to act, which is designated
3 by this Code as a blight violation pursuant to Section 4l(2) of ~~the Michigan~~ The Home Rule City
4 Cities-Act, being MCL 117.4l(2).

5 *Blight violation determination* means a determination that i) an alleged violator is responsible
6 for one (1) or more blight violations as a result of the admission of responsibility for the
7 allegation(s) in a blight violation notice, or ii) after an administrative hearing that a person is or is
8 not responsible for one (1) or more blight violations, or iii) as a result of a decision and order of
9 default for failing to appear as directed by the blight violation notice, or other notice regarding one
10 (1) or more blight violations, at a scheduled appearance at the department of ~~administrative~~
11 ~~Hearings~~appeals and hearings in accordance with Section 4q(8)(c) of ~~the Michigan~~ The Home
12 Rule City Cities-Act, being MCL 117.4q(8)(c).

13 *Blight violation notice* means a written violation notice prepared by an authorized local
14 official which directs an alleged violator i) to pay the civil fine(s) specified in the notice, including
15 any required fees or costs, for one (1) or more blight violations in accordance with the fines, fees,
16 or costs specified in this Code and ii) to appear at the department of ~~administrative~~appeals and
17 hearings regarding the occurrence or existence of one (1) or more blight violations pursuant to
18 Section 4q(8) of ~~the Michigan~~ The Home Rule City Cities-Act, being MCL 117.4q(8).

19 *Blight violation proceeding* means an administrative process that results in a blight violation
20 determination.

21 *BSEED* means the Buildings, Safety Engineering and Environmental Department.

22 *BSEED director* means the director of the Buildings, Safety Engineering and Environmental
23 Department.

24 *Bulk solid material* has the meaning as defined in section 22-5-5.

1 *Bulk solid waste* means solid waste that is larger than can be stored in an approved container
2 or greater than ~~ten~~-(10) cubic feet, including appliances, beds, cradles, furniture, refrigerators,
3 stoves, water heaters, other bulk heavy items, and four ~~(4)~~ or fewer scrap tires.

4 *Commercial establishments* means all businesses, non-profit organizations, churches,
5 governmental agencies, and other such institutions which cannot be classified as residential
6 structures, as well as residential structures containing five (5) or more household units.

7 *Commercial solid waste* means i) the solid waste resulting from the operation of commercial
8 establishments, and ii) construction solid waste, but does not include domestic solid waste.

9 *Construction solid waste* means waste from buildings construction, alteration, demolition or
10 repair, and dirt from excavations.

11 *Courville containers* means receptacles which are one hundred (100), three hundred (300), or
12 four hundred (400) gallons in capacity, are the property of the City of Detroit, are provided by the
13 department of public works for use at residential structures and commercial establishments, and
14 are mechanically emptied.

15 *Domestic solid waste* means the solid waste resulting from the usual routine of housekeeping,
16 but does not include commercial solid waste.

17 *Emergency* means any condition or situation that reasonably constitutes a threat to public
18 health, interest, safety, or welfare.

19 *Erected* means not only new buildings, but also any addition to a structure or any conversion
20 of use or occupancy of a structure which results either in new or increased production of food
21 wastes, except the remodeling of kitchens in one-or two-family dwellings or the replacement of
22 residential kitchen sinks.

23 *Food wastes* means vegetable or animal matter, or a combination thereof, produced or
24 developed as the result of preparation, processing, marketing, cooking, serving, distributing, sale,

1 spoilage, decay, deterioration, storage or in any other manner of food which renders such unfit,
2 undesirable or unacceptable for sale, distribution or human consumption.

3 *Garbage* means, as defined in Section 11503 of the Michigan Natural Resources and
4 Environmental Protection Act, being MCL 324.11503, rejected food wastes including waste
5 accumulation of animal, fruit, or vegetable matter used or intended for food or that attends the
6 preparation, use, cooking, dealing in or dealing with storing of meat, fish, fowl, fruit, vegetable
7 matter.

8 *Generator* means the person responsible for creating, disposing, storing or transporting solid
9 waste, medical waste, or hazardous waste.

10 *Hazardous waste* means any chemical or other material or substance defined as hazardous
11 waste or substance under Parts 111 and 201 of the Michigan Natural Resources and Environmental
12 Protection Act, respectively, being MCL 324.11101 *et seq.*, and MCL 324.20101 *et seq.*

13 *Household unit(s)* means the individual residences of the residents of the City of Detroit.

14 *Industrial site* means a location where heavy warehousing, manufacturing, processing,
15 assembling, utility generation, tool and ~~dye-die~~ operations, pumping, fabricating, iron working,
16 welding, grinding and the like occur.

17 *Industrial site solid waste* means garbage, as defined in this section, and rubbish, as defined
18 in this section, resulting from the daily activities of person at industrial sites, but does not include
19 industrial waste, as defined in this section.

20 *Industrial waste* means the liquid, solid, or gaseous waste or form of energy, or combination
21 thereof, resulting from any processing of industry, manufacturing, business, trade or research,
22 including the development, recovery, or processing of natural resources.

23 *Large movable or stationary containers* means receptacles which are two ~~(2)~~-cubic yards,
24 three ~~(3)~~-cubic yards, six ~~(6)~~-cubic yards or larger in capacity and are mechanically emptied.

1 *Litter* means, as defined by Section 8901 of the Michigan Natural Resources and
2 Environmental Protection Act, being MCL 324.8901, all rubbish, refuse, waste material, garbage,
3 offal, paper, glass, cans, bottles, trash, debris, or other foreign substances when the amount is ~~under~~
4 less than five (5)-cubic feet.

5 *Manifest* means a form provided or approved by the Michigan Department of Environmental
6 Quality that is used for identifying the quantity; composition (including class, curie count, and
7 radioactive nuclides) origin, routing; and destination of waste from the point of generation to the
8 point of disposal, treatment, or storage within the meaning of Section 11103(8) of the Michigan
9 Natural Resources and Environmental Protection Act, being MCL 324.11103(8).

10 *Medical waste* means any of the following that are not generated from a household, a farm
11 operation or other agricultural business:

- 12 (1) Cultures and stocks of infectious agents and associated biologicals, including laboratory
13 waste, biological production wastes, discarded live and attenuated vaccines, culture
14 dishes, and related devices;
- 15 (2) Liquid human and animal waste, including blood and blood products and bodily fluids,
16 but not including urine or materials stained with blood or body fluids;
- 17 (3) Pathological waste;
- 18 (4) Sharps; and
- 19 (5) Contaminated wastes from animals that have been exposed to agents infectious to
20 humans, these being primarily research animals.

21 *Municipal solid waste* means solid waste material from residential structures that is classified
22 as domestic solid waste, from commercial establishments that is classified as commercial solid
23 waste, and from industrial sites as industrial solid waste.

24 *On site disposal* means the disposal within the premises by approved methods or system of

1 any food wastes produced or developed therein.

2 *Owner or operator* means any person, whether owner, occupant, tenant, lessee, agent or other
3 person;

4 (1) who has legal or equitable title to any facility, private property, or water; or

5 (2) who has charge, care or control of any facility, private property, or water; or

6 (3) who is in possession of any facility private property or water or any part thereof; or

7 (4) who is entitled to control or direct the management of any facility, in possession or control
8 of any private property, or water.

9 *Pathological waste* means human organs, tissues, body parts other than teeth, products of
10 conception, and fluids removed by trauma or during surgery, autopsy, or other medical procedure,
11 and not fixed in formaldehyde. Pathological waste does not include a fetus or fetal body parts.

12 *Person* means an individual, partnership, co-partnership, firm, company, limited liability
13 company, corporation, association, sole proprietorship, joint venture, joint stock company, trust,
14 estate, political subdivision, state agency, owner, operator or generator, or any other legal entity,
15 or its legal representative, agent, or assigns.

16 *Portable containers* means receptacles which are not more than ~~thirty~~ (30) gallons in capacity
17 and are manually emptied.

18 *Private property or water* means any of the following:

19 (1) A privately owned right-of-way of a road or highway, a body of water or watercourse, or
20 the shore or beach of the body of water or watercourse, including the ice above the water;

21 (2) A privately owned park, playground, building, structure, parking lot, vacant lot, or
22 conservation or recreation area;

23 (3) Residential or farm properties or timberlands; or

24 (4) Motor vehicles or vessels.

1 *Repeat* means a second, or any subsequent, blight violation determination regarding a blight
2 violation notice that is made within a one ~~(1)~~-year period for the same blight violation except for
3 a determination by an administrative hearings officer that a person is not responsible for a blight
4 violation for the first or subsequent violation.

5 *Residential structures* means the household unit(s) of the residents of the City of Detroit.

6 *Rubbish* means, as defined by Section 11505 of the Michigan Natural Resources and
7 Environmental Protection Act, being MCL 324.11505, nonputrescible solid waste, excluding
8 ashes, consisting of both combustible and noncombustible waste, including paper, cardboard,
9 metal containers, yard clippings, wood, glass, bedding, crockery, demolished building materials,
10 or litter of any kind that may be a detriment to the public health and safety.

11 *Scrap tire hauler* means a person transporting scrap tires within the meaning of Section
12 16901(k) of the Michigan Natural Resources and Environmental Protection Act, being MCL
13 324.16901(k).

14 *Scrap tires* means continuous solid or pneumatic rubber coverings which were manufactured
15 to encircle a wheel for use in the operation of any motorized vehicle and are no longer being used
16 for their original intended purpose as defined by Sections 16901(j) and (m) of the Michigan Natural
17 Resources and Environmental Protection Act, being MCL 324.16901(j) and (m).

18 *Sharps* means needles, syringes, scalpels, and intravenous tubing with needles attached.

19 *Solid waste* means any material defined as a solid waste within the meaning of Part 115 of the
20 Natural Resources and Environmental Protection Act, being MCL 324.11501 *et seq.*, and 42 USC
21 6901 *et seq.*, and specifically includes “scrap” and “litter” as defined by the Michigan Litter
22 Statute, being MCL 324.8201, and “medical waste” as defined in this section.

23 *Solid waste hauler* means a person who owns or operates a solid waste transporting unit within
24 the meaning of Section 11506(2) of the Michigan Natural Resources and Environmental Protection

1 Act, being MCL 324.11506(2).

2 *Solid waste transporting unit*, as defined in Section 11506(4) of the Michigan Natural
3 Resources and Environmental Protection Act, being MCL 324.11506(4), means a container that
4 may be an integral part of a truck or other piece of equipment used for the transportation of solid
5 waste.

6 *Unapproved containers* means all receptacles which are not approved containers.

7 *Violation* means any act which is prohibited or made or declared to be a blight violation by
8 any section of this chapter, and any omission or failure to act where the act is required by any
9 section of this chapter.

10 *Violator* means a person who is responsible for a blight violation.

11 **Sec. 22-1-3. Enforcement of chapter; promulgation of rules and regulations.**

12 ~~For purposes of this chapter the~~ The directors of the departments charged with enforcing or
13 administering the provisions of this chapter are of environmental affairs is authorized to
14 promulgate rules and regulations for their respective departments in accordance with section 2-111
15 of the ~~1997-2012~~ Detroit City Charter.

16 **DIVISION 2. CIVIL FINES FOR VIOLATIONS**

17 **Sec. 22-1-17. Civil fines for violation of section 22-2-83(g) and (h) regarding bulk solid**
18 **material; cost of removal incurred by City of Detroit; factors to be considered**
19 **by hearings officer when determining fine; burden of proof for factors upon**
20 **violator.**

21 (a) A person who violates any of the provisions of section 22-5-6(b) or 22-5-7(b), or
22 sections 22-2-83(g) and (h), is responsible for a blight violation and, for the first violation, is
23 subject to a civil fine of one thousand dollars (\$1,000.00) and, in accordance with section 22-
24 1-31, is responsible for the cost of removal by the City of Detroit.

1 (b) For a repeat or subsequent blight violation under section 22-5-6(b) or 22-5-7(b) or
2 sections 22-2-83(g) and (h), a person shall be subject to a civil fine of not less than two
3 thousand five hundred dollars (\$2,500.00) and, in accordance with section 22-1-31, is
4 responsible for the cost of removal by the City of Detroit.

5 (c) Each day on which any violation of any of the provisions of section 22-5-6(b) or 22-
6 5-7(b) or sections 22-2-83(g) and (h) continues shall constitute a separate violation and, upon
7 a blight violation determination, may be subject to a civil fine for each day the violation
8 continues. The determination as to whether an act or a failure to act is a continuing violation
9 is within the discretion of the hearings officer. The imposition of a fine under this section shall
10 not be construed to excuse or to permit the continuation of any violation.

11 (d) When determining the amount of a civil fine issued under subsections (a) or (b), the
12 hearings officer shall consider all of the following factors:

13 (1) The type of bulk solid material;

14 (2) The nature of the violation;

15 (3) The duration of the violation;

16 (4) The preventability of the violation;

17 (5) The potential and actual effect on the surrounding neighborhood or the
18 environment;

19 (6) The economic benefit to the violator;

20 (7) The violator's recalcitrance or efforts to comply with law; and

21 (8) The economic impact of the fine on the violator.

22 These factors shall only be considered where the hearings officer determines that the violator
23 has made all good faith efforts to correct and terminate the violation. The violator shall have the
24 burden of proof regarding the presence and degree of any factor to be considered by the hearings

officer in determining the amount of the fine. In each case, the fine shall be set within the range that is delineated in subsections (a) or (b).

Secs. ~~22-1-17~~ 22-1-18 – 22-1-30. Reserved.

ARTICLE II. STORAGE, PREPARATION, COLLECTION, TRANSPORT, DISPOSAL, AND PLACEMENT

DIVISION 5. ILLEGAL DUMPING

Sec. 22-2-83. Dumping, storing or depositing solid waste, medical waste, ~~or~~ hazardous waste, or bulk solid material on any publicly owned property, or private property or water, without permit.

(a) No person shall dump, store or deposit or cause to be dumped, stored or deposited, on any publicly-owned property, or private property or water, within the City of Detroit any solid waste, medical waste or hazardous waste, except at a waste disposal or storage facility for which a permit or operating license has been properly issued pursuant to the provisions of this Code and of other local, state and federal law. Such dumping, storing, or depositing without a permit is declared to be a blight violation.

(b) Dumping, depositing, or placing solid waste less than five ~~(5)~~ cubic yards on any private property, public property, right-of-way or surface water or around any approved or portable container, or dumping solid waste less than five ~~(5)~~ cubic feet from a motor vehicle is littering and is hereby deemed unlawful and subject to the fines and penalties provided for in this chapter.

(c) Unless otherwise provided for in this division, dumping, storing, depositing of solid waste in an amount of five ~~(5)~~ cubic yards or more on any private property, public property, right-of-way or surface water or around any approved or portable container is illegal dumping and is hereby deemed unlawful and subject to the fines and penalties provided for in this

chapter.

(d) Dumping, or depositing solid waste of five (5)-cubic feet or more from any motor vehicle upon any public highway, city street, public or private property or water or causing such solid waste to be dumped or deposited from a motor vehicle is illegal dumping and is hereby deemed unlawful and subject to the fines and penalties provided for in this chapter.

(e) Dumping, storing, depositing or placing medical waste or hazardous waste in any discernable quantity on any private property, public property, right-of-way or surface water or around any approved or potable container is illegal dumping and is hereby deemed unlawful and is subject to the fines and penalties provided for in this chapter.

(f) Dumping or depositing medical or hazardous waste in any discernable quantity from any motor vehicle upon any public highway, city street, public or private property or water or causing such solid waste to be dumped or deposited from any motor vehicle is illegal dumping and is hereby deemed unlawful and is subject to the fines and penalties provided for in this chapter.

(g) Unless otherwise provided for in this chapter, dumping, storing, or depositing, bulk solid material on any private property, public property, right of way, or surface water or around any approved or portable container is illegal dumping and is a blight violation subject to the fines and penalties provided for in this chapter. Asphalt millings removed as part of a public paving or repaving project (a project conducted, controlled or funded by the governments or agencies of the City of Detroit, the County of Wayne, the State of Michigan, or the United States) and temporarily stored on or adjacent to that project for reuse in that project is not illegal dumping if the temporary storage period does not exceed 45 days.

(h) Violations of article V of this chapter not described by section 22-2-83(g), including but not limited to the escape of fugitive dust from an otherwise authorized collection of bulk

1 solid material in an amount that exceeds the opacity limit specified in MCL 324.5524(2),
2 regardless of qualification under MCL 324.5524(1), is unlawful and is subject to the fines and
3 penalties provided for in this chapter.

4 **ARTICLE V. BULK SOLID MATERIALS**

5 **DIVISION 1. IN GENERAL**

6 **Sec. 22-5-1. Purpose and Scope.**

7 (a) The purpose of this article is to regulate the storage and transporting, including loading
8 and unloading, of bulk solid materials in order to minimize the proliferation of fugitive dust that
9 has the potential to collect in residents' homes and vehicles and to protect residents from potential
10 health hazards of inhaling fugitive dust including pulmonary inflammation and fibrosis, and to
11 classify non-compliant bulk solid material storage as a visual nuisance and blight within the City
12 of Detroit and along its waterways.

13 (b) This article prescribes reasonable, specific operating and maintenance practices to
14 minimize emissions of fugitive dust from the storage, on-site transporting or handling, loading,
15 unloading, stockpiling, and processing of bulk solid materials as defined in this article. This article
16 applies to any owner, operator, or other person who processes, handles or transports on-site,
17 transfers, loads, unloads, stockpiles, or stores bulk solid materials.

18 (c) This article provides criteria to assure that processing, handling, transporting, loading,
19 unloading, stockpiling and storage of bulk solid materials is conducted in accordance with a
20 fugitive dust plan compliant with the standards and criteria set forth in Section 5524 of the
21 Michigan Natural Resources and Environmental Protection Act, Public Act 451 of 1994, being
22 MCL 324.5524, and in Rules R. 336.1371 and R. 336.1372 of the Michigan Administrative Code,
23 subject to such additional requirements as may be imposed by this article and chapter.

24 **Sec. 22-5-2. Authority under Michigan Natural Resources and Environmental Protection**

1 **Act.**

2 The provisions of this article are authorized by and adopted pursuant to part 55 of the
3 Michigan Natural Resources and Environmental Protection Act, Public Act 451 of 1994, titled
4 “Air Pollution Control”, particularly Sections 5540 and 5542 being MCL 324.5540 and 324.5542,
5 and specifically MCL 324.5542(1) which provides: “(1) Nothing in this part or in any rule
6 promulgated under this part invalidates any existing ordinance or regulation having requirements
7 equal to or greater than the minimum applicable requirements of this part or prevents any political
8 subdivision from adopting similar provisions if their requirements are equal to or greater than the
9 minimum applicable requirements of this part”.

10 **Sec. 22-5-3. Other Laws.**

11 The requirements of this article in no way affect the responsibilities of the facility owner and
12 operator to comply with all other applicable federal, state or city laws, ordinances, or regulations,
13 including but not limited to those regarding the zoning, construction, operation, maintenance, and
14 closure of the facility, whether or not such other laws are specifically referenced in this article.

15 **Sec. 22-5-4. Severability.**

16 If any clause, sentence, paragraph, subsection, section, or division of this article is determined
17 by any court of competent jurisdiction to be invalid, that judgment shall not affect, impair, or
18 invalidate the remainder of this article, but shall be confined in its operation to the clause, sentence,
19 paragraph, subsection, section or division to which the judgment is rendered.

20 **Sec. 22-5-5. Additional Definitions.**

21 For purposes of this article, the following words and phrases shall have the meanings
22 respectively ascribed to them by this section. Words and phrases not defined in this section shall
23 have the meanings as defined in section 22-1-1 or in Part 55 of the Michigan Natural Resources
24 and Environmental Protection Act, Act 451 of 1994, MCL 324.5501 et seq., or Michigan

1 Administrative Code, R 336.1101 et seq.

2 Asphalt milling, also known as asphalt grinding or RAP (Reclaimed Asphalt Pavement) means
3 the fine particles of bitumen and inorganic material that are produced by the mechanical grinding
4 of bituminous concrete surfaces.

5 ASTM means the American Society for Testing and Materials.

6 Bulk solid material means any solid substance or material that can be used as a fuel or as an
7 ingredient or component in a manufacturing or construction process that may create fugitive dust
8 and that is accumulated in an amount of 50 cubic yards or more at any one time, including, but not
9 limited, asphalt millings, ores, iron and steel slag, gravel, sand, and limestone, but shall not include
10 salt, grains, commercial solid waste, or garbage. Bulk solid material also includes any
11 carbonaceous material, regardless of the amount. Bulk solid material does not include material
12 stored at nurseries, garden centers, and farm supply stores (NAICS Code 444220).

13 Carbonaceous bulk solid material means bulk solid material that includes carbonaceous
14 material.

15 Carbonaceous bulk solid material facility means a source, site, or facility where carbonaceous
16 bulk solid material is stored, loaded, unloaded, stockpiled, handled on-site, blended, processed, or
17 otherwise managed.

18 Carbonaceous material means a solid substance that occurs naturally or exists as a result of a
19 human-made process that is rich in carbon, and includes, but is not limited to, coal and coke in its
20 various forms, including but not limited to, nut coke, coke breeze, petroleum coke, and
21 metallurgical coke, but does not include asphalt millings.

22 Construction bulk solid material means bulk solid material that can be used in a construction
23 process and also includes asphalt millings, ores, iron and steel slag, gravel, sand, and limestone.

24 CFR means the United States Code of Federal Regulations.

1 Chemical stabilizer is any chemical dust suppressant which is not prohibited for the uses
2 regulated by this article or by any other applicable law, and which meets all applicable
3 specifications required by any federal, state, or local agency.

4 Coal means a solid, brittle, carbonaceous rock classified as anthracite, bituminous,
5 subbituminous, or lignite by ASTM Designation D388-77.

6 Coke means a solid carbonaceous material derived from the distillation of coal (including
7 metallurgical coke) or from oil refinery coker units or other cracking processes (including
8 petroleum coke), and includes, but is not limited to, nut coke and coke breeze.

9 Enclosure plan means the plan described in section 22-5-41.

10 Facility means all contiguous land, and structures, other appurtenances, and improvements on
11 the land, used for storing, on-site handling, loading, unloading, stockpiling or processing bulk solid
12 material.

13 Fugitive dust means any solid particulate matter that becomes airborne by natural or human-
14 made activities, excluding engine combustion exhaust and particulate matter emitted from a
15 properly permitted exhaust stack equipped with a pollution control device.

16 Fugitive dust plan means the plan described in sections 22-5-17 and 22-5-18.

17 High wind conditions means when average wind speeds exceed 20 miles per hour over two
18 consecutive five minute intervals of time.

19 Internal road means any route within a facility that is not located in an area normally used for
20 staging or storage of material and that has evidence of repeated prior travel by, or is otherwise
21 regularly used by, vehicles for transporting materials to, from, or within a facility.

22 Metallurgical coke, or metcoke, means a carbonaceous material resulting from the
23 manufactured purification of coal.

24 Opacity means the highest degree to which visibility of a background (e.g., blue sky) is

1 reduced by fugitive dust, expressed as a percentage where 0% represents no interference by
2 fugitive dust and 100% represents zero visibility due to complete interference by fugitive dust.

3 *Petroleum coke, or petcoke,* means a solid carbonaceous residue produced from a coker after
4 cracking and distillation from petroleum refining operations, including such residues produced by
5 petroleum upgraders in addition to petroleum refining.

6 *PM10* means particulate matter that has an aerodynamic diameter less than or equal to a
7 nominal 10 micrometers, as measured by a reference test specified in 40 CFR part 51, appendix
8 M.

9 *Process or processing* means any chemical, industrial, commercial, or manufacturing
10 operation or activity that causes, or has the potential to cause, the emission of airborne particles
11 including, but not limited to, blending, mixing, crushing, screening, breaking, wet or dry cleaning,
12 thermal drying, and chemically treating.

13 *Reportable action level* means a PM10 level of 150 micrograms per cubic meter or more
14 measured at a facility that will trigger response activities under a contingency plan pursuant to
15 subsection (i) of section 22-5-18 as established in the fugitive dust plan submitted by a facility
16 under section 22-5-17.

17 *Transfer point* means the location at or within a facility where material being moved, carried,
18 or conveyed is dropped or deposited.

19 *Vehicle* means any car, truck, railcar, vessel or any other device in, upon, or by which any
20 person or property is or may be transported.

21 *Vessel* means every description of watercraft used or capable of being used as a means of
22 transportation on water.

23 *Wind screen* means a structure that is sufficient to deflect the wind away from stored or
24 conveyed material to reduce fugitive dust emissions to compliance levels, is adjacent to three sides

1 of stored material, and for conveyed material is adjacent to both sides of and extends along the
2 entire length of the conveyor, and is tall enough to extend above and below both the conveyor and
3 conveyed material.

4 **Sec. 22-5-6. Alternative Compliance for Qualified Solid Bulk Materials.**

5 (a) Notwithstanding divisions 2 to 5, the owner or operator of a facility that processes,
6 handles or transfers on-site, transfers, loads, unloads, stockpiles, or stores qualified solid bulk
7 materials shall be deemed in compliance with this article if all of the following apply:

8 (i) The owner or operator has submitted a state operating plan for the facility
9 pursuant to section 5524 of the Natural Resources and Environmental Protection
10 Act, being MCL 324.5524, and R 336.1371 and 336.1372 of the Michigan
11 Administrative Code, in compliance with section 5524 of the Natural Resources
12 and Environmental Protection Act, being MCL 324.5524;

13 (ii) The state operating plan , including any amendment, is effective and the owner
14 or operator is in compliance with the state operating plan; and

15 (iii) The state operating plan includes the information required by section 5524(5) of
16 the Natural Resources Environmental Protection Act, being MCL 324.5524(5),
17 and all of the following additional information is included in the state operating
18 plan, included in an active national pollutant discharge elimination system or
19 active groundwater permit for the facility issued by the Michigan Department of
20 Environmental Quality, or included with any supplemental information filed
21 with BSEED with an application for a certificate of alternative compliance under
22 this section:

23 (A) A site map for the facility that includes all of the information otherwise
24 required under section 22-5-18(c)(2) to (5);

1 (B) A description of the facility's operations, including a list of all bulk solid
2 materials that are construction bulk solid materials handled at, processed at,
3 or transported to, from, or within the facility;

4 (C) A description of the control measures, devices, and technologies to be used
5 to minimize and control fugitive dust at the facility consistent with any
6 applicable standard for density of emissions under Rule 336.1301 of the
7 Michigan Administrative Code, a description of how all control measures,
8 devices, and technologies will be maintained and calibrated to ensure their
9 continued effectiveness, and a description of the training provided to staff
10 regarding the proper application and operation of the control measures,
11 devices, and technologies;

12 (D) A description of the owner or operator's system for recordkeeping
13 compliant with the requirements otherwise applicable under section 22-5-
14 31(a), (b), and (f), the system of recordkeeping for the owner or operator's
15 compliance with subparagraphs (C) and (H) of this section, and compliant
16 with a requirement that the owner or operator keep and maintain the records
17 described in this subparagraph at the facility and available for inspection by
18 BSEED for at least 3 years after creation;

19 (E) A description of the owner or operator's measures to comply with any
20 applicable setback requirements under a state law, rule, or permit, or
21 applicable under Chapter 61 of this Code;

22 (F) A description of measures to comply with the requirements relating to
23 height limits and screening of piles otherwise applicable under Section 22-
24 5-52;

1 (G) A description of protections for waterways consistent with the requirements
2 of any applicable state law, rule, or permit, or the requirements of this Code
3 or a permit issued by the City;

4 (H) A description of the owner or operator's measures to monitor wind speeds
5 at the facility and to suspend disturbance of piles of qualified bulk solid
6 materials, including, but not limited to, outdoor loading, unloading, and any
7 other processing, during high wind conditions unless alternate measures are
8 implemented to effectively control dust in accordance with any applicable
9 state operating plan or permit; and

10 (I) A description of storm water management, erosion, sediment control, and
11 drainage measures to control runoff or migration at or from the facility in a
12 manner consistent with requirements under any applicable state law, rule,
13 or permit, or with any requirement of this Code or a City permit, or both.

14 (iv) If the owner or operator is relying only upon a state operating plan for
15 compliance with this section, the owner or operator files a copy of the state
16 operating plan and any amendments to document compliance with this section
17 and all of the following apply:

18 (A) Within 45 days of receipt, BSEED reviews the operating plan and any
19 amendments and inspects the facility for compliance with the requirements
20 of this section to determine whether the operating plan and any amendments
21 satisfy the requirements of this section and are adequate to protect the public
22 health and the environment and to prevent the emission of fugitive dust that
23 causes unreasonable interference with the comfortable enjoyment of life
24 and property;

1 (B) Within 45 days of the inspection BSEED determines and notifies the owner
2 or operator of the facility in writing that the owner or operator of the facility
3 is in compliance with this section; and

4 (C) The owner or operator remains in compliance with this section.

5 (v) If the owner or operator is relying upon a state permit not part of a state operating
6 plan or other supplemental information filed with BSEED in addition to a state
7 operating plan for compliance with this section, the owner or operator complies
8 with all of the following:

9 (A) The owner or operator files a copy of the state operating plan and any
10 amendments and any supplemental information to document compliance
11 with this section with BSEED along with an application for alternative
12 compliance under this section on a form determined by BSEED;

13 (B) Within 45 days of receipt, BSEED (1) reviews the application and other
14 documents submitted, (2) inspects the facility for compliance with the
15 requirements of this section to determine whether the application and other
16 documents submitted satisfy the requirements of this section and are
17 adequate to protect the public health and the environment and to prevent the
18 emission of fugitive dust that causes unreasonable interference with the
19 comfortable enjoyment of life and property, and (3) issues a certificate of
20 alternative compliance confirming compliance with this section; and

21 (C) The owner or operator remains in compliance with this section. BSEED
22 may revoke a certificate of alternative compliance issued under this section
23 if an owner or operator does not remain in compliance with this section.

24 (b) If an owner or operator of a facility is deemed in compliance with this article under

1 subdivision (a) and the owner or operator either violates the requirements of the state operating
2 plan or permit for the facility or otherwise violates section 5524 of the Natural Resources and
3 Environmental Protection Act, being MCL 324.5524, or R 336.1371 and 336.1372 of the
4 Michigan Administrative Code, and the Michigan Department of Environmental Quality or
5 another state officer or agency does not act to remedy or penalize the violation, the violation
6 may enforced as a blight violation under section 22-1-17.

7 (c) Nothing in subdivision (b) shall be an exclusive remedy, or be construed to impair or
8 bar any cause of action or legal or equitable remedy of any person or the public under
9 applicable laws and regulations.

10 (d) BSEED shall conduct semi-annual inspections for the purpose of monitoring
11 compliance with this section and may conduct other inspections for the purpose of monitoring
12 compliance with this article. If BSEED determines that an owner or operator is not complying
13 with the requirements of this article, including, but not limited to this section, BSEED shall
14 require the owner or operator to take action to comply with this article, or both, and shall
15 impose fines authorized under this article for each day the owner or operator fails to take the
16 action required by BSEED.

17 (e) An owner or operator of a facility not in compliance with this section at any time must
18 comply with divisions 2 to 5 of this article.). An owner or operator of a facility shall not be
19 deemed in compliance with this section if one or more of the following apply:

20 (i) The State determines that the owner or operator is not in compliance with a
21 state operating program or state permit applicable to the facility;

22 (ii) BSEED determines that the owner or operator has not complied with the
23 requirements of this section; or

24 (iii) The owner or operator of the facility violates R 336.1901 of the Michigan

1 Administrative Code.

2 (f) For purposes of this section, the following words and phrases shall have the meanings
3 respectively ascribed to them by this section. Words and phrases not defined in this section
4 shall have the meanings as defined in section 22-1-1 or in Part 55 of the Michigan Natural
5 Resources and Environmental Protection Act, Act 451 of 1994, MCL 324.5501 et seq., or
6 Michigan Administrative Code, R 336.1101 et seq.

7 *Qualified bulk solid materials* means bulk solid materials that satisfy all of the following:

- 8 (i) Are construction bulk solid materials;
9 (ii) Are not part of an active construction site described in section 22-5-10(b);
10 (iii) Are not carbonaceous bulk solid material; and
11 (iv) Are a fugitive dust source or a potential fugitive dust source.

12 *State operating plan* means an operating program for a fugitive dust source or potential
13 fugitive dust source under section 5524 of the Natural Resources and Environmental
14 Protection Act, being MCL 324.5524. An operating plan includes a fugitive dust control
15 program under R 336.1371 and 336.1372 of the Michigan Administrative Code.

16 **Sec. 22-5-7. Alternative Compliance for Scrap Processors.**

17 (a) Notwithstanding divisions 2 to 5, a scrap processor shall be deemed in compliance
18 with this article if all of the following apply:

- 19 (i) The scrap processor holds a business license issued by BSEED under division 2
20 of article VIII of chapter 49 of this Code and the business license has not expired
21 without submission of a renewal application or been suspended or revoked;
22 (ii) The scrap processor does not handle or transfer on-site, transfer, load, unload,
23 stockpile, store, or process carbonaceous bulk solid materials at the facility for
24 which the business license described in subparagraph (i) was issued;

1 (iii) The scrap processor is in compliance with all of the following:

2 (A) Article VIII of chapter 49 of this Code;

3 (B) Sections 7, 9, and 10 of the Scrap Metal Regulatory Act, Act 429 of 2008,
4 being MCL 445.421 to 445.443; and

5 (C) Any applicable standard for density of emissions under Rule 336.1301 of
6 the Michigan Administrative Code.

7 (iv) The scrap processor does not engage in a milling activity at the facility for which
8 the business license described in subparagraph (i) was issued that generates
9 fugitive dust visible beyond the property line of the facility; in violation of an
10 applicable permit for the facility or an applicable standard for density of
11 emissions under Rule 336.1301 of the Michigan Administrative Code; and

12 (v) The scrap processor uses measures to mitigate out-going material transport
13 vehicles from causing any track-out of materials onto the public way such as
14 rumble strips or wheel wash stations, or both;

15 (b) If a scrap processor is deemed in compliance with this article under subdivision (a),
16 the scrap processor violates Rule 336.1301 of the Michigan Administrative Code, and a state
17 officer or agency does not act to remedy or penalize the violation, the violation may be
18 enforced as a blight violation under section 22-1-17.

19 (c) Nothing in subsection (b) shall be an exclusive remedy, or be construed to impair or
20 bar any cause of action or legal or equitable remedy of any person or the public under
21 applicable laws and regulations.

22 (e) BSEED shall conduct semi-annual inspections for the purpose of monitoring
23 compliance with this section and may conduct other inspections for the purpose of monitoring
24 compliance with this article.

1 (f) An owner or operator of a facility not in compliance at any time with this section must
2 comply with divisions 2 to 5 of this article.

3 (g) For purposes of this section, the following words and phrases shall have the meanings
4 respectively ascribed to them by this section. Words and phrases not defined in this section
5 shall have the meanings as defined in section 22-1-1.

6 Scrap processor means a scrap metal dealer or a scrap metal processor as those terms are
7 defined under section 3 of the Scrap Metal Regulatory Act, Act 429 of 2008, being MCL
8 445.423.

9 **Secs. 22-5-8– 22-5-9. Reserved.**

10 **DIVISION 2. BULK SOLID MATERIAL FACILITIES – GENERAL**
11 **REQUIREMENTS**

12 **Sec. 22-5-10. Operating and Maintenance Practices.**

13 (a) Except as provided in subsection (b) and (c), a facility that processes, handles or
14 transfers on-site, transfers, loads, unloads, stockpiles, or stores bulk solid materials shall
15 comply with the requirements of this article.

16 (b) A location that is an active construction site with all appropriate building permits and
17 to which bulk solid materials are delivered for use in the construction at that site or at which
18 bulk solid materials are temporarily situated for use in the construction at that site shall not be
19 considered a facility subject to the requirements of this article.

20 (c) Asphalt millings removed as part of a public paving or repaving project (a project
21 conducted, controlled or funded by the governments or agencies of the City of Detroit, the
22 County of Wayne, the State of Michigan, or the United States) and temporarily stored on or
23 adjacent to that project for reuse in that project shall not be considered a facility subject to the
24 requirements of this article if the temporary storage period does not exceed 45 days.

1 **Sec. 22-5-11. Certificate of Operation.**

2 (a) Every owner or operator of a facility subject to this article must possess a certificate of
3 operation issued by BSEED.

4 (b) The owner or operator shall submit to BSEED an application for a certificate of operation.
5 Upon the owner or operator providing evidence of compliance with the provisions of this article,
6 including, where applicable, submitting an approved fugitive dust plan or an approved enclosure
7 plan, or both, and upon payment of the fee established by the BSEED director pursuant to a
8 schedule of fees, to cover the cost of application review and compliance inspection, BSEED shall
9 issue a certificate of operation in accordance with the provisions of this article.

10 (c) The certificate of operation shall be conditioned upon continued compliance with this
11 article.

12 (d) BSEED may impose dust control requirements, in addition to the requirements set forth
13 in this article, as a condition of the facility's certificate of operation, if BSEED finds that the
14 facility has failed to demonstrate its ability to control fugitive dust and the additional dust control
15 requirements are necessary to protect the public health and environment.

16 (e) In the case of a facility operating under all applicable permits issued by BSEED and
17 subject to a certificate of operation issued by BSEED as of the effective date of the ordinance that
18 added this section, BSEED may issue a temporary certificate of operation.

19 **Sec. 22-5-12 Reviewing and approving applications.**

20 (a) In determining whether to approve a fugitive dust plan and issue a certificate of operation,
21 BSEED shall solicit comments from the health department and the water and sewerage department.
22 BSEED shall evaluate the information provided in the application to meet the requirements of this
23 article.

24 (b) The BSEED director shall deny the application if it is incomplete or if the application

1 does not demonstrate compliance with the requirements of this article.

2 (c) The BSEED director may attach reasonable conditions to the certificate of operation to
3 ensure minimization of any adverse impacts.

4 **Sec. 22-5-13 Change in Facility Operations.**

5 If any part of the facility's operation expands or changes, then, at least 30 days before the
6 expansion or change in operation, the facility owner or operator shall notify the BSEED director,
7 submit an application to amend the certificate of operation, and submit a revised fugitive dust plan
8 or establish to BSEED's satisfaction that the expanded or changed operation will be compliant
9 with the existing fugitive dust plan.

10 **Sec. 22-5-14 Inspections by BSEED.**

11 BSEED shall conduct inspections for the purpose of monitoring compliance with this article
12 on a semiannual basis. BSEED may conduct inspections for the purpose of monitoring compliance
13 with this article in response to any complaint received by BSEED or BSEED's reasonable
14 suspicion of a violation of this article.

15 **Sec. 22-5-15 Fugitive Dust.**

16 (a) A facility owner or operator shall prevent the discharge into the atmosphere of visible
17 fugitive dust as specified in this division.

18 (b) A facility owner or operator shall not cause or allow any fugitive dust that is visible
19 beyond the property line of the facility. The facility owner or operator shall prevent the
20 discharge into the atmosphere of visible fugitive dust as specified in this division.

21 **Sec. 22-5-16. Opacity Limits; Measurement.**

22 (a) An owner, operator or other person responsible for any fugitive dust source subject
23 to this article shall not cause or allow the emission of fugitive dust from any road, lot, or
24 storage pile, including any material handling activity at a storage pile, that has an opacity

1 greater than 5%.

2 (b) An owner or operator of a facility subject to this article shall not cause or allow any
3 fugitive dust beyond the property line of the facility that has an opacity greater than [0%].

4 (c) Opacity shall be determined by reference test method 9d, as defined in Section 5525
5 of the Michigan Natural Resources and Environmental Protection Act, 1995 PA 451, being
6 MCL 15 324.5525(j).

7 (d) The facility owner or operator shall, on at least a quarterly basis, periodically perform
8 tests of visual fugitive dust and opacity in accordance with the protocol set forth in the
9 approved fugitive dust plan.

10 **Sec. 22-5-17. Fugitive Dust Plan – Required.**

11 (a) Every owner or operator of a facility subject to this article must submit and follow a
12 fugitive dust plan.

13 (b) If the owner or operator of the facility has obtained approval from the State of Michigan
14 of a state operating plan as defined in section 22-5-6 pursuant to state laws or regulations, including
15 but not limited to MCL 324.5524 and Rules R. 336.1371 and R. 336.1372 of the Michigan
16 Administrative Code, and the state operating plan, including any amendments, is currently legally
17 enforceable and in effect, then the owner or operator of the facility shall provide a complete and
18 current copy of the state operating plan, including any amendments to BSEED, along with a
19 statement indicating where and how the requirements of this article are addressed by the state
20 operating plan. Unless BSEED makes specific findings that the state operating plan contains
21 deficiencies or omissions that would render it insufficient to ensure compliance with this article,
22 the state operating plan shall be presumed to satisfy the requirements of this article. The owner or
23 operator shall notify BSEED in advance of any submissions of new or amended state operating
24 plans. Notwithstanding this subsection, the owner or operator of the facility shall install, operate,

1 and maintain fugitive dust monitors pursuant to section 22-5-19 unless the owner or operator of
2 the facility conducts fugitive dust monitoring that is no less stringent than the requirements of
3 section 22-5-19.

4 (c) If BSEED, at any time, finds that the submitted fugitive dust plan is missing any required
5 information or is insufficient to ensure compliance with this article, BSEED shall disapprove the
6 fugitive dust plan and require submission of an amended fugitive dust plan. If there is any change,
7 modification, or addition to any facility component described in an approved fugitive dust plan,
8 the facility owner or operator shall submit an amended fugitive dust plan to BSEED for review
9 and approval at least 30 days before such change, modification, or addition.

10 (d) The first fugitive dust plan shall be due within 180 days of the effective date of the
11 ordinance that enacted this article. For facilities that are constructed or become subject to this
12 article after it is enacted, the first fugitive dust plan shall be submitted with the facility's application
13 for a certificate of operation and before the facility accepts any bulk solid materials. After April
14 30 and before July 1 of each year, the owner or occupant of the facility shall submit to BSEED an
15 annual update to the fugitive dust plan for BSEED's review.

16 **Sec. 22-5-18. Fugitive Dust Plan – Contents**

17 The fugitive dust plan shall include, at a minimum, the following components:

18 (a) The name and address of the facility;

19 (b) The name, address, and contact information of the owner or operator responsible for
20 implementation of the fugitive dust plan

21 (c) A site map, drawn to scale, depicting the following information:

22 (1) Facility boundaries;

23 (2) All buildings, internal roadways, and utilities on facility property;

24 (3) All roadways and transportation corridors within one quarter mile of the

1 perimeter of the facility that are used for transport of material to or from the
2 facility;

3 (4) The location of all floor drains, storm drains, and storm water outfalls;

4 (5) All potential emissions points at the facility, including a depiction of the
5 footprints of all bulk solid material storage piles; and

6 (6) The locations of all control devices and monitoring devices, including the fugitive
7 dust monitors required under section 22-5-19 and the wind monitors required
8 under section 22-5-20;

9 (d) A description of the facility's operations, including a list of all bulk solid materials
10 handled at, processed at, or transported to, from, or within the facility;

11 (e) A description of the truck routes within one quarter mile of the perimeter of the facility
12 that are used to transport material to and from the facility, including an explanation of how
13 dust will be minimized during transport (e.g., travel on paved roads where possible, minimize
14 truck speeds, etc.) and a description of the measures that will be used to ensure trucks are
15 cleaned of loose material before they leave the facility;

16 (f) A calculation showing the facility's maximum total indoor and outdoor bulk solid
17 material storage capacity in tons or cubic yards. In the first fugitive dust plan, due within 180
18 days after the effective date of the ordinance that enacted this article, the calculation shall be
19 certified by signature of an authorized representative of the owner or operator and shall be
20 accompanied by evidence of authority to sign on behalf of the owner or operator;

21 (g) A description of the control measures, devices, and technologies to be used to
22 minimize and control fugitive dust, a description of how all control measures, devices, and
23 technologies will be maintained and calibrated to ensure their continued effectiveness, and a
24 description of the training provided to staff regarding the proper application and operation of

1 the control measures, devices, and technologies;

2 (h) A dust monitoring plan that describes:

3 (1) the placement, operation, and maintenance of the PM10 monitors if required
4 under section 22-5-19; and

5 (2) The schedule and plan for quarterly testing to ensure compliance with the
6 prohibition on fugitive dust set forth in this article. Such testing must be:

7 i. conducted by a professional trained and certified to read opacity in
8 accordance with the measurement method specified in section 22-5-16, and

9 ii. conducted during a range of weather conditions to ensure that representative
10 conditions are the facility are covered;

11 (i) A contingency plan describing the owner's or operator's response activities when
12 PM10 exceeds the reportable action level. The response activities should consist of a range of
13 increasingly aggressive measures appropriate to different levels of exceedance;

14 (j) A contingency plan for an alternative method of monitoring in the event of malfunction
15 or failure of any required PM10 monitors;

16 (k) A description of the facility's recordkeeping system, which shall include a schedule
17 for routine inspection, testing, and maintenance as required in section 22-5-31;

18 (l) Other information as BSEED may require to facilitate its review of the fugitive dust
19 plan; and

20 (m) A fact sheet or executive summary of the fugitive dust plan designed to inform the
21 public of the facility's plan to control and minimize fugitive dust, which may be posted on the
22 city's website.

23 **Sec. 22-5-19. Fugitive Dust Monitoring.**

24 Unless, either pursuant to the variance procedure set forth in division 5 of this article or

1 because the facility does not include carbonaceous bulk solid materials and is enclosed in
2 accordance with Sec. 22-5-42, the facility owner or operator establishes that the facility's
3 operations do not and will not result in off-site fugitive dust emissions, the owner or operator of
4 the facility shall install, operate, and maintain around the perimeter of the facility, according to
5 manufacturer's specifications, permanent, continuous Federal Equivalent Method (FEM) real-time
6 PM10 monitors, or other sensors acceptable to BSEED and the Health Department that provide
7 equivalent information, in accordance with the requirements specified below:

8 (a) During the first year of monitoring, at least two monitors must be located at
9 opposite ends of the facility to monitor fugitive dust in the ambient air around the facility;

10 (b) During the second and subsequent years of monitoring, monitors must be placed
11 at the facility in compliance with an approved fugitive dust monitoring plan for the facility
12 based on data collected from monitors placed under subdivision (a);

13 (c) A data logger shall be attached to the monitors to record readings from the
14 monitors, and the facility owner or operator shall notify BSEED, in writing within 24
15 hours, each time the monitors exceed the reportable action level set forth in the fugitive
16 dust plan and any time monitoring equipment has malfunctioned preventing readings or
17 logging of data; and

18 (d) The facility owner or operator shall maintain a log of all routine and non-routine
19 maintenance and calibration activities associated with each fugitive dust monitor.

20 **Sec. 22-5-20. Wind Monitoring.**

21 (a) Except as provided in subsection (b), the owner or operator shall install, operate, and
22 maintain, according to manufacturer's specifications, a weather station or other permanent
23 device to monitor and log wind speed and wind direction at the facility at an unobstructed,
24 unsheltered area, centrally positioned in relation to the storage piles, and at a minimum height

1 of 15 feet above ground level, unless BSEED determines that another height is appropriate
2 pursuant to applicable U.S. Environmental Protection Agency protocols and guidance.

3 (b) Subsection (a) does not apply to bulk solid materials other than carbonaceous bulk
4 solid materials if all handling and storage of the bulk solid materials is conducted within
5 enclosed buildings, vehicles, and conveyors.

6 **Sec. 22-5-21. Conveyors and Transfer Points.**

7 The owner or operator shall install, operate, and maintain conveyors and material transfer
8 points in compliance with one or a combination of the following measures in order to ensure
9 compliance with the opacity limit set forth in section 22-5-16:

10 (a) Total enclosure;

11 (b) Water spray system sufficient to control fugitive dust emissions during operations;

12 (c) Vented to air pollution control equipment which is in full operation; or

13 (d) Transfer only moist material with a minimum moisture content of 8% by weight as
14 determined by ASTM analysis, unless another standard is established by an applicable state
15 law or rule, and conduct the transfer in a manner that minimizes the exposed drop.

16 **Sec. 22-5-22. Transport.**

17 When transport is by truck, the facility owner or operator shall ensure that:

18 (a) All vehicles and off-road mobile heavy equipment handling or transporting bulk solid
19 material shall adhere to the posted speed limit within the facility, which shall be no more than
20 8 miles per hour;

21 (b) Except for existing facilities, material is received or transferred only in truck beds or
22 trailers that, within one quarter mile of the perimeter of the facility, are driven only on paved
23 roads;

24 (c) Unless the approved fugitive dust plan specifies an aggressive street sweeping plan or

1 other measures to ensure that the trucks will not cause any unaddressed track-out of materials
2 onto the public way, all outgoing material transport trucks, whether loaded or empty, are
3 cleaned so that:

4 (1) Any part of any tractor, bed, trailer or tire exterior surface, excluding the inside
5 of the beds or trailer, are free of all loose material; and

6 (2) The material removed by the truck cleaning operation is collected and recycled
7 or otherwise disposed of so that it does not result in fugitive dust emissions.

8 (d) All outgoing material transport trucks, whether loaded or empty, pass over rumble
9 strips that will vibrate the trucks and shake off loose material and dust.

10 (e) Unless the approved fugitive dust plan specifies an aggressive street sweeping plan or
11 other measures in addition to the rumble strips to ensure that the trucks will not cause any
12 unaddressed track-out of materials onto the public way, all outgoing material transport trucks,
13 whether loaded or empty, pass through a wheel wash station.

14 **Sec. 22-5-23. Vehicle Covering and Other Dust Control.**

15 The facility owner or operator shall not load material into any truck bed or trailer, railcar, or
16 vessel unless measures are in place to prevent material from escaping from the vehicle as follows:

17 (a) Truck beds and trailers must be immediately covered before leaving the facility in one
18 of the following manners:

19 (1) A solid sliding cover or stackable cover on the top of the truck bed or trailer that
20 is kept completely closed except during loading; or

21 (2) A continuous tarp that completely covers the truck bed or trailer and that is
22 installed or constructed to prevent wind from entering over the leading edge of
23 the bed or trailer rim into the interior of the bed or trailer.

24 (b) Railcars and vessels must be loaded in a manner that will control dust through the use

1 of best management practices such as, but not limited to, the use of solid covers, the
2 application of dust suppression agents and/or water, and the profiling of materials to prevent
3 wind erosion.

4 **Sec. 22-5-24. Vehicle Leaking.**

5 Facility owners or operators shall not load material into truck beds or trailers, railcars, or
6 vessels such that a vehicle leaks material or liquid that contains material onto internal roads or into
7 waterways. If a vehicle leaks material or liquid that contains material onto an internal road or into
8 a waterway, the facility owner or operator shall clean the affected road within one hour with a
9 street sweeper or water and shall clean the affected waterway immediately.

10 **Sec. 22-5-25. Truck Loading and Unloading.**

11 For enclosed carbonaceous bulk solid material storage piles, the facility owner or operator
12 shall conduct material truck loading and unloading only in an enclosed structure that is either
13 equipped with a water spray system to be used as needed to prevent visible dust emissions or
14 vented to permitted air pollution control equipment that is operated during loading and unloading
15 activities. The ends of the structure shall have overlapping flaps that reduce the opening, sliding
16 doors which shall remain closed except to allow the trucks to enter and leave, or other equally
17 effective devices. For outdoor bulk solid material storage, the facility owner or operator shall
18 ensure that truck loading and unloading occurs in compliance with the requirements for transfer
19 points specified in section 22-5-21.

20 **Sec. 22-5-26. Railcar Loading and Unloading.**

21 For enclosed carbonaceous bulk solid material storage piles, the facility owner or operator
22 shall conduct railcar material loading and unloading only in an enclosed structure that is either
23 equipped with a water spray system operated to prevent visible dust emissions, or vented to
24 permitted air pollution control equipment that is operated during loading and unloading activities.

The ends of the structure shall have overlapping flaps, sliding doors or other equally effective devices, which shall remain closed except to allow the railcars to enter and leave. For outdoor bulk solid material storage, the facility owner or operator shall ensure that railcar loading and unloading occurs in compliance with the requirements for transfer points specified in section 22-5-21.

Sec. 22-5-27. Vessel Loading and Unloading.

The facility owner or operator shall conduct vessel material loading only through an enclosed chute that uses a water spray system, or an air pollution control system or other mechanism described in the approved fugitive dust plan, in order to control fugitive dust emissions during operations. Vessel unloading shall be conducted in a manner that will minimize dust in accordance with measures set forth in the fugitive dust plan and in compliance with the requirements for transfer points specified in section 22-5-21.

Sec. 22-5-28. Reserved.

Sec. 22-5-29. Roadway Cleaning.

In order to clean roads of spilled and tracked material, the facility owner or operator shall use a street sweeper to clean any paved road that is used to transport material inside or within one quarter mile of the perimeter of the facility and shall comply with all of the following requirements:

(a) The street sweeper shall be equipped with a water spray for use during nonfreezing weather, and a vacuum system to prevent fugitive dust during street sweeping;

(b) The street sweeping shall be sufficient so that not more than 8 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, unless the roads are free and clear of any material transported to or from the facility; and

(c) Each day, the facility owner or operator shall document whether for that day the facility owner or operator is street sweeping every eight hours or every 100 trucks, or whether

1 the roads are free and clear of any material transported to or from the facility. The record shall
2 show the date and time when street sweeping was performed and the truck count, as
3 applicable.

4 **Sec. 22-5-30. Spilled Material.**

5 The facility owner or operator shall maintain all areas within the facility not regularly used
6 for storage of bulk solid material free of any spilled or misplaced material by removing such
7 material by the end of each work shift.

8 **Sec. 22-5-31. Recordkeeping.**

9 The facility owner or operator shall keep and maintain facility logs as follows:

10 (a) Record daily, all cleaning and street sweeping;

11 (b) Record the application of water and/or chemical stabilizers, as applicable, and note
12 any instances when such application is suspended for any reason, including but not limited to,
13 weather conditions;

14 (c) Record any instances when activities are suspended due to high winds as required by
15 section 22-5-54, as applicable;

16 (d) Record the results of the continuous monitoring for fugitive dust as required in section
17 22-5-19, indicate any instances when a monitor detects fugitive dust that exceeds the
18 reportable action level set forth in the fugitive dust plan, and record the action taken to respond
19 to the detection of fugitive dust;

20 (e) Record quarterly, the results of the tests of visual fugitive dust and opacity as required
21 in section 22-5-16;

22 (f) Maintain a schedule for routine inspection, maintenance, and testing of all control
23 measures, devices, and technologies, including a schedule for inspection of bulk solid material
24 piles, inspection of any monitors, and inspection of off-site areas for the presence of dust; and

1 identify the person or persons responsible for such inspections, maintenance, and testing;

2 (g) All records required to be kept pursuant to this article shall be submitted to BSEED
3 on a quarterly basis and kept and maintained at the facility and be available for inspection for
4 a minimum of three years from the date the record is created.

5 **Sec. 22-5-32. Inspections.**

6 Inspections for the purpose of monitoring compliance with this article shall be conducted by
7 BSEED on at least a semi-annual basis and in response to any complaint received by BSEED.

8 **Secs. 22-5-33 – 22-5-39. Reserved.**

9 **DIVISION 3. CARBONACEOUS BULK SOLID MATERIAL FACILITIES**

10 **Sec. 22-5-40. Enclosure of Carbonaceous Bulk Solid Materials.**

11 The owner or operator of a carbonaceous bulk solid material facility shall maintain all
12 carbonaceous bulk solid material in fully enclosed structures in accordance with the enclosure
13 requirements set forth in this division.

14 **Sec. 22-5-41. Enclosure Plan.**

15 The owner or operator of any carbonaceous bulk solid material facility shall submit to BSEED
16 for review and approval a plan (the “enclosure plan”) for total enclosure of all carbonaceous bulk
17 solid material piles, conveyors, transfer points, and processing areas at the facility. The enclosure
18 plan shall include:

19 (a) A construction schedule prepared using the critical path method for completion of
20 engineering, procurement, permitting, and construction of the enclosure; and

21 (b) An fugitive dust plan that shall include, at a minimum, the following components:

22 (1) A site map, drawn to scale, depicting the following information:

23 i. Facility boundaries;

24 ii. All buildings, internal roads and utilities on facility property;

- 1 iii. All roadways within one quarter mile of the perimeter of the facility that are
2 used for transport of material to or from the facility;
- 3 iv. The location of all floor drains, storm drains, and storm water outfalls;
- 4 v. All potential fugitive dust emissions points at the facility, including a
5 depiction of the footprints of all carbonaceous bulk solid material piles;
- 6 vi. The locations of all control devices and monitoring devices, including the
7 fugitive dust monitors required under section 22-5-19 and the wind monitor
8 required under section 22-5-20;
- 9 (2) A site map, drawn to scale, depicting the boundaries of any associated
10 carbonaceous bulk solid material facility owned or operated by the owner or
11 operator at which the owner or operator intends to temporarily store
12 carbonaceous bulk solid materials during implementation of the enclosure plan,
13 and including all the information required in paragraph (1) of subsection (b) of
14 this section;
- 15 (3) A description of the facility's operations, including a list of all carbonaceous
16 bulk solid materials handled at the facility;
- 17 (4) A description of all control measures, devices, and technologies to be used to
18 minimize and control fugitive dust during transport to and from the facility while
19 materials are staged, loaded, unloaded, processed, or otherwise handled at the
20 facility;
- 21 (5) A dust monitoring plan that describes the placement, operation, and maintenance
22 of the PM10 monitors required under section 22-5-19, including an explanation
23 of the background levels of PM10 leaving a facility that will determine the

1 reportable action level (20% increase) based on the concentration of PM10
2 detected at the downwind monitor(s) at a facility;

3 (6) A contingency plan describing the owner's or operator's response activities
4 when the monitors required under section 22-5-19 detect PM10 that exceeds the
5 reportable action level established pursuant to subsection (g) of section 22-5-18,
6 and a contingency plan for an alternative method of monitoring in the event of
7 malfunction or failure of the approved PM10 monitors;

8 (7) A spill control and pollution prevention plan describing the owner's or
9 operator's response activities to address spills of any stored materials and to
10 protect and prevent any stored material from spilling into any floor drains, storm
11 drains, or storm water outfalls; and

12 (8) A description of the facility's recordkeeping system, which shall include a
13 schedule for routine inspection and maintenance of the control measures,
14 devices, and technologies, and the identity of the person or persons responsible
15 for such maintenance and testing.

16 **Sec. 22-5-42. Enclosure Requirements.**

17 Fully enclosed structures for all carbonaceous bulk solid material handling, storage, and
18 transfer operations must satisfy the following requirements:

19 (a) Structures used to store, handle, or transfer carbonaceous bulk solid materials must be
20 completely enclosed structures with an impervious floor, four walls, and an approved roof;

21 (b) Structures used to store, handle, or transfer carbonaceous bulk solid materials shall be
22 designed, permitted and constructed in accordance with applicable building code
23 requirements, zoning requirements, and other applicable laws, ordinances, and regulations;

1 (c) Structures used to store, handle, or transfer carbonaceous bulk solid materials shall be
2 properly maintained and shall be equipped with and shall use a permitted air pollution control
3 system and/or the ability to apply water to materials within a structure sufficient to control
4 fugitive dust emissions at designed vents and at any other openings, including entrances and
5 exits;

6 (d) Entrances and exits for material or vehicles shall have overlapping flaps, sliding doors
7 or other devices(s), which shall remain closed except to allow material or vehicles to enter
8 and leave or to allow people to enter and exit, provided that if devices other than overlapping
9 flaps or sliding doors are used, then the performance for dust control at the openings must be
10 shown in the fugitive dust plan to be equivalent to or better than that of the overlapping flaps
11 or sliding doors used in conjunction with the required air pollution controls as determined by
12 BSEED; and

13 (e) Fully enclosed structures in compliance with this section need not comply with the
14 fugitive dust monitoring requirements of Sec. 22-5-19.

15 **Secs. 22-5-43 – 22-5-49. - Reserved.**

16 **DIVISION 4. OUTDOOR STORAGE OF BULK SOLID MATERIALS**

17 **OTHER THAN CARBONACEOUS BULK SOLID MATERIALS**

18 **Sec. 22-5-50. Outdoor Bulk Solid Material Storage.**

19 The facility owner or operator may maintain outdoor storage of bulk solid material other than
20 carbonaceous bulk solid material if the facility meets all of the requirements of this division.

21 **Sec. 22-5-51. Setbacks.**

22 Bulk solid material storage piles shall be located in accordance with setback requirements
23 established in the Detroit Zoning Ordinance, being Chapter 61 of this Code.

24 **Sec. 22-5-52. Height Limit; Screening from view.**

The vertical distance from grade immediately adjacent to a pile to the highest point of that pile shall be no greater than 50 feet. The facility owner or operator shall install and maintain, or otherwise have available at the facility, equipment or devices used to measure the height of each pile, with the equipment or devices available for use by an inspector during any inspection or use by the owner or operator of the facility to demonstrate compliance with the height limit to the satisfaction of the inspector during any inspection. Piles shall be screened from view of adjacent rights-of-way and from view of properties adjacent to the facility at the level of the right-of-way or separated from the facility by a right-of-way if the properties are located in districts zoned residential, SD4, or PR, in conformance with Chapter 61, Article XIV, Division 2, Subdivision D, in particular Secs. 61-14-235 and 61-14-237.

Sec. 22-5-53. Protection of Waterways.

Outdoor storage piles shall be set back at least 25 feet from any waterway, except that material in the process of being unloaded from or loaded to a vessel may be located within 25 feet of a waterway for a period of time not to exceed 24 hours so long as no materials are allowed to fall, erode, be thrown, discharged, dumped, disposed of, or deposited in the waterway at any time. BSEED may reduce the 25 feet setback requirement upon receipt and verification of information that a shorter setback satisfies runoff and engineering requirements specific to the site.

Sec. 22-5-54. High Wind Events.

Disturbance of outdoor bulk solid material piles, including but not limited to outdoor loading, unloading, and any other processing, shall be suspended during high wind conditions unless alternate measures are implemented to effectively control dust in accordance with the approved fugitive dust plan.

Sec. 22-5-55. Dust Suppressant System.

1 BSEED shall require the facility owner or operator to apply chemical stabilizers and/or
2 maintain and operate wind screens, water spray bars, a misting system, water spray systems, and/or
3 water trucks to prevent fugitive dust emissions in violation of section 22-5-15 and 22-5-16, in
4 accordance with the following requirements:

5 (a) Except pursuant to subsection (c), the dust suppressant system shall be operable and
6 able to dispense water, water-based solutions, and/or chemical stabilizers at all times unless
7 all bulk storage material piles are covered or protected by wind screens.

8 (b) When the temperature falls below 32 degrees Fahrenheit, the facility must use
9 chemical stabilizers and/or water heating systems to ensure that dust suppression continues.

10 (c) If any part of the dust suppressant system is undergoing maintenance or otherwise
11 becomes inoperable, the facility owner or operator must suspend disturbance of bulk solid
12 material piles that would be controlled by the inoperable portion of the dust suppressant
13 system until such time as the system becomes operable again.

14 **Sec. 22-5-56. Runoff Management.**

15 The facility owner or operator shall install and maintain storm water management, erosion,
16 and sediment controls, pursuant to a written plan, sufficient to:

17 (a) Prevent runoff from the pile onto neighboring parcels, public ways, or any water
18 bodies;

19 (b) Prevent runoff from entering into public sewers or any entry points into the storm
20 water collection system, unless such discharges are in compliance with all applicable
21 discharge permits;

22 (c) Address timely and effective ways to respond to spills and/or visible migration of
23 pollutants that could occur onsite or offsite;

1 (d) Demonstrate that the site is graded in such a way as to ensure proper drainage and to
2 prevent pooling of water.

3 **Secs. 22-5-57 – 22-5-59. Reserved.**

4 **DIVISION 5. VARIANCES.**

5 **Sec. 22-5-60. Applications for a Variance; Fee.**

6 The facility owner or operator may apply to the BSEED director for a variance from any
7 requirement or provision set forth in division 2, division 3 or division 4 of this article in accordance
8 with the provisions set forth in this division 5. The BSEED director may establish a schedule of
9 fees pursuant to which a variance review fee may be assessed per application.

10 **Sec. 22-5-61. Requirements of the Variance Application.**

11 The request for a variance must be in writing and must set forth, in detail, all of the following:

12 (a) A statement identifying the provision or requirement of this article from which the
13 variance is requested;

14 (b) A description of the process or activity for which the variance is requested, including
15 pertinent data on location, size, and the population and geographic area affected by, or
16 potentially affected by, the process or activity;

17 (c) The quantity and types of materials used in the process or activity in connection with
18 which the variance is requested, as appropriate;

19 (d) A demonstration that issuance of the variance will not create a public nuisance or
20 adversely impact the surrounding area, surrounding environment, or surrounding property
21 uses;

22 (e) A statement explaining:

23 (1) Why compliance with the regulations imposes an arbitrary or unreasonable
24 hardship;

1 (2) Why compliance cannot be accomplished during the required timeframe due to
2 events beyond the facility owner or operator's control such as permitting delays
3 or natural disasters; or

4 (3) Why the proposed alternative measure is superior or preferable.

5 (f) A description of the proposed methods to achieve compliance with the regulations and
6 a timetable for achieving that compliance, if applicable;

7 (g) A discussion of alternate methods of compliance and of the factors influencing the
8 choice of applying for a variance;

9 (h) A statement regarding the person's current status as related to the subject matter of
10 the variance request;

11 (i) For any request for a variance from the enclosure deadline set forth in section 22-5-
12 71, if the applicant is not the owner or operator of a facility operating on the effective date of
13 the ordinance that added this section, the applicant must submit all of the information required
14 in subsections (a) through (h) of section 22-5-61 and shall also submit all of the following:

15 (1) fugitive dust monitoring reports for the four months before the date of the
16 variance application, and

17 (2) in the event that the variance is granted, monthly fugitive dust monitoring
18 reports for the duration of the variance which shall be due fourteen (14) days
19 following the end of the month which the report covers.

20 (j) The monthly fugitive dust monitoring reports required by this section shall be
21 submitted in an electronic format as specified in the variance.

22 **Sec. 22-5-62. Criteria for Reviewing Applications.**

23 (a) In determining whether to grant a variance, the BSEED director will consider public
24 comments received pursuant to section 22-5-64 and will evaluate the information provided

1 in the application to meet the requirements of section 22-5-61. Particular consideration will
2 be given to the following information:

3 (1) Inclusion of a definite compliance program;

4 (2) Evaluation of all reasonable alternatives for compliance;

5 (3) Demonstration that any adverse impacts will be minimal.

6 (b) The BSEED director shall deny the variance if the application for the variance is
7 incomplete or if the application is outside the scope of relief provided by variances.

8 (c) The BSEED director may deny a variance, may grant a variance in whole or in part,
9 and may attach reasonable conditions to the variance to ensure minimization of any adverse
10 impacts.

11 (d) Granting a variance is at the sole discretion of the BSEED director. A variance may
12 be revoked at any time if the BSEED director finds that operation of the facility is creating a
13 public nuisance or otherwise adversely impacting the surrounding area, surrounding
14 environment, or surrounding property uses.

15 **Sec. 22-5-63. Change in Facility Operations.**

16 If any part of the facility's operation that is the subject of the variance expands or changes,
17 then, at least thirty (30) days before the expansion or change in operation, the facility owner or
18 operator shall notify the BSEED director and either apply for a new variance or notify the BSEED
19 director of the owner or operator's intent to comply with the requirements that were the subject of
20 the variance, in which case the variance will automatically terminate.

21 **Sec. 22-5-64. Notice of Variance Applications; Public Hearing; Comments from the**
22 **Public.**

23 The BSEED director shall not grant any variance under this section until after a public hearing
24 at which members of the public have had an opportunity to comment on the variance application.

1 Members of the public shall also have the opportunity to submit written comments on the variance
2 application. The BSEED director shall provide notice of all variance applications by (1)
3 publication in a newspaper of general circulation published within the city, (2) by posting on the
4 city's website, and (3) by mailed or delivered notice to all addresses located within 300 feet of the
5 boundaries of the facility seeking the variance. The public hearing shall be held not less than 14
6 days after publication of the notice. The BSEED director shall accept written comments for a
7 period of not less than thirty (30) days from the date of publication of the notice. The BSEED
8 director shall not make a decision until after close of the comment period. Notice of the decision
9 shall be posted on the city's website.

10 **Secs. 22-5-65 – 22-5-69. - Reserved.**

11 **DIVISION 6, IMPLEMENTATION AND COMPLIANCE**

12 **Sec. 22-5-70. Implementation Schedule.**

13 The provisions of this article shall take effect in three phases as follows:

14 (a) The following sections and subsections shall take effect immediately upon the
15 effective date of the ordinance that enacted this article:

16 (1) All sections with respect to new facilities or expansions of facilities, except those
17 portions in operation on the effective date of the ordinance that enacted this
18 article

19 (2) All sections within Division 1, *In General*

20 (3) All sections within Division 5, *Variances*.

21 (4) Sec. 22-5-10 *Operating and Maintenance Practices*+

22 (5) Sec. 22-5-11 *Certificate of Operation*

23 (6) Sec. 22-5-12 *Reviewing and Approving Applications*

24 (7) Sec. 22-5-13 *Change in Facility Operations*

- 1 (8) Sec. 22-5-14 Inspections by BSEED
- 2 (9) Sec. 22-5-16 Opacity Limits; Measurement
- 3 (10) Sec. 22-5-24 Vehicle Leaking
- 4 (11) Sec. 22-5-29 Roadway Cleaning
- 5 (12) Sec. 22-5-30 Spilled Material
- 6 (13) Sec. 22-5-31(a) Recordkeeping – Daily cleaning
- 7 (14) Sec. 22-5-31(g) Recordkeeping – Maintain Schedule for Routine Inspection
- 8 (15) Sec. 22-5-31(h) Recordkeeping – Timeframe for Maintenance of Required
- 9 Records
- 10 (16) Sec. 22-5-32 Inspections
- 11 (17) Sec. 22-5-70 Implementation Schedule
- 12 (18) Sec. 22-5-72 Enclosure Reporting
- 13 (19) Sec. 22-5-73 Issuance of Certificate of Operation
- 14 (20) Sec. 22-5-74 Penalties
- 15 (21) Sec. 22-5-75 Public Health Fund

16 (b) For facilities in operation on the effective date of the ordinance that enacted this

17 article, the following sections and subsections shall take effect 180 days from the effective

18 date of the ordinance that enacted this article:

- 19 (1) Sec. 22-5-15 Fugitive Dust
- 20 (2) Sec. 22-5-17 Fugitive Dust Plan – Required
- 21 (3) Sec. 22-5-18 Fugitive Dust Plan – Contents
- 22 (4) Sec. 22-5-19 Fugitive Dust Monitoring
- 23 (5) Sec. 22-5-2 Wind Monitoring
- 24 (6) Sec. 22-5-21 Conveyors and Transfer Points

1 (7) Sec. 22-5-22 Transport

2 (8) Sec. 22-5-23 Vehicle Covering and Other Dust Control

3 (9) Sec. 22-5-25 Truck Loading and Unloading

4 (10) Sec. 22-5-26 Railcar Loading and Unloading

5 (11) Sec. 22-5-27 Vessel Loading and Unloading

6 (12) Sec. 22-5-31(b) Recordkeeping – Weather Conditions

7 (13) Sec. 22-5-31(c) Recordkeeping – Application of Water or Chemical Stabilizer

8 (14) Sec. 22-5-31(d) Recordkeeping – Suspension of Activities due to High Winds

9 (15) Sec. 22-5-31(e) Recordkeeping – Dust Monitoring Results

10 (16) Sec. 22-5-31(f) Recordkeeping – Record Monthly Tests of Visual Fugitive

11 Dust

12 (17) Sec. 22-5-40 Enclosure of Carbonaceous Bulk Solid Material

13 (18) Sec. 22-5-41 Enclosure Plan

14 (19) All sections within Division 4, Outdoor Storage Of Bulk Solid Materials Other

15 Than Carbonaceous Bulk Solid Materials

16 (c) For facilities in operation on the effective date of the ordinance that enacted this
17 article, the following sections shall take effect two years from the effective date of the
18 ordinance that enacted this article:

19 (1) Sec. 22-5-42 Enclosure Requirements

20 (2) Sec. 22-5-71. Enclosure Deadline.

21 **Sec. 22-5-71. Enclosure Deadline.**

22 (a) For facilities continuing in operation on the effective date of the ordinance that enacted
23 this article: Within two (2) years from the submission of the enclosure plan, as required by
24 section 22-5-41 and paragraph (17) of subsection (b) of section 22-5-70, all carbonaceous bulk

1 solid materials must be either fully enclosed or removed from the facility, as required by
2 section 22-5-40.

3 (b) For new facilities, expansion or recommencement of operation of existing facilities:
4 compliance with the enclosure requirements is a condition to receiving a certificate of
5 operation.

6 **Sec. 22-5-72. Enclosure Reporting.**

7 During the two-year period provided in subsection (c) of section 22-5-70, the facility owner
8 or operator shall submit to BSEED quarterly reports describing the work completed within the
9 previous quarter, and the work planned in the current quarter and following quarter, towards
10 compliance with these sections. The first report shall be due on the fifteenth day of the second
11 month following the effective date of the ordinance that enacted this article, with subsequent
12 reports due on the fifteenth day of the month following each calendar quarter. The address to
13 submit the reports is:

14 Buildings, Safety Engineering & Environmental Department

15 2 Woodward Avenue, 4th Floor

16 Detroit, MI 48226

17 ATTN: Environmental Affairs.

18 The BSEED director may, at the director's sole discretion, grant extensions of the timeframes
19 provided, in accordance with the variance provisions set forth in division 5 upon request and only
20 for good cause shown by the facility owner or operator.

21 **Sec. 22-5-73. Issuance of Certificate of Operation.**

22 Upon the owner or operator providing evidence of compliance with the provisions of this
23 article, including but not limited to submitting an approved fugitive dust plan and where
24 applicable, an approved fugitive dust plan and enclosure plan, and upon payment of the fee

1 established by the BSEED director pursuant to a schedule of fees, to cover the cost of application
2 review and compliance inspection, BSEED shall issue a certificate of operation. The certificate of
3 operation shall be conditioned upon continued compliance with this article.

4 **Sec. 22-5-74. Penalties.**

5 (a) In accordance with and subject to the exceptions of section 22-2-83(g) of this code,
6 dumping, storing, depositing, or transporting bulk solid material on any private property,
7 public property, right of way, or surface water or around any approved or portable container
8 is illegal dumping, is a blight violation and is subject to the fines and penalties provided for
9 in this code.

10 (b) A violation of any other provision of this article is a municipal civil infraction subject
11 to the fines and penalties provided for in this code.

12 (c) Each day of any violation of this article constitutes a separate and distinct offense, and
13 for each such violation the fines and penalties imposed shall be assessed per day.

14 **Sec. 22-5-75. Public Health Fund.**

15 (a) The public health fund is created as a separate depository fund. The public health fund
16 shall consist of the following:

17 (1) Money deposited in the public health fund under subsection (c);

18 (2) Money appropriated or allocated to the public health fund by ordinance,
19 resolution, or this Code; and

20 (3) Donations of money to the public health fund from any other source.

21 (b) Money in the public health fund at the close of a fiscal year will remain in the public
22 health fund and not revert to the general fund.

23 (c) Notwithstanding a contrary provision of this Code, a penalty or fine paid to the City
24 for a violation of this article must be credited to and deposited in the public health fund.

1 (d) The department of public health and BSEED may expend money from the public
2 health fund upon appropriation only for activities promoting the public health and wellness of
3 residents of the City and to mitigate negative health impacts of pollution on residents of the
4 City, including, but not limited to, enforcement of this article, purchasing, installation, use,
5 and maintenance of air monitoring equipment, installation of vegetation to buffer the impact
6 of activities subject to regulation under this article, and conducting health impact assessments.

7 (e) A grant or other donation to the public health fund must be accepted by City Council
8 and is subject to any conditions on the grant or donation.

9 (f) An agreement or contract for expenditure of money from the public health fund must
10 be approved by the City Council.

11 **Secs. 22-5-76 – 22-5-79. - Reserved.**

12 **Section 2.** This ordinance is hereby declared necessary to preserve the public peace, health, safety,
13 and welfare of the People of the City of Detroit.


14 **Section 3.** All ordinances or parts of ordinances that conflict with this ordinance are repealed.

15 **Section 4.** In the event this ordinance is passed by two-thirds (2/3) majority of City Council
16 Member serving, it shall be given immediate effect and become effective upon publication in
17 accordance with Section 4-118 of the 2012 Detroit City Charter. Where this ordinance is passed by
18 less than a two-thirds (2/3) majority of City Council Members serving, it shall become effective on
19 the thirtieth day after enactment, or on the first business day thereafter, in accordance with Section 4-
20 118 of the 2012 Detroit City Charter.

Approved as to form:



Melvin Butch Hollowell
Corporation Counsel


C. N. Ramin
Deputy