

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF: )  
 )  
EMERGENCY RULEMAKING ) R2014-20  
REGARDING REGULATIONS OF ) (Rulemaking – Air/Land/Water)  
COKE/BULK TERMINALS: NEW 35 ILL. )  
ADM. CODE 213 )

**NOTICE OF FILING**

To: see attached Certificate of Service

On the 21st Day of January, 2014, I filed my Appearance and Public Comments on behalf of the Southeast Environmental Task Force with the Office of the Clerk of the Illinois Pollution Control Board.

A copy of this filing is hereby served upon you.

By: Keith Harley  
Keith Harley, Chicago Legal Clinic, Inc.

Dated: January 21, 2014

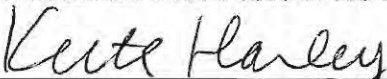
Keith Harley  
Chicago Legal Clinic, Inc.  
211 West Wacker, Suite 750  
Chicago, IL 60606  
(312) 726-2938  
(312) 726-5206 (fax)  
kharley@kentlaw.edu

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APPEARANCE

I, Keith Harley, an attorney, hereby enter my Appearance on behalf of the Southeast Environmental Task Force in the above matter.

  
\_\_\_\_\_  
Keith Harley, Chicago Legal Clinic, Inc.

Date: January 21, 2014

Keith Harley  
Chicago Legal Clinic, Inc.  
211 W. Wacker, Suite 750  
Chicago, IL 60606  
(312) 726-2938  
(312) 726-5206 (fax)  
[kharley@kentlaw.edu](mailto:kharley@kentlaw.edu)

**CERTIFICATE OF SERVICE**

I, Keith Harley, the undersigned attorney, hereby certify that I served the attached documents – Appearance and Public Comments on behalf of the Southeast Environmental Task Force – by delivering it to:

John Therriault, Clerk  
Illinois Pollution Control Board  
100 West Randolph, Suite 11-500  
Chicago, IL 60601-7447

Marie E. Tipsord, Hearing Officer  
Illinois Pollution Control Board  
100 West Randolph, Suite 11-500  
Chicago, IL 60601-7447

and by mailing it to:

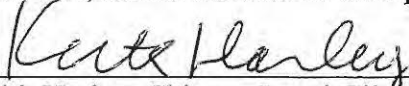
Dana Vetterhoffer  
Assistant Counsel, Division of Legal Counsel  
Illinois Environmental Protection Agency  
1021 North Grand Avenue East  
P.O. Box 19276  
Springfield, IL 62794-9276

Matthew J. Dunn  
Office of the Attorney General  
69 W. Washington, Suite 1800  
Chicago, IL 60602

Virginia I. Yang, Deputy Counsel  
Illinois Department of Natural Resources  
Office of Legal Counsel  
One Natural Resources Way  
Springfield, IL 62702-1271

Susan Franzetti  
Kristin Laughridge Gale  
Nijman Franzettie LLP  
10 S. LaSalle, Suite 3600  
Chicago, IL 60603

by depositing it in the United States Mail, postage prepaid, from 211 W. West Wacker, Suite 750, before the hour of 5:00 p.m., on this 21st day of January, 2014.

  
\_\_\_\_\_  
Keith Harley, Chicago Legal Clinic, Inc.

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PUBLIC COMMENTS OF THE SOUTHEAST ENVIRONMENTAL TASK FORCE

Now comes Keith Harley of the Chicago Legal Clinic, Inc. and makes the following public comments on behalf of the Southeast Environmental Task Force (“SETF”).

By way of summary, SETF is a community-based organization that advocates on behalf of public health and environmental quality on Chicago’s southeast side. SETF agrees with IL EPA that the environmental and public health impacts of the outdoor storage of coke and/or coal justifies an emergency rulemaking. SETF’s purpose in contributing these comments is not to perform a technical analysis of the proposed rules; SETF endorses the technical analysis contained in the comments prepared by the Environmental Law and Policy Center. Rather, SETF wishes to call this Board’s attention to the dangerous and chaotic situation which is now being experienced on Chicago’s southeast side by virtue of the outdoor storage of coke and coal. In making these comments, SETF is mindful that, absent emergency regulations, the situation in southeast Chicago could become even worse as outdoor storage areas multiply. Perhaps even more importantly, absent emergency regulations, the experience in southeast Chicago could be repeated throughout Illinois.

In order to contribute to the Board’s record in this abbreviated proceeding, SETF is basing its comments on publicly documented actions arising from the current crisis on Chicago’s southeast side. These public actions – all initiated in a roughly one month

period beginning on October 24, 2013 - arise from the operations of two southeast side companies, Beemsterboer Slag Company and KCBX Terminals Company. In light of the intensity of the public response to the effects of outdoor storage of coke and/or coal by only two operators, it is clear an emergency rule is necessary before these kinds of operations begin to proliferate in Illinois.

On October 24, 2013 the Illinois Environmental Protection Agency issued a Notice of Violation to Beemsterboer Slag Company alleging, in part, that Beemsterboer's outdoor storage of coke and coal "...caused, threatened, or allowed the discharge of particulate matter into the atmosphere generated during material handling and storage operations causing or tending to cause air pollution." Citing to 415 ILCS 5/9(a) and 415 ILCS 5/3.115, Illinois EPA mandated that Beemsterboer "immediately cease causing or tending air pollution from the material handling and storage operations," and, that Beemsterboer "...submit a compliance plan which will ensure the prevention of air pollution from the facility that cause, threaten, or allows the unreasonable interference with the enjoyment of life and property of local citizens." A true and accurate copy of this NOV is attached to these comments and labeled as SETF Exhibit One.

On October 31, 2013, a class action lawsuit was initiated in the Circuit Court of Cook County on behalf of residents including four named plaintiffs affected by "...sprawling, uncovered piles up to five-stories high" of coal and petcoke on Chicago's southeast side.

The Complaint alleges:

Every day, winds hit Defendants' uncovered piles of coal and petcoke, and black clouds of coal and petcoke dust – called "fugitive dust" – are blown into the air and subsequently fall on homes, businesses, yards, streets, alleys,

parkways, and other types of property neighboring Defendants' terminals.

A true and accurate copy of this Complaint is attached to these comments and labeled as SETF Exhibit Two.

These allegations are entirely consistent with the testimony of local residents at public hearings in southeast Chicago, most recently on January 13, 2014. The January 13<sup>th</sup> public meeting was convened by the City of Chicago to receive public comments on its proposed regulations in response to the outdoor storage of bulk material. In the transcribed public hearing, local residents expressed their concerns about the observed impacts on outdoor storage of petcoke and coal, specifically: 1. the effects on water quality in Calumet waterways from blown material and from leachate and runoff; 2. the effects of materials running off and leaching into the local sewers; 3. dust on cars and personal property; 4. fugitive emissions landing on vegetable gardens and outdoor markets; 5. the effects of fugitive emissions on schools, including inside school buildings; 6. the effect on ambient air quality especially for people attempting to enjoy outdoor recreation; 7. the accumulation of dust on the exterior and interior of people's homes; and, 8. the health effects on people who are inhaling dust.

On November 4, the People of the State of Illinois initiated an environmental enforcement action against KCBX in the Circuit Court of Cook County. In the Complaint, the Illinois Attorney General alleges the emissions of petcoke and coal dust into the surrounding neighborhood "...threatened the human health of the local residents in the vicinity of the Site and unreasonable interfered with their enjoyment of life and/or property." A true and accurate copy of this Complaint is attached to these comments and labeled as SETF Exhibit Three.

On or about November 22, 2013, the City of Chicago and the People of the State of Illinois initiated an action in the Circuit Court of Cook County against Beemsterboer. Noting the close proximity of residential neighborhoods, schools and playgrounds, the plaintiffs alleged that:

“...fine particles...have been escaping Defendants’ Facility during periods of moderate and heavy wind and inundating the surrounding communities with black dust. As a direct result, residents within the surrounding community often must curtail their activities out of concern for their health and well-being. Children attempting to play outdoors are frequently driven into their homes to avoid inhaling black dust. During the dead of summer, even families without air conditioning were forced to keep their windows sealed shut so dust from Defendants’ Facility would not blow into their homes. To prevent unsightly damage and discoloration, residents are forced to frequently wash black dust off the exterior of their houses.”

A true and accurate copy of this Complaint is attached to these comments and labeled as SETF Exhibit Four.

On November 25, 2013, another class action case was filed on behalf of residents of southeast Chicago, including 5 named plaintiffs. Based on allegations of “exposure to airborne fugitive petcoke dust contamination” of home and property, the Complaint makes claims arising from willful and wanton conduct (by the petcoke generator, BP), as well as strict liability, trespass, nuisance and many other related claims. A true and accurate copy of this Complaint is attached to these comments and labeled as SETF Exhibit Five.

*In just over one month*, the public health and environmental consequences of the outdoor storage of coke and/or coal generated a Notice of Violation, two enforcement Complaints in the Circuit Court of Cook County, two class action lawsuits and, in a short time thereafter, proposed regulations by the City of Chicago's Department of Health. In the absence of immediately effective statewide regulations, this is the chaotic and dangerous future that awaits communities throughout Illinois. This is unmistakable evidence of an emergency situation that justifies a proactive, precautionary regulatory response. This is especially true because, as IL EPA points out in its filing, there is a proliferation of proposals for storage of these materials. If so, absent emergency regulations, the situation in southeast Chicago is going spiral even farther into chaos, devastating neighborhoods. Perhaps even more troubling, the experience in southeast Chicago is going to be replicated, with every community in Illinois being put at risk.

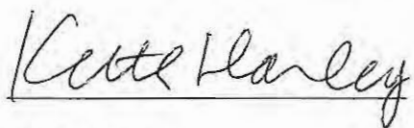
In response to the dangerous conditions on the southeast side and the risk of the proliferation of sources, on December 19<sup>th</sup>, the City of Chicago's Department of Public Health proposed regulations for the handling and storage of bulk material piles. See: [http://www.cityofchicago.org/city/en/depts/cdph/provdrs/environmental\\_permitsregulation/alerts/2013/dec/notice-of-proposed-regulations---for-the-handling-and-storage-of.html](http://www.cityofchicago.org/city/en/depts/cdph/provdrs/environmental_permitsregulation/alerts/2013/dec/notice-of-proposed-regulations---for-the-handling-and-storage-of.html) and SETF Exhibit Six. While SETF acknowledges the urgent need for the City regulations, SETF emphasizes the critical importance for a comprehensive statewide approach to this issue. Absent statewide regulations, the Chicago-only approach will have the effect of directing bulk storage operations to other places in Illinois. As petcoke is generated in exponentially increasing amounts by in-state and out-of-state refineries that are transitioning to heavier varieties of crude oil, there will be a "race to the bottom",



generating a county-by-county, municipality-by-municipality fight over proliferating storage operations. By contrast to IL EPA, counties and municipalities will lack the resources to develop and implement the quality of regulations now proposed by the Agency. Simply, regulated facilities should be subject to uniform, baseline statewide requirements to control risks to air, water and land quality. The emergency regulations have the effect of providing clear notice of the statewide regulatory regime storage operations will be expected to achieve. At the same time, local units of government will retain basic aspects of local land use control.

Thank you for your consideration of SETF's comments, and for considering the hard fought lessons derived from SETF's experience. It is SETF's hope that by considering the devastating effects of outdoor storage of coke and coal on its neighborhood, the Board will understand the urgent need for emergency regulations to protect all Illinois communities.

Respectfully Submitted,

A handwritten signature in black ink that reads "Keith Harley". The signature is written in a cursive, slightly slanted style.

Keith Harley

Attorney for the Southeast Environmental Task Force

January 21, 2014



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Violation Notice A-2013-00235

Beemsterboer Slag Corp., I.D. 031600FES

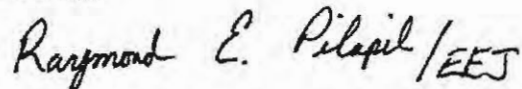
The Illinois EPA will review the proposed terms for a CCA provided by the source and, within 30 days of receipt, will respond with either a proposed CCA or a notice that no CCA will be issued by the Illinois EPA. If the Illinois EPA sends a proposed CCA, the source must respond in writing by either agreeing to and signing the proposed CCA or by notifying the Illinois EPA that the source rejects the terms of the proposed CCA.

If a timely written response to this Violation Notice is not provided, it shall be considered a waiver of the opportunity to respond and meet, and the Illinois EPA may proceed with referral to the prosecutorial authority.

Written communications should be directed to JOHN REKESIUS, Illinois EPA, Bureau of Air, Compliance Unit, P.O. Box 19276, Springfield, Illinois 62794-9276. All communications must include reference to the Violation Notice number in this matter.

Questions regarding this matter should be directed to JOSEPH KOTAS at 847/294-4023.

Sincerely,

Handwritten signature of Raymond E. Pilapil/EEJ in cursive script.

Raymond E. Pilapil, Manager  
Compliance Section  
Bureau of Air

REP: jr

Page 3

Violation Notice A-2013-00235

Beemsterboer Slag Corp., I.D. 031600FES

ATTACHMENT A

Per observations by Joseph Kotas on September 6, 11, and 13, 2013, and other available information:

VIOLATIONS:

1. Section 9(b) of the Act and 35 Ill. Adm. Code 201.142: Beemsterboer Slag Corp. failed to obtain construction permits prior to the construction of a screener and modification to the materials handled at the facility by handling materials other than coal.
2. Section 9(b) of the Act and 35 Ill. Adm. Code 201.143: Beemsterboer Slag Corp. failed to obtain an operating permit prior to the operation of the screener and allowing the handling any material other than coal.
3. Section 9.12 of the Act: Beemsterboer Slag Corp. failed to pay applicable construction permit application fees.
4. Section 9(a) of the Act and 35 Ill. Adm. Code 212.309, 212.310, and 212.312: Beemsterboer Slag Corp. failed to develop, maintain, amend, and submit to the Illinois EPA, an operating program designed to significantly reduce fugitive particulate matter emissions.
5. Section 9(a) of the Act and 35 Ill. Adm. Code 212.316(g)(1) and (g)(5): Beemsterboer Slag Corp. failed to submit annual and quarterly reports for activities involving fugitive particulate matter control measures.
6. Section 9(a) of the Act and 35 Ill. Adm. Code 212.316 (g)(2) and (g)(4): Beemsterboer Slag Corp. may have failed to document and maintain the records required by 35 Ill. Adm. Code 212.316(g)(2).
7. Section 9(a) of the Act and 35 Ill. Adm. Code 212.701: Beemsterboer Slag Corp. failed to develop, maintain, and submit a PM-10 contingency measure plan to the Illinois EPA.
8. Section 9(a) of the Act and 35 Ill. Adm. Code 201.302(a) and 254.132(a): Beemsterboer Slag Corp. failed to submit an Annual Emissions Report ("AER") to the Illinois EPA for calendar year 2012. Specifically this AER was due May 1, 2013. In addition, Beemsterboer Slag Corp. may have failed to submit complete, true, and accurate AERs for at least calendar years 2000 through 2011.

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Violation Notice A-2013-00235

Beemsterboer Slag Corp., I.D. 031600FES

ATTACHMENT A (Continued)

9. Section 9.1(d) of the Act and 40 CFR 63.6595, 63.6600, 63.6603, 63.6605, 63.6612, 63.6615, 63.6620, 63.6625, 63.6640, 63.6645, 63.6650, 63.6655, 63.6660, 63.6665: Beemsterboer Slag Corp. may have failed to comply with the emission limitation standards; the corresponding operation, maintenance, and monitoring plan requirements; the testing and initial compliance requirements; the monitoring requirements; and the notification, reporting, and record keeping requirements of 40 CFR 63, Subpart ZZZZ – National Emission Standards for Hazardous Air Pollutants for Reciprocating Internal Combustion Engines (“Subpart ZZZZ”) and NESHAP Subpart A- General Provisions as identified in Table 8 of Subpart ZZZZ.
10. Section 9(a) of the Act and 35 Ill. Adm. Code 201.141: Beemsterboer Slag Corp. caused, threatened, or allowed the discharge of particulate matter into the atmosphere generated during material handling and storage operations causing or tending to cause air pollution.

RECOMMENDATIONS:

The Illinois EPA suggests that Beemsterboer Slag Corp. take the following actions to address the violations stated above:

1. Immediately cease causing or tending air pollution from the material handling and storage operations.
2. Within 45 days of receipt of this Violation Notice, develop, implement, and submit a compliance plan, along with dates of implementation, which will ensure the prevention of air pollution from the facility that cause, threaten, or allows the unreasonable interference with the enjoyment of life and property of local citizens. This compliance plan should include at a minimum any and all interim and/or permanent measures and procedures that will be undertaken.
3. Within 45 days of receipt of this Violation Notice, submit to the Illinois EPA a complete, true, accurate, and acceptable operating permit application for all current emission units and all materials that will be handled at this facility.
4. Within 45 days of receipt of this Violation Notice, submit to the Illinois EPA, Bureau of Air, Compliance Section, the applicable avoided construction fees. Note the construction fee form can be found at: <http://www.epa.state.il.us/air/permits/construction-fees.html>

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Violation Notice A-2013-00235

Beemsterboer Slag Corp., I.D. 031600FES

**ATTACHMENT A (Continued)**

**RECOMMENDATIONS (Continued):**

5. Within 45 days of receipt of this Violation Notice, develop, implement, maintain, and submit to the Illinois EPA, Bureau of Air, Compliance Section a complete, true, accurate, and acceptable operating program in accordance with 35 Ill. Adm. Code 212.309 and 212.310.
6. Within 45 days of receipt of this Violation Notice, develop, implement, and submit to the Illinois EPA internal policy to ensure that the operating program is documented, maintained, and amended, as specified in 35 Ill. Adm. Code 212.309, 212.310, and 212.312.
7. Within 45 days of receipt of this Violation Notice, develop, implement, and submit to the Illinois EPA, Bureau of Air, Compliance Section an internal policy to ensure the documentation of the records of fugitive emission control measures required by 35 Ill. Adm. Code 212.316(g)(2) and these records are maintained and readily accessible upon inspection in accordance with 35 Ill. Adm. Code 212.316(g)(4).
8. Within 45 days of receipt of this Violation Notice, submit to the Illinois EPA, Bureau of Air, Compliance Section, fugitive particulate matter control measures reports covering calendar years 2008, 2009, 2010, 2011, and 2012. Specifically, these reports will list the dates that fugitive particulate matter control measures were and were not implemented, a listing of those control measures implemented, the reasons that the control measures were not implemented, and any other corrective actions taken.
9. Within 45 days of receipt of this Violation Notice, develop, implement, and submit to the Illinois EPA, Bureau of Air, Compliance Section, an internal policy that will ensure the quarterly fugitive particulate matter control measures reports, required by 35 Ill. Adm. Code 212.316(g)(5) are submitted to the Illinois EPA within 30 calendar days from the end of a quarter (Quarters end March 31, June 30, September 30, and December 31).
10. Within 45 days of receipt of this Violation Notice, develop, implement, and submit to the Illinois EPA, an internal policy to ensure the annual report containing the written records of the application of control measures, as may be needed for compliance with opacity limitations, will be prepared and submitted timely.
11. Within 45 days of receipt of this Violation Notice, submit a PM-10 Contingency Measure Plan to the Illinois EPA, Compliance Section, in accordance with 35 Ill. Adm. Code 212.701 and 212.703.

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Violation Notice A-2013-00235

Beemsterboer Slag Corp., I.D. 031600FES

ATTACHMENT A (Continued)

RECOMMENDATIONS (Continued):

12. Within 45 days of receipt of this Violation Notice, develop, implement, and submit to the Illinois EPA, an internal policy to ensure the Contingency Measures Plan is documented, maintained, implemented, and amended as specified in 35 Ill. Adm. Code 212.701, 212.702, 212.703, and 212.704.
13. Within 45 days of the receipt of this Violation Notice, submit the following information to the Illinois EPA, Bureau of Air, Compliance Section, date of construction, date of initial operation, and the monthly and 12-month rolling annual emissions of nitrogen oxides ("NO<sub>x</sub>"), carbon monoxide ("CO"), particulate matter ("PM"), particulate matter less than 10 microns ("PM<sub>10</sub>"), sulfur dioxide ("SO<sub>2</sub>"), volatile organic materials ("VOM"), and hazardous air pollutants ("HAPs") for calendar years 2000 through 2012 for each emission source, along with supporting documentation.
14. Within 45 days of receipt of this Violation Notice, submit a complete, true, and accurate AER for calendar years 2000 through 2012 to the Illinois EPA, Bureau of Air, Compliance Section.
15. Within 45 days of receipt of this Violation Notice, develop, implement, and submit an internal policy that will ensure AERs will be complete, true, accurate, and timely submitted to the Illinois EPA, Bureau of Air, Compliance Section.
16. Within 45 days of receipt of this Violation Notice, submit to the Illinois EPA a detailed explanation identifying how and when compliance with Subpart ZZZZ regulations cited above will be achieved.
  - a. Testing shall be conducted, documented, and reported by an independent testing service in accordance with appropriate USEPA Methods and an approvable stack test protocol. Two copies of the proposed test protocol shall be submitted to the Division of Air Pollution Control/Compliance Section and one copy shall be submitted to the Division of Air Pollution Control/Field Operation Section ("FOS") at least 60 days prior to the scheduled test date. The test protocol must comply with the applicable requirements of 40 CFR 63.7(c) and the test methods and procedures specified in 40 CFR 63.7(d) and 40 CFR 63.6620 for diesel engine.
  - b. In order to enable the Illinois EPA to witness the test, the Compliance Section and FOS shall be notified in writing of the test date at least 60 days before the expected testing date. Final confirmation of the exact date and time of the test shall be made at least five (5) days prior to the test date.

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Violation Notice A-2013-00235

Beemsterboer Slag Corp., I.D. 031600FES

ATTACHMENT A (Continued)

RECOMMENDATIONS (Continued):

- c. Testing shall be conducted under conditions representative of maximum process operating rates and prior to making any modifications to the existing source equipment, control equipment and stacks.
- d. The final report for the test(s) shall be submitted to the Compliance Section (two copies) and FOS (one copy) within 60 days of completion of testing.
- e. The reports and notification described above should be submitted to:

Illinois EPA/Bureau of Air  
Field Operation Section  
Attn: Regional Manager  
9511 Harrison Street  
Des Plaines, IL 60016  
(1 copy)

Illinois EPA/Bureau of Air  
Compliance Section (MC40)  
Attn: Raymond Pilapil  
1021 North Grand Avenue East  
P.O. Box 19276  
Springfield, IL 62794-9276  
(1 copy)

Illinois EPA/Bureau of Air  
Compliance Section  
Attn: Kevin Mattison  
9511 Harrison Street  
Des Plaines, IL 60016  
(1 copy)



IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS  
COUNTY DEPARTMENT, CHANCERY DIVISION

LILLY MARTIN, JEAN TOURVILLE,  
JANE GOULD, and ALFREDO MENDOZA,  
individually, and on behalf of all others  
similarly situated,

Plaintiffs,

v.

KCBX TERMINALS COMPANY, a North Dakota  
corporation,  
GEORGE J. BEEMSTERBOER, INC., an  
Indiana corporation,  
KM RAILWAYS, LLC, a Delaware limited liability  
company,  
TRANSLOAD REALTY, LLC, an Illinois limited  
liability company,  
DTE CHICAGO FUELS TERMINAL, LLC, a  
Michigan limited liability company,  
CALUMET TRANSLOAD RAILROAD, LLC, an  
Illinois limited liability company, and  
KOCH CARBON, LLC,  
a Delaware limited liability company,

Defendants.

2013CH24614  
CALENDAR/ROOM 16  
No. TIME 00:00  
Class Action

Jury Trial Demand

CLASS ACTION COMPLAINT

Plaintiffs LILLY MARTIN, JEAN TOURVILLE, JANE GOULD, and ALFREDO MENDOZA, individually, and on behalf of all other persons and entities similarly situated ("Plaintiffs"), by and through counsel ZIMMERMAN LAW OFFICES, P.C., bring this Complaint against Defendants KCBX TERMINALS COMPANY ("KCBX"), KM RAILWAYS, LLC ("KMR"), GEORGE J. BEEMSTERBOER, INC. ("Beemsterboer"), TRANSLOAD REALTY, LLC ("Transload"), DTE CHICAGO FUELS TERMINAL, LLC ("DTE"), CALUMET TRANSLOAD RAILROAD, LLC ("Calumet Transload"), and KOCH CARBON,

SETF EXHIBIT TWO

FILED-1  
2013 OCT 31 PM 12:00  
COURT OF COOK  
COUNTY ILLINOIS  
CHANCERY DIV.  
NORRIS BROWN  
CLERK

LLC (“Koch Carbon”) (collectively, “Defendants”), and hereby allege on information and belief as follows:

**Introduction**

1. This Complaint arises out of the presence of vast quantities of coal and petroleum coke, or “petcoke,” a highly dangerous, hazardous contaminant, in the Chicago southeast side residential South Deering and East Side neighborhoods. These quantities of coal and petcoke are maintained in sprawling, uncovered piles up to five-stories high at three nearly adjacent storage and transfer terminals along the Calumet River currently or formerly owned, operated, controlled, and/or maintained by Defendants.

2. Every day, winds hit Defendants’ uncovered piles of coal and petcoke, and black clouds of coal and petcoke dust—called “fugitive dust”—are blown into the air and subsequently fall on homes, businesses, yards, streets, alleys, parkways, and other types of property neighboring Defendants’ terminals. A photograph of one of these coal and petcoke dust clouds taken on August 30, 2013 is attached hereto as Exhibit A.

3. Petcoke is a byproduct of the petroleum refining process. Petcoke contains concentrated amounts of sulfur, as well as the heavy metals nickel and vanadium, which is classified as a possible human carcinogen by the International Agency for Research on Cancer.

4. According to the Material Safety Data Sheet (“MSDS”) for petcoke, it can form combustible dust concentrations that may become flammable or explosive, and excessive exposure to petcoke dust may cause skin, eye or respiratory tract irritation. The MSDS recommends that individuals minimize physical contact with petcoke dust, do not breathe the dust, and avoid accumulation of the dust to prevent a fire hazard. (*See* MSDS for petcoke, attached hereto as Exhibit B).

5. The petcoke MSDS warns that if petcoke dust is inhaled the person must be removed to fresh air, and repeated inhalation of petcoke dust may cause impaired lung function. (See Exhibit B). However, the Plaintiffs and Class members cannot escape the petcoke dust and access fresh air in their neighborhood, as the dust is constantly blowing in the air all throughout the neighborhood.

6. Despite repeated complaints by affected residents, Defendants have refused and continue to refuse to take adequate measures to stop or mitigate the migration of hazardous coal and petcoke dust to the surrounding neighborhoods. The contamination of those neighborhoods is ongoing.

7. As a result of the actions and inactions of Defendants, Plaintiffs and other South Deering and East Side neighborhood residents, former residents, and businesses have suffered property damage, have had their peace, quiet enjoyment, lives and futures uprooted and trampled, and have been deprived of the use of their homes, property and businesses.

8. Accordingly, Plaintiffs seek compensation individually, and on behalf of a putative Class consisting of current and former residents and businesses whose property, and the use and enjoyment of their homes, property and businesses, have been and continue to be damaged as a result of the presence of hazardous coal and petcoke dust emanating from Defendants' terminals.

9. Plaintiffs, individually, and on behalf of the putative Class, also seek injunctive relief to immediately stop the ongoing nuisance and trespass inflicted by Defendants, who continue to maintain vast quantities of hazardous petcoke and coal dust uncovered at or near the homes and businesses of Plaintiffs and the putative Class, and who refuse to take measures to stop this ongoing airborne contamination.

The Plaintiffs

10. Plaintiff LILLY MARTIN is the owner of the property located at 10928 Mackinaw Avenue, in Chicago, which is in a neighborhood that has been and is being damaged by the migration of coal and petcoke dust as a result of Defendants' actions and inaction. Ms. Martin has lived in this home for approximately 15 years. While living in the home, Ms. Martin and her family have been exposed to the airborne coal and petcoke dust contamination of her home and property.

11. Plaintiff JEAN TOURVILLE is the owner of the property located at 10933 Mackinaw Avenue, in Chicago, which is in a neighborhood that has been and is being damaged by the migration of coal and petcoke dust as a result of Defendants' actions and inaction. While living in the home, Ms. Tourville and her family have been exposed to the airborne coal and petcoke dust contamination of her home and property.

12. Plaintiff JANE GOULD is the owner of the property located at 10117 South Avenue M in Chicago, which is in a neighborhood that has been and is being damaged by the migration of coal and petcoke dust as a result of Defendants' actions and inaction. While living in the home, Ms. Gould and her family have been exposed to the airborne coal and petcoke dust contamination of her home and property.

13. Plaintiff ALFREDO MENDOZA is the owner of the property located at 3348 East 106th Street, in Chicago, which is in a neighborhood that has been and is being damaged by the migration of coal and petcoke dust as a result of Defendants' actions and inaction. While living in his home, Mr. Mendoza and his family have been exposed to the airborne coal and petcoke dust contamination of his home and property.

14. At all times since moving into their homes, Plaintiffs reasonably expected that they and their families would have the full and unimpeded use and enjoyment of their homes and property.

15. Plaintiffs live in fear, apprehension, and great distress, and have been denied and will continue to be denied the full use and enjoyment of their homes and property as a result of the actions and inaction of Defendants in allowing the coal and petcoke dust to contaminate their homes and property.

16. Plaintiffs are putative Class Representatives who are similarly situated to residents and former residents of the southeast Chicago neighborhoods of South Deering and East Side, whose homes, businesses, property, lives, peace and quiet enjoyment have been damaged or impacted adversely by the presence of hazardous coal and petcoke dust contamination of their homes, property, and businesses caused by the Defendants.

#### **The Defendants**

17. Defendant KCBX is a North Dakota corporation, located and doing business at 3259 East 100th Street, Chicago, Illinois. KCBX owns, operates, maintains, and/or controls a storage and transfer terminal at that location, situated on the western bank of the Calumet River ("100th Street Terminal"), and a storage transfer terminal located at 10730 South Burley Avenue, situated on the east bank of the Calumet River ("Burley Terminal"). KCBX stores large quantities of coal and petcoke at both of its terminals. KCBX is a subsidiary of Koch Industries, Inc.

18. Defendant KMR is a Delaware limited liability company who, upon information and belief, owns the property on which KCBX's Burley Terminal is situated, as well as rail

tracks and rail facilities on and adjacent thereto. KMR purchased this property from Defendant DTE in December, 2012. KMR is a subsidiary of Koch Industries, Inc.

19. Defendant Beemsterboer is an Indiana limited liability company located and doing business at 2900 East 106th Street, in Chicago, Illinois. Beemsterboer owns, operates, maintains, and/or controls a storage and transfer terminal at that location, situated on the western bank of the Calumet River, on which large quantities of coal and petcoke are stored.

20. Defendant Transload is an Illinois limited liability company that owns the property on which Beemsterboer operates its storage and transfer terminal.

21. Defendant DTE is a Michigan limited liability company located at 414 South Main Street, in Ann Arbor, Michigan. Until December, 2012, DTE owned, operated, maintained, and/or controlled the Burley Terminal and the property on which the Burley Terminal is located.

22. Defendant Calumet Transload is an Illinois limited liability company with its principal office located at the Burley Terminal. Until February 8, 2007, Calumet Transload owned, operated, maintained, and/or controlled the Burley Terminal and the property on which the Burley Terminal is located. Upon information and belief, Calumet Transload continues to operate, maintain, and/or control a storage and transfer terminal at that location, on which large quantities of coal and petcoke are stored.

23. Defendant Koch Carbon is a Delaware limited liability company located and doing business at 106th Street and Calumet River, at or near 2900 East 106th Street, in Chicago, Illinois. On information and belief, Koch Carbon owns, operates, maintains, and/or controls a storage and transfer terminal at that location, situated on the western bank of the Calumet River, on which large quantities of coal and petcoke are stored.

**Jurisdiction and Venue**

24. Jurisdiction over Defendants is proper under 735 ILCS 5/2-209(a)(1) (transaction of any business within this State), section 2-209(a)(2) (the commission of a tortious act within this State), section 2-209(a)(3) (the ownership, use, or possession of any real estate situated in this State), section 2-209(b)(4) (corporation doing business within this State), and section 2-209(c) (any other basis now or hereafter permitted by the Illinois Constitution and the Constitution of the United States).

25. Venue is proper in this County pursuant to 735 ILCS 5/2-101, because this is the County in which the transaction, or some part thereof occurred, and Defendants are corporations doing business in this County. 735 ILCS 5/2-102(a).

**Background**

26. Petcoke is a solid material and a byproduct of the oil refinery process, which upgrades fuel oil by heating it and cracking it to higher valued gasoline, jet, and diesel components. Petcoke is over 90% carbon, and emits 5% – 10% more carbon dioxide than coal on a per-unit-of-energy basis when it is burned.

27. Coal and petcoke dust is a form of particulate matter (“PM”)—especially fine particles that contain microscopic solids or liquid droplets that are so small that they can get deep into the lungs and cause serious health problems. PM is linked to a variety of problems, including increased respiratory symptoms such as irritation of the airways, coughing, difficulty breathing, decreased lung function, aggravated asthma, and premature death in people with heart or lung disease.

28. The petcoke affecting Plaintiffs and Class members is produced by the oil giant BP at its Whiting, Indiana refinery on Lake Michigan, just across the Indiana state line. BP ships

much of its petcoke to Defendants' terminals in Chicago.

29. The amount of petcoke stored at Defendants' terminals has skyrocketed recently. Indeed, the increase in the amount of petcoke produced by BP at its Whiting refinery prompted KCBX to expand its operations to the Burley Terminal last December. The half-mile square area has the capacity to hold hundreds of thousands of tons of petcoke.

30. The amount of petcoke stored by Defendants in southeast Chicago is expected to continue to increase dramatically. BP is in the midst of a \$3.8 billion upgrade to enable the company to refine more and heavier oils, primarily from the tar sands oil fields in Alberta, Canada.

31. Upon completion of the upgrade, BP's new coker, which produces the petcoke, will be the second largest in the world. BP will produce more than 2.2 million tons of petcoke per year at its Whiting refinery, up from about 700,000 tons before the refinery was overhauled, to process oil from the tar sands region of Alberta. The drastic increase of production of petcoke at BP's Whiting refinery will result in a concomitant increase in the amount of petcoke stored at Defendants' terminals.

32. For years, Plaintiffs and the Class members have noticed an infiltration of coal and petcoke dust in the air, and on their real and personal property. Several Plaintiffs and Class members have repeatedly complained about the contamination of their air and property to the Illinois Environmental Protection Agency, the U.S. Environmental Protection Agency, the City of Chicago, and other city, state, and federal agencies, as well as to Defendants.

33. However, Defendants have refused and continue to refuse to take adequate corrective measures, such as covering or enclosing their piles of coal and petcoke, which would prevent dust from being carried off those piles and contaminating the real and personal property



of Plaintiffs and Class members.

34. Other facilities that store petcoke have enclosed it. For example, the piles of petcoke at the Port of Los Angeles were completely covered in 2002, due to the hazardous nature of the petcoke dust that was blowing off those piles into the community. (*See* May 17, 2002 Los Angeles Times article, attached hereto as Exhibit C). Furthermore, BP itself surrounds piles of petcoke that it produces at its Whiting facility with 40-foot walls before it ships the petcoke off of its premises.

35. Instead of completely or partially enclosing their coal and petcoke piles, as other facilities have agreed to do, Defendants simply spray the piles of coal and petcoke with wet suppression equipment (*i.e.*, sprinklers spraying the piles with water and possibly a surfactant solution).

36. Defendants' meager efforts to minimize the coal and petcoke dust emissions are insufficient to stop the migration of coal and petcoke dust into the air and property of Plaintiffs and the Class members. Indeed, despite Defendants' spraying the coal and petcoke piles with water and/or surfactant, wind frequently hits these large piles and carries large quantities of dust from the piles into the surrounding neighborhoods.

37. Moreover, upon information and belief, the Burley Terminal does not have a system for spraying all of the coal and petcoke piles at that terminal, and therefore, the emission of coal and petcoke dust from that location contaminates the surrounding neighborhoods unabated.

**The Illinois Environmental Protection Agency's Violation Notice**

38. On October 24, 2013, the Illinois Environmental Protection Agency issued a violation notice ("Violation Notice") to Beemsterboer, alleging violations of environmental laws,

regulations, or permits. (*See* Violation Notice, attached hereto as Exhibit D). The Violation Notice further advised that, “[d]ue to the nature and seriousness of the alleged violations,” Beemsterboer’s violations may require the “involvement of a prosecutorial authority for purposes that may include, among others, the imposition of statutory penalties.” (*See* Exhibit D, p.1).

39. According to the Violation Notice, Beemsterboer committed the following violations of the Illinois Environmental Protection Act, and the rules and regulations promulgated under the authority of that Act:

- (a) Beemsterboer failed to obtain construction permits prior to the construction of a screener and modification to the materials handled at the facility by handling materials other than coal;
- (b) Beemsterboer failed to obtain an operating permit prior to the operation of the screener and allowing the handling [of] material other than coal;
- (c) Beemsterboer failed to develop, maintain, amend, and submit to the Illinois Environmental Protection Agency an operating program designed to significantly reduce fugitive particulate matter emissions;
- (d) Beemsterboer failed to develop, maintain, and submit a PM-10 contingency measure plan to the Illinois Environmental Protection Agency;
- (e) Beemsterboer failed to submit an Annual Emissions Report to the Illinois Environmental Protection Agency for calendar year 2012, and may have failed to submit complete, true, and accurate Annual Emission Reports for at least calendar years 2000 through 2011;
- (f) Beemsterboer caused, threatened, or allowed the discharge of particulate matter into the atmosphere generated during material handling and storage operations causing or tending to cause air pollution.

(*See* Violation Notice, pp.3-4).

**The Effect of the Coal and Petcoke Dust on Plaintiffs and Class Members**

40. Due to the coal and petcoke dust contamination of their property, Plaintiffs and Class members have been prevented from the full and unimpeded use and enjoyment of their homes and property. Additionally, Plaintiffs and Class members have suffered financial

damages as a result of the intrusion of coal and petcoke dust onto their property and homes, including the diminution of value of their homes and property.

41. The emission and migration of coal and petcoke dust negatively affects residents' outdoor activities. For example, on windy days, residents—many of whom are elderly and children—are forced to stay inside because of the danger and inconvenience posed by the coal and petcoke dust, as discussed above.

42. Additionally, Plaintiffs and Class members cannot engage in outdoor activities such as swimming in their backyard swimming pools, because the dust contaminates the water and attaches to the skin of those who swim in the contaminated water. Nor can Plaintiffs and Class members enjoy barbeques and picnics, as the coal and petcoke dust gets into the food and beverages, which must be discarded.

43. The coal and petcoke dust in the air eventually settles on the property of the Plaintiffs and Class members, leaving an unsightly and dangerous black coating on their property, such as the exterior of their homes, vehicles, lawn furniture, outdoor recreation equipment, pools, holiday decorations, and other possessions.

44. The coal and petcoke dust infiltrates the interior of Plaintiffs' and Class members' homes as well, as it is drawn into their homes through windows, vents, chimneys, air conditioners, and doors, and is tracked in their homes through the entry of people and pets into the home. Once inside the home, it accumulates on windows, drapes, carpet, upholstery, furniture, clothing, and walls, causing the Plaintiffs and Class members to have to spend money to clean and/or replace these items.

45. Indeed, Plaintiffs and Class members are forced to keep their windows closed at all times to mitigate this danger and inconvenience, which deprives them of enjoyment of fresh

air and forces them to incur the expense of running air conditioners more often.

46. The coal and petcoke dust coating is dangerous to property, as it is highly flammable and explosive, and can be ignited by heat. (*See* petcoke MSDS, Exhibit B, pp. 1-5). Therefore, Plaintiffs and Class members must regularly spend time and money washing and rinsing the exterior and interior of their homes, furnishings, vehicles, and other real and personal property to prevent potentially catastrophic aggregation of coal and petcoke dust.

47. Plaintiffs and Class members must also frequently wash the ugly, black coal and petcoke dust off their homes, vehicles, and other property to maintain an acceptable aesthetic condition thereof, and to prevent their property from acquiring an unseemly smell as a result of the high sulfur content of petcoke dust.

48. Sometimes, the dust cannot be washed off or it leaves stains on the interior and exterior of Plaintiffs' and Class members' homes, and they are forced to frequently paint the inside and outside of their homes to hide the stains.

49. Not all of the property of Plaintiffs and Class members can be salvaged. Indeed, coal and petcoke dust ruins perishable items such as food and beverages, stains clothing, carpeting, upholstery and other furnishings, clogs air and water filters, and otherwise destroys or devalues Plaintiffs' and Class members' property. Therefore, Plaintiffs and Class members are required to replace these items more frequently than they otherwise would.

50. Moreover, some Plaintiffs and Class members are forced to alter the composition of their homes in order to mitigate the damage by removing carpeting, going without shades or drapes, and painting their homes a darker color.

51. Plaintiffs and Class members have expended and will expend in the future large sums of money for replacing, repairing, and/or remediating the damage to their property.

**Class Action Allegations**

52. **Class Definition:** Plaintiffs bring this action pursuant to 735 ILCS 5/2-801 on behalf of themselves and a Class of similarly situated individuals, defined as follows:

**Subclass A:** All persons and entities currently and formerly located in the South Deering and Elgin neighborhoods who have suffered property damage, and an interference with their use, peace and quiet enjoyment of their property, as a result of the migration of coal and petcoke dust onto or near their property.

**Subclass B:** All persons and entities in the South Deering and Elgin neighborhoods whose peace and quiet enjoyment is currently and will continue to be interfered with by the migration of coal and petcoke dust onto or near their property.

Excluded from the Class are: (1) Defendants, Defendants' agents, subsidiaries, parents, successors, predecessors, and any entity in which Defendants or their parents have a controlling interest, and those entities' current and former employees, officers, and directors; (2) the Judge to whom this case is assigned and the Judge's immediate family; (3) any person who executes and files a timely request for exclusion from the Class; (4) any person who has had their claims in this matter finally adjudicated and/or otherwise released; and (5) the legal representatives, successors and assigns of any such excluded person.

53. **Numerosity:** The exact number of Class members is unknown and is not available to Plaintiffs at this time, but individual joinder in this case is impracticable, as the putative Class includes thousands of people, businesses and property owners in the South Deering and East Side neighborhoods whose homes, property and/or peace and quiet enjoyment has been or may have been damaged by the presence or proximity of coal and petcoke dust.

54. **Commonality:** The questions of fact or law common to the Class which predominate over questions of law or fact unique to individual Class members are as follows:

- a. Whether Plaintiffs and Class members' air, homes, and property have been contaminated by coal and petcoke dust;
- b. Whether Defendants are responsible for the coal and petcoke dust contamination of Plaintiffs' and Class members' air, homes, and property;

- c. Whether Defendants have taken adequate steps to prevent coal and petcoke dust from contaminating Class members' air, homes, and property;
- d. Whether the presence of coal and petcoke dust on Plaintiffs' and Class members' homes and property has damaged Plaintiffs and Class members;
- e. Whether Defendants continue to own, operate, maintain, and/or control the coal and petcoke piles in such a manner that coal and petcoke dust continues to contaminate Plaintiffs' and Class members' air, homes, and property;
- f. Whether the operation, ownership and maintenance of Defendants' terminals have damaged Plaintiffs' and Class members' peace, quiet enjoyment and life routines, such that they should be compensated;
- g. Whether the Defendants' actions and inaction in owning, operating or maintaining their terminals constitute trespass;
- h. Whether the Defendants' actions and inaction in owning, operating or maintaining their terminals constitute nuisance;
- i. Whether the Defendants' actions and inaction in owning, operating or maintaining their terminals were negligent; and
- j. Whether the Court should enjoin the Defendants to ensure that coal and petcoke dust does not continue to contaminate Plaintiffs and Class members' air, homes, and property.

55. **Predominance:** The common questions regarding facts, law and remedy predominate. The quantity and spatial distribution of the coal and petcoke dust contamination can be determined by common evidence and methodology. The fact that the measure of some damages may vary among the Class members does not lessen the propriety of maintaining this action as a class action. Due to the nature and mobility of the hazardous contamination caused or maintained in the South Deering and East Side neighborhoods, no individual damage can be determined except in conjunction with all other Class members.

56. **Typicality:** The claims of the Plaintiffs are typical of the claims of the other members of the Class, as the representative Plaintiffs include persons who own or reside in

residential properties the South Deering and East Side neighborhoods and who have suffered and continue to suffer damages as a result of the coal and petcoke dust contamination caused by the Defendants.

57. **Adequacy of Representation:** Plaintiffs will fairly and adequately represent and protect the interests of the Class, and have retained counsel competent and experienced in complex class actions. Plaintiffs have no interest antagonistic to those of the Class, and Defendants have no defenses unique to Plaintiffs. All Class members will receive proper, efficient and appropriate protection of their interests by the Plaintiffs and their counsel.

58. **Appropriateness:** A class action is an appropriate method for the fair and efficient adjudication of the claims involved. Class action treatment of the claims of the class provides a method for the immediate adjudication of the claims herein and is superior to proceeding on an individual case by case adjudication which would increase dramatically the costs and time necessary to dispose of these claims, deny most Class members relief as a practical matter due to the costs and time required to prosecute these claims, and risk inconsistent and varying adjudications of these claims.

**COUNT I**  
**Private Nuisance**  
**(Against All Defendants)**

59. Plaintiffs repeat and re-allage paragraphs 1 to 58 as though fully set forth herein.

60. Defendants' ownership, operation, control and/or maintenance of large, uncovered piles of coal and petcoke dust without adequate safeguards to prevent the dust from contaminating Plaintiffs' and Class members' homes, property, and businesses, was and is a continuous activity.

61. Defendants knew or had reason to know that their conduct would result in or was substantially certain to result in the invasion of Plaintiffs' and Class members' quiet use and enjoyment of their property, as well as a diminution in their property values.

62. Coal and petcoke dust contamination from the terminals owned, operated, controlled and/or maintained by the Defendants was and is present at, on, near and/or in Plaintiffs' and Class members' property and businesses, and the dust is physically offensive to the senses to the extent that it makes life uncomfortable for Plaintiffs and Class members.

63. Defendants have thereby invaded Plaintiffs' and Class members' interest in the quiet use and enjoyment of their property, and have caused a diminution in their property values.

64. This invasion of Plaintiffs' and Class members' quiet use and enjoyment of their properties is substantial, intentional or negligent, and unreasonable.

65. Plaintiffs and Class members have been and continue to be damaged by Defendants' acts and/or failure to act.

WHEREFORE, Plaintiffs LILLY MARTIN, JEAN TOURVILLE, JANE GOULD, and ALFREDO MENDOZA, individually, and on behalf of all other persons and entities similarly situated, pray for an Order as follows:

- A. Finding that this action satisfies the prerequisites for maintenance as a class action set forth in 735 ILCS 5/2-801, *et seq.*, and certifying the Class defined herein;
- B. Designating Plaintiffs as representatives of the Class and their undersigned counsel as Class Counsel;
- C. Entering judgment in favor of Plaintiffs and the putative Class and against Defendants;
- D. Awarding Plaintiffs and the Class compensatory damages, punitive damages, and reasonable attorney's fees and costs; and



- E. Granting all such further and other relief as the Court deems just and appropriate.

**COUNT II**  
**Trespass**  
**(Against All Defendants)**

66. Plaintiffs repeat and reallege paragraphs 1 to 65 as though fully set forth herein.

67. Defendants' aforesaid actions and inaction in their ownership, operation, control and/or maintenance of their terminals has caused and is causing the migration of hazardous coal and petcoke dust onto and/or near the homes, property, and businesses of Plaintiffs and Class members.

68. As a result of the actions and inaction of Defendants causing the migration of hazardous coal and petcoke dust onto and/or near the homes, property, and businesses of Plaintiffs and Class members, Plaintiffs and Class members have suffered damages, in that they are deprived of the exclusive possession and full use and enjoyment of their property due to the presence of the hazardous coal and petcoke dust contamination.

WHEREFORE, Plaintiffs LILLY MARTIN, JEAN TOURVILLE, JANE GOULD, and ALFREDO MENDOZA, individually, and on behalf of all other persons and entities similarly situated, pray for an Order as follows:

- A. Finding that this action satisfies the prerequisites for maintenance as a class action set forth in 735 ILCS 5/2-801, *et seq.*, and certifying the Class defined herein;
- B. Designating Plaintiffs as representatives of the Class and their undersigned counsel as Class Counsel;
- C. Entering judgment in favor of Plaintiffs and the Class and against Defendants;
- D. Awarding Plaintiffs and the Class compensatory damages, punitive damages, and reasonable attorney's fees and costs; and

- E. Granting all such further and other relief as the Court deems just and appropriate.

**COUNT III**  
**Negligence**  
**(Against All Defendants)**

69. Plaintiffs repeat and reallege paragraphs 1 to 68 as though fully set forth herein.

70. At all relevant times, Defendants had a reasonable duty of care to own, operate, control and/or maintain their terminals in such a way that hazardous coal and petcoke dust would not migrate onto and contaminate Plaintiffs' and Class members' property.

71. Defendants breached their duty by:

- a. Failing to own, operate, maintain, and/or control their storage terminals and equipment in a manner that would prevent wind from blowing coal and petcoke dust from the piles of coal and petcoke stored at those terminals into the air and onto the homes, property and businesses of Plaintiffs and Class members;
- b. Failing to take adequate measures to suppress the coal and petcoke dust so as to prevent the migration of coal and petcoke stored at Defendants' terminals into the air and onto the homes, property, and businesses of Plaintiffs and the putative Class;
- c. Failing to maintain adequate coal and petcoke dust suppression systems at their terminals;
- d. Failing to adequately contain or cover their piles of coal and petcoke so as to prevent coal and petcoke dust from migrating into the air and onto the homes, property and businesses of Plaintiffs and Class members;
- e. Owning, operating, controlling, and/or maintaining their storage terminals and equipment in an unreasonable manner;
- f. Failing to remediate the damage to the homes, property and businesses of Plaintiffs and Class members caused by coal and petcoke dust; and
- g. Otherwise failing to own, operate, maintain and/or control their storage terminals in a reasonable manner so as to avoid damaging, diminishing the value of, and interfering with the Plaintiffs' and Class members' interest in the private use and enjoyment of their homes, businesses, and property.

72. It was foreseeable that if the Defendants did not own, operate, maintain and/or control their terminals in a manner that would prevent wind from blowing coal and petcoke dust off the piles of coal and petcoke stored at those terminals, Plaintiffs and Class members would suffer damage to their property. Indeed, the problem of "fugitive dust" is well-known within Defendants' industry.

73. As a direct and proximate result of Defendants' actions and failure to act, Plaintiffs and Class members have been damaged.

WHEREFORE, Plaintiffs LILLY MARTIN, JEAN TOURVILLE, JANE GOULD, and ALFREDO MENDOZA, individually and on behalf of all other persons and entities similarly situated, pray for an Order as follows:

- A. Finding that this action satisfies the prerequisites for maintenance as a class action set forth in 735 ILCS 5/2-801, *et seq.*, and certifying the Class defined herein;
- B. Designating Plaintiffs as representatives of the Class and their undersigned counsel as Class Counsel;
- C. Entering judgment in favor of Plaintiffs and the Class and against Defendants;
- D. Awarding Plaintiffs and the Class compensatory damages, punitive damages, and reasonable attorney's fees and costs; and
- E. Granting all such further and other relief as the Court deems just and appropriate.

#### COUNT IV

##### **Preliminary and Permanent Injunction (Against KCBX, KMR, Beemsterboer, and Transload)**

74. Plaintiffs repeat and reallege paragraphs 1 to 73 as though fully set forth herein.

75. At all relevant times complained of herein, there existed in full force and effect certain statutes that provide for injunctions. *See* 735 ILCS 5/11-101 and 11-102.

76. Plaintiffs seek an injunction to preserve the *status quo* and either (1) prevent Defendants from owning, maintaining, controlling, and/or operating their land and terminals in a manner that permits coal and petcoke dust to contaminate the air, homes, and other property of the Plaintiffs and Class members; or (2) require Defendants to abate the ongoing nuisance that they have created by covering and/or enclosing the large piles of coal and petcoke at Defendants' terminals.

77. Defendants' actions and failure to act has caused and continues to cause Plaintiffs and Class members substantial damages in the form of financial damages, inconvenience, loss of use and enjoyment of their property, and diminution of their property values. Plaintiffs and Class members have no other means to put a stop to the contamination of their property.

78. Plaintiffs are likely to succeed on the merits. Plaintiffs have a right to the uninterrupted use and enjoyment of their property, and to be free from invasion thereupon by hazardous coal and petcoke dust. Defendants have no valid, legal basis for invading Plaintiffs' and Class members' property, or intruding upon their use and enjoyment thereof.

79. Plaintiffs and Class members have a clearly ascertainable right to the uninhibited use and enjoyment of their property.

80. Plaintiffs lack any complete and adequate remedy at law, as Defendants' actions are continuous and ongoing in nature, and Defendants have refused Plaintiffs' and Class members repeated pleas to Defendants to halt or substantially reduce their offending conduct.

81. Enforcement is feasible, as other terminals and facilities that store coal and petcoke have enclosed and/or covered their piles of coal and petcoke, as described above. Furthermore, the coal and petcoke piles described herein are adjacent to large piles of road salt, which are covered, demonstrating that covering these large piles is possible.

82. It would be easy to ascertain whether Defendants continue to engage in this misconduct, as relevant authorities such as the Illinois Environmental Protection Agency can monitor the air, and monitor compliance through inspections.

83. Plaintiffs and Class members will be irreparably injured absent immediate injunctive relief. Defendants' misconduct is intentional, continuous, and ongoing, as the piles of coal and petcoke remain uncovered and the dust remains insufficiently suppressed.

84. The balancing of the hardships favors the issuance of an injunction here. Defendants operate facilities that handle hazardous coal and petroleum coke in a densely-populated part of the city of Chicago—one of the largest metropolitan areas in the country. It is indisputable that the activities in which Defendants engage result in the migration of coal and petcoke dust onto Plaintiffs' and Class members' property, and pose a health risk to them. Defendants can feasibly and without undue hardship take steps to reduce the migration of coal and petcoke dust by enclosing and/or covering the coal and petcoke, as other facilities have done.

85. There are no excuses for Defendants' unlawful actions.

WHEREFORE, Plaintiffs LILLY MARTIN, JEAN TOURVILLE, JANE GOULD, and ALFREDO MENDOZA, individually and on behalf of all other persons and entities similarly situated, pray for an Order as follows:

- A. Finding that this action satisfies the prerequisites for maintenance as a class action set forth in 735 ILCS 5/2-801, *et seq.*, and certifying the Class defined herein;
- B. Designating Plaintiffs as representatives of the Class and their undersigned counsel as Class Counsel;
- C. Entering judgment in favor of Plaintiffs and the Class and against Defendants;

- D. Enjoining Defendants to either:
- (1) stop owning, maintaining, controlling, and/or operating their land and terminals in a manner that permits coal and petcoke dust to contaminate the air, homes, and other property of the Plaintiffs and Class members, or
  - (2) abate the ongoing nuisance that they have created by covering and/or enclosing the large piles of coal and petcoke at Defendants' terminals;
- E. Awarding Plaintiffs and the Class compensatory damages, punitive damages, and reasonable attorney's fees and costs; and
- F. Granting all such further and other relief as the Court deems just and appropriate.

**JURY DEMAND**

Plaintiffs demand a trial by jury on all issues so triable.

Plaintiffs LILLY MARTIN, JEAN TOURVILLE, JANE GOULD, and ALFREDO MENDOZA, individually, and on behalf of all others similarly situated,

By: 

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Counsel for Plaintiffs and the Class

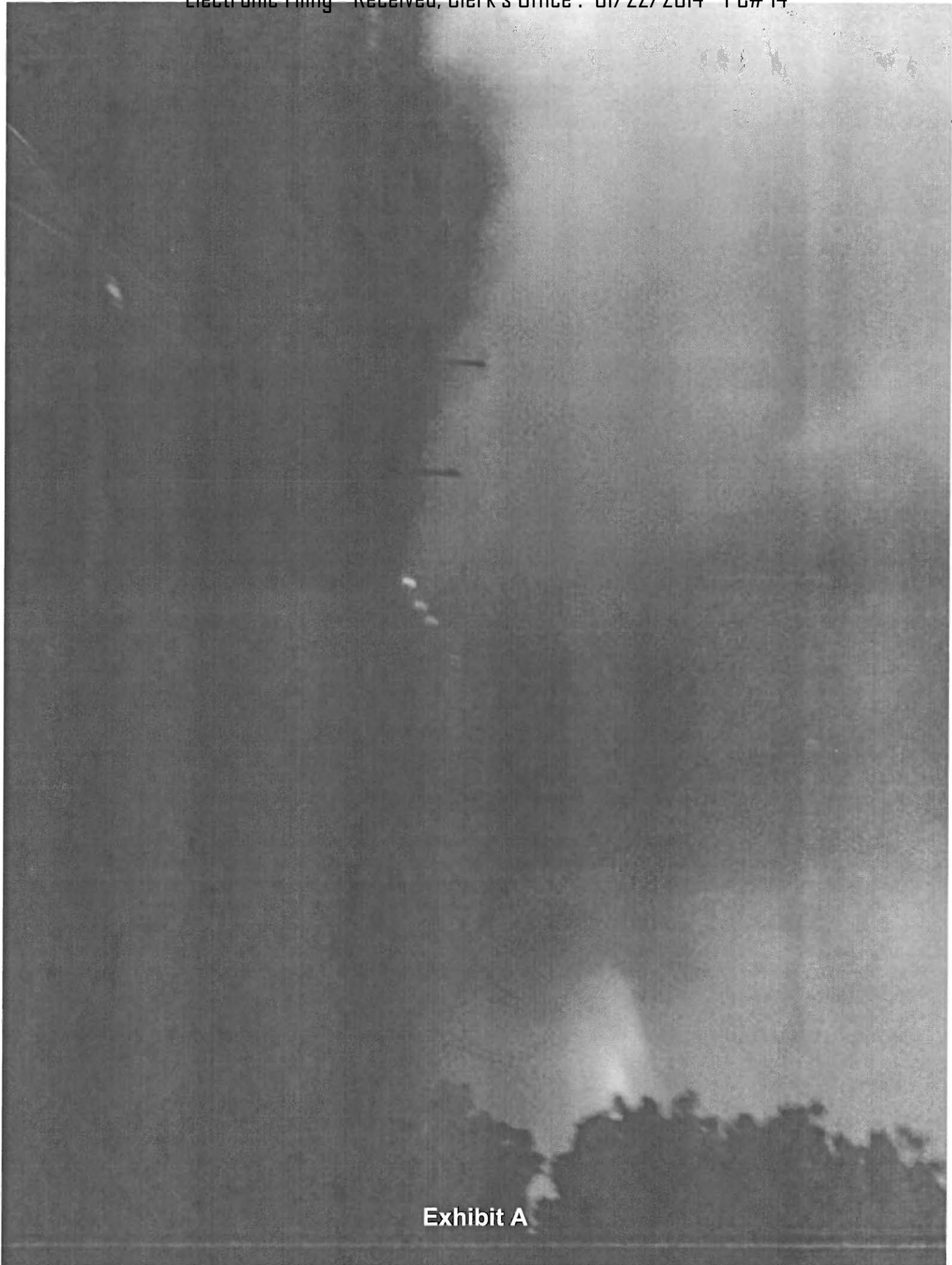
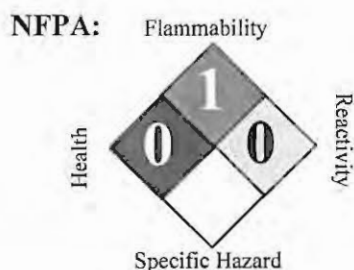


Exhibit A

# Safety Data Sheet

## Petroleum Coke



### SECTION 1. PRODUCT AND COMPANY IDENTIFICATION

|                                |   |  |   |   |                |
|--------------------------------|---|--|---|---|----------------|
| <b>Product name</b>            | : | Petroleum Coke   |   |   |                |
| <b>Synonyms</b>                | : | Green Coke, Uncalcined Coke, Thermocracked Coke, Fuel Grade Coke, 888100004472         |   |   |                |
| <b>SDS Number</b>              | : | 888100004472   | <b>Version</b>                          | : | 1.20           |
| <b>Product Use Description</b> | : | Fuel   |   |   |                |
| <b>Company</b>                 | : | For: Tesoro Refining & Marketing Co.<br>19100 Ridgewood Parkway, San Antonio, TX 78259 |   |   |                |
| <b>Tesoro Call Center</b>      | : | (877) 783-7676   | <b>Chemtrec<br/>(Emergency Contact)</b> | : | (800) 424-9300 |

### SECTION 2. HAZARDS IDENTIFICATION

|                                 |   |   |
|---------------------------------|---|---|
| <b>Classifications</b>          | : | Combustible Dust  |
| <b>Pictograms</b>               | : | None  |
| <b>Signal Word</b>              | : | WARNING   |
| <b>Hazard Statements</b>        | : | May form combustible dust concentrations in air.<br>Excessive exposure may cause skin, eye or respiratory tract irritation.   |
| <b>Precautionary Statements</b> | : |   |
| <b>Prevention</b>               | : | Avoid accumulations of finely ground dust.<br>Keep away from flames and hot surfaces. No smoking.<br>Wear gloves, eye protection and face protection as needed to prevent skin and eye contact with liquid.<br>Wash hands or liquid-contacted skin thoroughly after handling.<br>Do not eat, drink or smoke when using this product.<br>Do not breathe dust.<br>Use only outdoors or in a well-ventilated area.         |
| <b>Response</b>                 | : | In case of fire: Use dry chemical, CO <sub>2</sub> , water spray or fire fighting foam to extinguish.<br>If on skin (or hair): Rinse skin with water or shower. Remove and wash contaminated clothing.<br>If in eye: Rinse cautiously with water for several minutes. Remove contact lenses, if present and easy to do. Continue rinsing.<br>If inhaled: Remove person to fresh air and keep comfortable for breathing. |



## SAFETY DATA SHEET

## Petroleum Coke

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|          |  |
|----------|--|
|          | Immediately call or doctor or emergency medical provider.<br>If skin, eye or respiratory system irritation persists, get medical attention.                            |
| Storage  | Avoid generating heavy concentrations of airborne, finely-ground petroleum coke dust. Avoid accumulations of finely ground dust on surfaces of equipment or buildings. |
| Disposal | Dispose of contents/containers to approved disposal site in accordance with local, regional, or national regulations.  |

## SECTION 3. COMPOSITION/INFORMATION ON INGREDIENTS

| Component        | CAS-No.    | Weight % |
|------------------|------------|----------|
| Coke (Petroleum) | 64741-79-3 | 100%     |

## SECTION 4. FIRST AID MEASURES

|                    |  |
|--------------------|--|
| Inhalation         | : If inhaled, remove to fresh air. If not breathing, give artificial respiration. If necessary, provide additional oxygen once breathing is restored if trained to do so. Seek medical attention immediately.                                  |
| Skin contact       | : Take off all contaminated clothing immediately. Wash off with soap and plenty of water. Wash contaminated clothing before re-use. Seek medical advice if symptoms persist or develop.  |
| Eye contact        | : Remove contact lenses. Immediately flush eyes thoroughly with warm water for at least 15 minutes. Hold the eyelids open and away from the eyeballs to ensure that all surfaces are flushed thoroughly. Seek medical advice.                  |
| Ingestion          | : Ingestion is considered unlikely. However, inhalation procedures should be followed if this happens. Drink 1 or 2 glasses of water. Do NOT induce vomiting. Never give anything by mouth to an unconscious person. Obtain medical attention. |
| Notes to physician | : Symptoms: Vomiting, Diarrhea, Pain   |

## SECTION 5. FIRE-FIGHTING MEASURES

|  |   |
|--|---|
| Suitable extinguishing media                   | : Water spray, Dry chemical, Foam, Carbon dioxide blanket, A solid stream of water may scatter and spread the fire.   |
| Specific hazards during fire fighting          | : Product will burn. In very large quantities, spontaneous heating and combustion may occur. Fire will produce dense black smoke containing hazardous combustion products (see Section 10).   |
| Special protective equipment for fire-fighters | : Firefighting activities that may result in potential exposure to high heat, smoke or toxic by-products of combustion should require NIOSH/MSHA- approved pressure-demand self-contained breathing apparatus with full facepiece and full protective clothing. |
| Further information                            | : Large fires are best extinguished with water. Surfactant (foam or soap) in water may be effective in reaching deep, smoldering fires (such as in coke pile).  |

## SECTION 6. ACCIDENTAL RELEASE MEASURES

**SAFETY DATA SHEET****Petroleum Coke**

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- Personal precautions** : ACTIVATE FACILITY'S SPILL CONTINGENCY OR EMERGENCY RESPONSE PLAN if applicable. Ventilate the area. Evacuate personnel to safe areas.
- Environmental precautions** : Prevent further leakage or spillage. Should not be released into the environment. Do not allow material to contaminate ground water system. In case of accident or road spill notify CHEMTREC (800) 424-9300. U.S. Coast Guard regulations require immediate reporting of spills that could reach any waterway including intermittent dry creeks. Report spill to Coast Guard toll free number (800) 424-8802.
- Methods for cleaning up** : Carefully vacuum, shovel, scoop or sweep up into a waste container for reclamation or disposal. Water fog may be necessary to minimize dust generation. Respiratory protection is recommended where visible dust may be generated.

**SECTION 7. HANDLING AND STORAGE**

- Precautions for safe handling** : Minimize physical contact with the product. Avoid conditions which create dust. Do not breathe vapors or dust. Avoid dispersal of coke dust into air such as cleaning dusty surfaces with compressed air.
- : Keep away from heat and sources of ignition. No smoking near areas where material is stored or used. Ground and bond containers during product transfers to reduce the possibility of static-initiated fire or explosion.
- Dust explosion class** : High concentrations of airborne petroleum coke dusts may be ignited by contact with heated surface. Airborne coke dust is primarily a fire hazard, but explosion may be possible.
- Conditions for safe storage, including incompatibilities** : Avoid generation and accumulation of dust when handling this material. Refer to NFPA 654 Standard for Prevention of Fire & Dust Explosions.
- : Stable under recommended storage conditions.

**SECTION 8. EXPOSURE CONTROLS / PERSONAL PROTECTION****Exposure Guidelines**

| List  | Components   | CAS-No.    | Type | Value  |
|-------|--|------------|------|--|
| OSHA  | Petroleum Coke                                       | 64741-79-3 | TWA  | 15mg/m3 (total dust)<br>5 mg/m3 (respirable dust)  |
| ACGIH | Petroleum Coke                                       | 64741-79-3 | TL   | 10 mg/m3 (total dust)<br>3 mg/m3 (respirable dust) |
| OSHA  | Coal Tar Pitch Volatiles<br>Benzene Soluble Fraction | 65996-93-2 | TWA  | 0.2 mg/m3  |
| ACGIH | Coal Tar Pitch Volatiles<br>Benzene Soluble Fraction | 65996-93-2 | TLV  | 0.2 mg/m3  |

NOTE: Limits shown for guidance only. Follow applicable regulations.

- Engineering measures** : Use adequate ventilation to keep dust concentrations of this product below occupational exposure limits. Facilities storing or utilizing this material should be equipped with an eyewash facility and a safety shower. Dust control equipment such as local exhaust ventilation or material transport systems handling coke should contain explosion relief vents or explosion suppression systems.

**SAFETY DATA SHEET****Petroleum Coke**

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|                                 |   |  |
|---------------------------------|---|--|
| <b>Eye protection</b>           | : | Indirect vented, dust-tight goggles are recommended if dust is generated when handling this product.   |
| <b>Hand protection</b>          | : | Work gloves are recommended if needed to prevent repeated or prolonged skin contact.   |
| <b>Skin and body protection</b> | : | Disposable clothing such as Tyvek® (DuPont) may be warranted to minimize skin and clothing contamination, depending on the work to be performed. Flame resistant clothing such as Nomex® is recommended in areas where material is stored or handled.  |
| <b>Respiratory protection</b>   | : | A NIOSH/ MSHA-approved air-purifying respirator with particulate classification N-95 or greater filter cartridges or canister may be permissible under certain circumstances where airborne concentrations are or may be expected to exceed exposure limits or for odor or irritation. Protection provided by air-purifying respirators is limited. Refer to OSHA 29 CFR 1910.134, ANSI Z88.2-1992, NIOSH Respirator Decision Logic, and the manufacturer for additional guidance on respiratory protection selection. Use a NIOSH/ MSHA-approved positive-pressure supplied-air respirator if there is a potential for uncontrolled release, exposure levels are not known, in oxygen-deficient atmospheres, or any other circumstance where an air-purifying respirator may not provide adequate protection. |
| <b>Hygiene measures</b>         | : | Use good personal hygiene practices. Avoid repeated and/or prolonged skin exposure. Wash hands before eating, drinking, smoking, or using toilet facilities. When using do not eat, drink or smoke. Promptly remove contaminated clothing and launder before reuse.  |

**SECTION 9. PHYSICAL AND CHEMICAL PROPERTIES**

|  |                             |
|--|-----------------------------|
| <b>Appearance</b>                              | Dark brown to black solid   |
| <b>Odor</b>                                    | Asphalt – like odor         |
| <b>Odor threshold</b>                          | Not determined              |
| <b>pH</b>                                      | Not determined              |
| <b>Melting point/freezing point</b>            | Not determined              |
| <b>Initial boiling point</b>                   | Not determined              |
| <b>Flash point</b>                             | Not determined              |
| <b>Evaporation rate</b>                        | Not determined              |
| <b>Flammability (solid, gas)</b>               | Solid                       |
| <b>Upper flammable limit</b>                   | Not determined              |
| <b>Lower flammable limit</b>                   | 15 to 1000 g/m <sup>3</sup> |
| <b>Vapor Pressure</b>                          | Not applicable              |
| <b>Vapor density (air = 1)</b>                 | No data available           |
| <b>Relative density (water = 1)</b>            | >1.0                        |
| <b>Solubility (in water)</b>                   | Insoluble                   |
| <b>Partition coefficient (n-octanol/water)</b> | No data available           |

## SAFETY DATA SHEET

## Petroleum Coke

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|                           |                   |
|---------------------------|-------------------|
| Auto-ignition temperature | 670°C (1,238°F)   |
| Kinematic viscosity       | No data available |
| Kst                       | 47 to 74 bar m/s  |
| MIE                       | > 1000 mj         |

**SECTION 10. STABILITY AND REACTIVITY**

|                                    |  |
|------------------------------------|--|
| Reactivity                         | : Airborne dust may become flammable or explosive.   |
| Chemical stability                 | Stable under normal conditions.  |
| Possibility of hazardous reactions | Keep away from oxidizing agents, and acidic or alkaline products.  |
| Conditions to avoid                | Avoid accumulation of finely ground dust. Minimize generation of airborne dust. See Section 7 for additional information.  |
| Hazardous decomposition products   | In case of fire, hazardous decomposition products may be produced such as carbon monoxide, carbon dioxide, hydrocarbons and smoke. No decomposition if stored and applied as directed. |

**SECTION 11. TOXICOLOGICAL INFORMATION**

|                       |   |
|-----------------------|---|
| Inhalation            | Inhalation of excessive dust concentrations may be irritating to the upper respiratory system. Repeated chronic inhalation exposure may cause impaired lung function. There is no evidence that such exposures cause pneumoconiosis, carcinogenicity, or other chronic health effects.  |
| Ingestion             | Low order of oral toxicity. Ingestion is considered unlikely. However, good personal hygiene such as washing hands and face after handling or contacting material before eating, drinking or smoking should be practiced to minimize ingestion of this product.   |
| Skin contact          | Contact may cause skin irritation.  |
| Eye contact           | May cause irritation, experienced as mild discomfort and seen as slight excess redness of the eye.  |
| Further information   | Repeated inhalation of the petroleum coke dust (10.2 and 30.7 mg/m <sup>3</sup> ) over a two-year period resulted in lung damage typical of high dust exposure including inflammation and scarring in rats. Similar exposures in monkeys did not produce similar lung effects. There was no observation of a carcinogenic effect at any dose following a lifetime exposure. There is no evidence of pneumoconiosis or carcinogenicity in human health studies.<br>24 months of exposure in monkeys and rats to either 10.2 or 30.7 mg/m <sup>3</sup> of coke dust resulted in lung accumulation of dust. There was no associated tissue abnormality in monkeys. A low level inflammatory response developed in the rat lung at 10.2 mg/m <sup>3</sup> and more significant inflammatory changes occurred in the rat lung at 30.7 mg/m <sup>3</sup> . There was no evidence of carcinogenicity in either species. Mouse skin painting bioassay negative. |
| Acute oral toxicity   | LD50 rat<br>Dose: > 2,000 mg/kg<br>The toxicological data has been taken from products of similar composition.  |
| Acute dermal toxicity | LD50 rabbit<br>Dose: > 2,000 mg/kg<br>The toxicological data has been taken from products of similar composition.   |

**SAFETY DATA SHEET****Petroleum Coke**

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Acute inhalation toxicity : No data available

**Carcinogenicity**

NTP : No component of this product which is present at levels greater than or equal to 0.1 % is identified as a known or anticipated carcinogen by NTP.

IARC : No component of this product which is present at levels greater than or equal to 0.1 % is identified as probable, possible or confirmed human carcinogen by IARC.

OSHA : No component of this product which is present at levels greater than or equal to 0.1 % is identified as a carcinogen or potential carcinogen by OSHA.

CA Prop 65 : This product does not contain any chemicals known to State of California to cause cancer, birth, or any other reproductive defects.

**SECTION 12. ECOLOGICAL INFORMATION**

Additional ecological information : Keep out of sewers, drainage areas, and waterways. Report spills and releases, as applicable, under Federal and State regulations.

**SECTION 13. DISPOSAL CONSIDERATIONS**

Disposal : Dispose of container and unused contents in accordance with federal, state and local requirements.  
 Product is suitable for burning for fuel value in compliance with applicable laws and regulations.  
 RCRA: The unused product, in our opinion, is not specifically listed by the EPA as a hazardous waste (40 CFR, Part 261D), nor is it formulated to contain materials which are listed hazardous wastes. It does not exhibit the hazardous characteristics of ignitability, corrosivity, or reactivity. The unused product is not formulated with substances covered by the Toxicity Characteristic Leaching Procedure (TCLP). However, used product may be regulated.

**SECTION 14. TRANSPORT INFORMATION**

CFR : Not regulated by USA DOT 49 CFR.

ICAO/IATA : Not regulated by ICAO/IATA.

**SECTION 15. REGULATORY INFORMATION****U.S. FEDERAL, STATE AND LOCAL REGULATORY INFORMATION**

Any spill or uncontrolled release of this product, including any substantial threat of release, may be subject to federal, state and/local reporting requirements. This product and/or its constituents may also be subject to other regulations at the state and/or local level. Consult those regulations applicable to your facility/operation.

TSCA Status : On TSCA Inventory

DSL Status : All components of this product are on the Canadian DSL list.

SARA 311/312 Hazards : No SARA Hazards

## SAFETY DATA SHEET

## Petroleum Coke

Page 7 of 7

**CERCLA SECTION 103 and SARA SECTION 304 (RELEASE TO THE ENVIROMENT)**

The CERCLA definition of hazardous substances contains a "petroleum exclusion" clause which exempts crude oil. Fractions of crude oil, and products (both finished and intermediate) from the crude oil refining process and any indigenous components of such from the CERCLA Section 103 reporting requirements. However, other federal reporting requirements, including SARA Section 304, as well as the Clean Water Act may still apply.

PENN RTK US. Pennsylvania Worker and Community Right-to-Know Law (34 Pa. Code Chap. 301-323)

**Components****CAS-No.****Coke (Petroleum)**

64741-79-3

NJ RTK

US. New Jersey Worker and Community Right-to-Know Act (New Jersey Statute Annotated Section 34:5A-5)

**Components****CAS-No.****Coke (Petroleum)**

64741-79-3

California Prop. 65

: This product may contain detectable quantities of chemicals known to the State of California to cause cancer, birth defects or other reproductive harm, and which may be subject to the requirements of California Proposition 65.

|   |               |            |
|---|---------------|------------|
| Nickel / Nickel Compounds                   | Cancer        | 7440-02-0  |
| Chromium, Hexavalent Compounds              | Cancer        | 18540-29-9 |
| Lead  | Cancer        | 7439-92-1  |
| Lead  | Developmental | 7439-92-1  |
| Polycyclic Aromatic Hydrocarbons including: |               |            |
| Benzo(a)pyrene                              | Cancer        | 50-32-8    |
| Indeno(1,2,3-cd)pyrene                      | Cancer        | 193-39-5   |

**SECTION 16. OTHER INFORMATION****Further information**

The information provided in this Safety Data Sheet is correct to the best of our knowledge, information and belief at the date of its publication. The information given is designed only as guidance for safe handling, use, processing, storage, transportation, disposal and release and is not to be considered a warranty or quality specification. The information relates only to the specific material designated and may not be valid for such material used in combination with any other materials or in any process, unless specified in the text.

10/29/2012

163, 275, 1142

[← Back to Original Article](#)

Los Angeles

## Port of L.A. Covers Its Petroleum Coke

*Health: The facility is storing the potentially carcinogenic material in a \$7.5-million barn.*

May 17, 2002 | SANDRA MURILLO | TIMES STAFF WRITER

After years of public outcry, lawsuits and environmental studies, politicians and officials at the Port of Los Angeles announced Thursday that all petroleum coke piles at the port have been covered.

Assemblyman Alan Lowenthal (D-Long Beach) and representatives of the South Coast Air Quality Management District and the Los Angeles Export Terminal held a news conference Thursday to announce the completion of an enormous storage barn on Terminal Island that will house the potentially carcinogenic petroleum coke piles.

The piles are now covered by the \$7.5-million storage barn, which is 105 feet tall and 240 feet wide. The barn was built by the export terminal, which handles about half of the 5 million tons of coke shipped out of the ports of Los Angeles and Long Beach every year.

Petroleum coke, a coal-like byproduct of the oil refining process, is exported to Asia for use as an industrial fuel. If inhaled in sufficient quantities, the material can cause cancer, officials said.

"They'd put it in these huge piles ... and it would blow on the community," Lowenthal said. When he first got elected to the Long Beach City Council in 1992, residents near the port complained to him about the dust on their windows and boats, he said.

Studies have shown a link between elevated levels of coke dust in the air and the deaths of people with respiratory illness and heart disease. An early study in Long Beach showed that coke dust comprised 12% to 15% of air pollutants.

"We ship out some of the worst stuff in the world," Lowenthal said.

Officials at the Los Angeles Export Terminal had argued that installing roofs over the coke piles would be too costly, and they said that dust was being controlled by sprinklers and other devices.

In 1998, the terminal began building two \$20-million concrete domes covering 75,000 tons of coke each, said Jim Holland, vice president of operations.

Subsequent regulations by the AQMD mandated full enclosure of the coke piles awaiting shipment that, at that point, were not covered.

The new rules required equipment and procedural changes by January 2004 to facilities and trucks that handle petroleum coke. A bill introduced by Lowenthal and signed by Gov. Gray Davis two years ago advanced the deadline to next month.

The Los Angeles Export Terminal "has always wanted to work with the community," said Gerald Swan, the terminal's president. "We are committed to a clean environment, and I hope that the vast sums of money we have spent will render that very end."

The Port of Long Beach has until Jan. 1, 2004, to cover parts of its antiquated loading machinery.



## ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

1021 NORTH GRAND AVENUE EAST, P.O. BOX 19276, SPRINGFIELD, ILLINOIS 62794-9276 • (217) 782-2829  
PAT QUINN, GOVERNOR                      LISA BONNETT, DIRECTOR

TDD 217/782-9143

OCT 24 2013

Certified Mail # 7009 3410 0002 3750 1787  
Return Receipt Requested

Peter Smith  
Beemsterboer Slag Corp.  
2900 E. 106<sup>th</sup> Street  
Chicago, Illinois 60617

**RE: Violation Notice A-2013-00235  
I.D. 031600FES**

Dear Mr. Smith:

This constitutes a Violation Notice pursuant to Section 31(a)(1) of the Illinois Environmental Protection Act ("Act"), 415 ILCS 5/31(a)(1), and is based upon a review of available information and an investigation by representatives of the Illinois Environmental Protection Agency ("Illinois EPA").

The Illinois EPA hereby provides notice of alleged violations of environmental laws, regulations, or permits as set forth in Attachment A to this letter. Attachment A includes an explanation of the activities that the Illinois EPA believes may resolve the specified alleged violations, including an estimate of a reasonable time period to complete the necessary activities. Due to the nature and seriousness of the alleged violations, please be advised that resolution of the violations may also require the involvement of a prosecutorial authority for purposes that may include, among others, the imposition of statutory penalties.

A written response, which may include a request for a meeting with representatives of the Illinois EPA, must be submitted via certified mail to the Illinois EPA within 45 days of receipt of this letter. If a meeting is requested, it shall be held within 60 days of receipt of this notice. The response must include information in rebuttal, explanation, or justification of each alleged violation and a statement indicating whether or not the source wishes to enter into a Compliance Commitment Agreement ("CCA") pursuant to Section 31(a) of the Act. If the source wishes to enter into a CCA, the written response must also include proposed terms for the CCA that contains dates for achieving each commitment and may also include a statement that compliance has been achieved for some or all of the alleged violations. In order to increase the likelihood of the Illinois EPA accepting such terms, the written response should specifically propose them in a manner that can be formalized into an enforceable agreement between the Illinois EPA and the source. As such, proposed conditions should be as detailed as possible, including steps to be taken to achieve compliance, the manner of compliance, interim and completion dates, etc.

**Exhibit D**



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Violation Notice A-2013-00235

Beemsterboer Slag Corp., I.D. 031600FES

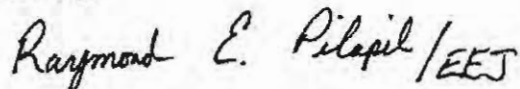
The Illinois EPA will review the proposed terms for a CCA provided by the source and, within 30 days of receipt, will respond with either a proposed CCA or a notice that no CCA will be issued by the Illinois EPA. If the Illinois EPA sends a proposed CCA, the source must respond in writing by either agreeing to and signing the proposed CCA or by notifying the Illinois EPA that the source rejects the terms of the proposed CCA.

If a timely written response to this Violation Notice is not provided, it shall be considered a waiver of the opportunity to respond and meet, and the Illinois EPA may proceed with referral to the prosecutorial authority.

Written communications should be directed to JOHN REKESIUS, Illinois EPA, Bureau of Air, Compliance Unit, P.O. Box 19276, Springfield, Illinois 62794-9276. All communications must include reference to the Violation Notice number in this matter.

Questions regarding this matter should be directed to JOSEPH KOTAS at 847/294-4023.

Sincerely,

Handwritten signature of Raymond E. Pilapil in cursive script, followed by the initials 'REP' in a separate column.

Raymond E. Pilapil, Manager  
Compliance Section  
Bureau of Air

REP: jr

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Violation Notice A-2013-00235

Beemsterboer Slag Corp., I.D. 031600FES

ATTACHMENT A

Per observations by Joseph Kotas on September 6, 11, and 13, 2013, and other available information:

VIOLATIONS:

1. Section 9(b) of the Act and 35 Ill. Adm. Code 201.142: Beemsterboer Slag Corp. failed to obtain construction permits prior to the construction of a screener and modification to the materials handled at the facility by handling materials other than coal.
2. Section 9(b) of the Act and 35 Ill. Adm. Code 201.143: Beemsterboer Slag Corp. failed to obtain an operating permit prior to the operation of the screener and allowing the handling any material other than coal.
3. Section 9.12 of the Act: Beemsterboer Slag Corp. failed to pay applicable construction permit application fees.
4. Section 9(a) of the Act and 35 Ill. Adm. Code 212.309, 212.310, and 212.312: Beemsterboer Slag Corp. failed to develop, maintain, amend, and submit to the Illinois EPA, an operating program designed to significantly reduce fugitive particulate matter emissions.
5. Section 9(a) of the Act and 35 Ill. Adm. Code 212.316(g)(1) and (g)(5): Beemsterboer Slag Corp. failed to submit annual and quarterly reports for activities involving fugitive particulate matter control measures.
6. Section 9(a) of the Act and 35 Ill. Adm. Code 212.316 (g)(2) and (g)(4): Beemsterboer Slag Corp. may have failed to document and maintain the records required by 35 Ill. Adm. Code 212.316(g)(2).
7. Section 9(a) of the Act and 35 Ill. Adm. Code 212.701: Beemsterboer Slag Corp. failed to develop, maintain, and submit a PM-10 contingency measure plan to the Illinois EPA.
8. Section 9(a) of the Act and 35 Ill. Adm. Code 201.302(a) and 254.132(a): Beemsterboer Slag Corp. failed to submit an Annual Emissions Report ("AER") to the Illinois EPA for calendar year 2012. Specifically this AER was due May 1, 2013. In addition, Beemsterboer Slag Corp. may have failed to submit complete, true, and accurate AERs for at least calendar years 2000 through 2011.

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Violation Notice A-2013-00235

Beemsterboer Slag Corp., I.D. 031600FES

ATTACHMENT A (Continued)

9. Section 9.1(d) of the Act and 40 CFR 63.6595, 63.6600, 63.6603, 63.6605, 63.6612, 63.6615, 63.6620, 63.6625, 63.6640, 63.6645, 63.6650, 63.6655, 63.6660, 63.6665: Beemsterboer Slag Corp. may have failed to comply with the emission limitation standards; the corresponding operation, maintenance, and monitoring plan requirements; the testing and initial compliance requirements; the monitoring requirements; and the notification, reporting, and record keeping requirements of 40 CFR 63, Subpart ZZZZ – National Emission Standards for Hazardous Air Pollutants for Reciprocating Internal Combustion Engines (“Subpart ZZZZ”) and NESHAP Subpart A- General Provisions as indentified in Table 8 of Subpart ZZZZ.
10. Section 9(a) of the Act and 35 Ill. Adm. Code 201.141: Beemsterboer Slag Corp. caused, threatened, or allowed the discharge of particulate matter into the atmosphere generated during material handling and storage operations causing or tending to cause air pollution.

RECOMMENDATIONS:

The Illinois EPA suggests that Beemsterboer Slag Corp. take the following actions to address the violations stated above:

1. Immediately cease causing or tending air pollution from the material handling and storage operations.
2. Within 45 days of receipt of this Violation Notice, develop, implement, and submit a compliance plan, along with dates of implementation, which will ensure the prevention of air pollution from the facility that cause, threaten, or allows the unreasonable interference with the enjoyment of life and property of local citizens. This compliance plan should include at a minimum any and all interim and/or permanent measures and procedures that will be undertaken.
3. Within 45 days of receipt of this Violation Notice, submit to the Illinois EPA a complete, true, accurate, and acceptable operating permit application for all current emission units and all materials that will be handled at this facility.
4. Within 45 days of receipt of this Violation Notice, submit to the Illinois EPA, Bureau of Air, Compliance Section, the applicable avoided construction fees. Note the construction fee form can be found at: <http://www.epa.state.il.us/air/permits/construction-fees.html>

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Violation Notice A-2013-00235

Beemsterboer Slag Corp., I.D. 031600FES

ATTACHMENT A (Continued)

RECOMMENDATIONS (Continued):

5. Within 45 days of receipt of this Violation Notice, develop, implement, maintain, and submit to the Illinois EPA, Bureau of Air, Compliance Section a complete, true, accurate, and acceptable operating program in accordance with 35 Ill. Adm. Code 212.309 and 212.310.
6. Within 45 days of receipt of this Violation Notice, develop, implement, and submit to the Illinois EPA internal policy to ensure that the operating program is documented, maintained, and amended, as specified in 35 Ill. Adm. Code 212.309, 212.310, and 212.312.
7. Within 45 days of receipt of this Violation Notice, develop, implement, and submit to the Illinois EPA, Bureau of Air, Compliance Section an internal policy to ensure the documentation of the records of fugitive emission control measures required by 35 Ill. Adm. Code 212.316(g)(2) and these records are maintained and readily accessible upon inspection in accordance with 35 Ill. Adm. Code 212.316(g)(4).
8. Within 45 days of receipt of this Violation Notice, submit to the Illinois EPA, Bureau of Air, Compliance Section, fugitive particulate matter control measures reports covering calendar years 2008, 2009, 2010, 2011, and 2012. Specifically, these reports will list the dates that fugitive particulate matter control measures were and were not implemented, a listing of those control measures implemented, the reasons that the control measures were not implemented, and any other corrective actions taken.
9. Within 45 days of receipt of this Violation Notice, develop, implement, and submit to the Illinois EPA, Bureau of Air, Compliance Section, an internal policy that will ensure the quarterly fugitive particulate matter control measures reports, required by 35 Ill. Adm. Code 212.316(g)(5) are submitted to the Illinois EPA within 30 calendar days from the end of a quarter (Quarters end March 31, June 30, September 30, and December 31).
10. Within 45 days of receipt of this Violation Notice, develop, implement, and submit to the Illinois EPA, an internal policy to ensure the annual report containing the written records of the application of control measures, as may be needed for compliance with opacity limitations, will be prepared and submitted timely.
11. Within 45 days of receipt of this Violation Notice, submit a PM-10 Contingency Measure Plan to the Illinois EPA, Compliance Section, in accordance with 35 Ill. Adm. Code 212.701 and 212.703.

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Violation Notice A-2013-00235

Beemsterboer Slag Corp., I.D. 031600FES

ATTACHMENT A (Continued)

RECOMMENDATIONS (Continued):

12. Within 45 days of receipt of this Violation Notice, develop, implement, and submit to the Illinois EPA, an internal policy to ensure the Contingency Measures Plan is documented, maintained, implemented, and amended as specified in 35 Ill. Adm. Code 212.701, 212.702, 212.703, and 212.704.
13. Within 45 days of the receipt of this Violation Notice, submit the following information to the Illinois EPA, Bureau of Air, Compliance Section, date of construction, date of initial operation, and the monthly and 12-month rolling annual emissions of nitrogen oxides ("NO<sub>x</sub>"), carbon monoxide ("CO"), particulate matter ("PM"), particulate matter less than 10 microns ("PM<sub>10</sub>"), sulfur dioxide ("SO<sub>2</sub>"), volatile organic materials ("VOM"), and hazardous air pollutants ("HAPs") for calendar years 2000 through 2012 for each emission source, along with supporting documentation.
14. Within 45 days of receipt of this Violation Notice, submit a complete, true, and accurate AER for calendar years 2000 through 2012 to the Illinois EPA, Bureau of Air, Compliance Section.
15. Within 45 days of receipt of this Violation Notice, develop, implement, and submit an internal policy that will ensure AERs will be complete, true, accurate, and timely submitted to the Illinois EPA, Bureau of Air, Compliance Section.
16. Within 45 days of receipt of this Violation Notice, submit to the Illinois EPA a detailed explanation identifying how and when compliance with Subpart ZZZZ regulations cited above will be achieved.
  - a. Testing shall be conducted, documented, and reported by an independent testing service in accordance with appropriate USEPA Methods and an approvable stack test protocol. Two copies of the proposed test protocol shall be submitted to the Division of Air Pollution Control/Compliance Section and one copy shall be submitted to the Division of Air Pollution Control/Field Operation Section ("FOS") at least 60 days prior to the scheduled test date. The test protocol must comply with the applicable requirements of 40 CFR 63.7(c) and the test methods and procedures specified in 40 CFR 63.7(d) and 40 CFR 63.6620 for diesel engine.
  - b. In order to enable the Illinois EPA to witness the test, the Compliance Section and FOS shall be notified in writing of the test date at least 60 days before the expected testing date. Final confirmation of the exact date and time of the test shall be made at least five (5) days prior to the test date.

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Violation Notice A-2013-00235

Beemsterboer Slag Corp., I.D. 031600FES

ATTACHMENT A (Continued)

RECOMMENDATIONS (Continued):

- c. Testing shall be conducted under conditions representative of maximum process operating rates and prior to making any modifications to the existing source equipment, control equipment and stacks.
- d. The final report for the test(s) shall be submitted to the Compliance Section (two copies) and FOS (one copy) within 60 days of completion of testing.
- e. The reports and notification described above should be submitted to:

Illinois EPA/Bureau of Air  
Field Operation Section  
Attn: Regional Manager  
9511 Harrison Street  
Des Plaines, IL 60016  
(1 copy)

Illinois EPA/Bureau of Air  
Compliance Section (MC40)  
Attn: Raymond Pilapil  
1021 North Grand Avenue East  
P.O. Box 19276  
Springfield, IL 62794-9276  
(1 copy)

Illinois EPA/Bureau of Air  
Compliance Section  
Attn: Kevin Mattison  
9511 Harrison Street  
Des Plaines, IL 60016  
(1 copy)

IN THE CIRCUIT COURT FOR COOK COUNTY, ILLINOIS  
CHANCERY DIVISION

PEOPLE OF THE STATE OF ILLINOIS, )  
ex rel. LISA MADIGAN, Attorney )  
General of the State of Illinois, )  
 )  
Plaintiff, )  
 )  
v. )  
 )  
KCBX TERMINALS COMPANY, )  
a North Dakota corporation, )  
 )  
Defendant. )

No. 2013CH24788  
CALENDAR/ROOM 15  
TIME 00:00  
Injunction

COMPLAINT FOR INJUNCTIVE RELIEF AND CIVIL PENALTIES

The PEOPLE OF THE STATE OF ILLINOIS, *ex rel.* LISA MADIGAN, Attorney General of the State of Illinois, on her own motion and at the request of the Illinois Environmental Protection Agency ("Illinois EPA"), complains of the Defendant, KCBX TERMINALS COMPANY, a North Dakota corporation, as follows:

COUNT I

AIR POLLUTION

1. This Count is brought on behalf of the People of the State of Illinois, *ex rel.* Lisa Madigan, Attorney General of the State of Illinois, on her own motion and at the request of the Illinois EPA, against Defendant KCBX Terminals Company, a North Dakota corporation (the "Defendant"), pursuant to the terms and provisions of Sections 42(d) and (e) of the Illinois Environmental Protection Act ("Act"), 415 ILCS 5/42(d) and (e) (2012).

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11:28 PM  
L. J. ...

2. The Illinois EPA is an administrative agency of the State of Illinois, created by Section 4 of the Act, 415 ILCS 5/4 (2012), and charged, inter alia, with the duty of enforcing the Act.

3. At all times relevant to this Complaint, the Defendant has been and is a North Dakota corporation qualified to transact business in the State of Illinois. It is registered with the Illinois Secretary of State's Office as a foreign corporation and is in good standing.

4. Between December 20, 2012 through the date of the filing of this Complaint, the Defendant has operated and continues to operate a bulk solid materials transloading facility located at 10730 South Burley Avenue, Chicago, Cook County, Illinois (the "Site") for petroleum coke and coal.

5. The Site comprises approximately 90 acres and is bound by the Calumet River to the North, West and South, and railroad tracks and South Burley Avenue to the East. A residential neighborhood is located directly to the east of South Burley Avenue and the Site. Wolfe Playground Park is located approximately 0.2 miles from the entrance to the Site. A baseball diamond is located directly to the east of the southern portion of the Site. Addams Elementary School is located 0.6 miles to the east of the Site, and Washington High School and George Washington Elementary School are located 0.9 miles to the southeast of the Site.

6. Petroleum coke, also known as "pet coke," is a by-product of petroleum refining that is primarily utilized as a replacement fuel or fuel blend for coal-fired power plants and cement kilns. Petroleum coke generally has a very high carbon content (90-95 percent), contains some sulfur and may include trace elements of metals such as vanadium, nickel, chromium and lead.



7. At all times relevant to this Complaint, the Defendant has received and continues to receive petroleum coke and coal by rail, truck, barge or vessel, which is stored in large piles at the Site and then is moved off-site by the same modes of transportation.

8. On September 5, 2013, and such other dates better known to the Defendant, the Defendant had eight piles of petroleum coke and coal at the Site that were between approximately twenty- and sixty-feet in height. On September 20, 2013, and such other dates better known to the Defendant, the Defendant had approximately 350,000 tons of petroleum coke and coal at the Site.

9. At all times relevant to the Complaint, the Defendant has left the petroleum coke and coal piles at the Site uncovered and open to the environment.

10. Between December 20, 2012 and August 30, 2013, and on such other dates better known to the Defendant, the Defendant had (a) six thirty-five foot high water sprinklers to control dust in the southwest portion of the Site and (b) one 8,000 gallon water truck to control dust from the petroleum coke and coal piles on the entire remaining portion of the Site. The Defendant also may have occasionally utilized surfactant, a dust control agent, on 'inactive' piles of petroleum coke and coal at the Site.

11. Between at least December 20, 2012 and the date of the filing of this Complaint, and on such other dates better known to the Defendant, the Defendant threatened or caused the emission of dust from the petroleum coke and coal piles into the atmosphere above the Site due to the Defendant's (a) loading and unloading, conveyance, distribution and storage operations at the Site and (b) inadequate dust control measures at the Site.

12. On August 30, 2013, a visible cloud of black dust from the petroleum coke and coal located at the Site was observed off-Site blowing into the surrounding residential neighborhood.

13. Petroleum coke and coal dust is a type of particulate matter that can be emitted into the environment and carried by the wind into areas surrounding the Site. When petroleum coke and coal dust is blown off the Site into the nearby residential neighborhood, the dust gets into people's eyes, is inhaled and coats people's homes, outside play areas, cars and other personal property, thereby threatening human health and unreasonably interfering with the local residents' enjoyment of life and property.

14. Particulate matter, including petroleum coke and coal dust, may be inhaled into the lungs and cause serious health problems, including aggravated asthma, decreased lung function, increased respiratory symptoms such as difficulty in breathing, irregular heartbeat, nonfatal heart attacks and premature death in people with heart or lung disease.

15. Section 9(a) of the Act, 415 ILCS 5/9(a) (2012), provides as follows:

No person shall:

- (a) Cause or threaten or allow the discharge or emission of any contaminant into the environment in any State so as to cause or tend to cause air pollution in Illinois, either alone or in combination with contaminants from other sources, or so as to violate regulations or standards adopted by the Board under this Act.

16. Section 3.315 of the Act, 415 ILCS 5/3.315 (2012), provides as follows:

"Person" is any individual, partnership, co-partnership, firm, company, limited liability company, corporation, association, joint stock company, trust, estate, political subdivision, state agency, or any other legal entity, or their legal representative, agent or assigns.

17. The Defendant is a "person" as that term is defined in Section 3.315 of the Act, 415 ILCS 5/3.315 (2012).

18. Section 3.165 of the Act, 415 ILCS 5/3.165 (2012), provides as follows:

"Contaminant" is any solid, liquid, or gaseous matter, any odor, or any form of energy, from whatever source.

19. Coal and petroleum coke dust is a "contaminant" as that term is defined by Section 3.165 of the Act, 415 ILCS 5/3.165 (2012).

20. Section 3.115 of the Act, 415 ILCS 5/3.115 (2012), provides as follows:

"Air pollution" is the presence in the atmosphere of one or more contaminants in sufficient quantities and of such characteristics and duration as to be injurious to human, plant, or animal life, to health, or to property, or to unreasonably interfere with the enjoyment of life or property.

21. On at least August 30, 2013, and such other dates better known to the Defendant, petroleum coke and coal dust discharged or emitted from the Site into the surrounding neighborhood threatened the human health of the local residents in the vicinity of the Site and unreasonably interfered with their enjoyment of life and/or property. The discharge or emission of petroleum coke and coal dust from the Site constitutes "air pollution," as that term is defined in Section 3.115 of the Act, 415 ILCS 5/3.115 (2012).

22. Between December 20, 2012 and the date of the filing of this Complaint, and on such other dates better known to the Defendant, the Defendant threatened the emission of petroleum coke and coal dust into the residential neighborhood adjacent to the Site due to the Defendant's insufficient dust suppression controls at the Site, particularly during windy conditions.

23. By causing, threatening or allowing the discharge or emission of petroleum coke and coal dust into the environment so as to cause air pollution, the Defendant violated Section 9(a) of the Act, 415 ILCS 5/9(a) (2012).

24. Plaintiff is without an adequate remedy at law. Plaintiff will be irreparably injured and violations of pertinent environmental statutes and regulations will continue unless this Court grants equitable relief in the form of permanent injunctive relief.

WHEREFORE, Plaintiff, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that this honorable Court enter a preliminary and, after trial, a permanent injunction in favor of Plaintiff and against the Defendant, KCBX TERMINALS COMPANY, a North Dakota corporation, as follows:

1. Finding that the Defendant, KCBX TERMINALS COMPANY, has violated Section 9(a) of the Act, 415 ILCS 5/9(a) (2012);
2. Enjoining the Defendant, KCBX TERMINALS COMPANY, from any further violations of Section 9(a) of the Act, 415 ILCS 5/9(a) (2012);
3. Ordering the Defendant, KCBX TERMINALS COMPANY, to immediately undertake all necessary corrective action that will result in a final and permanent abatement of violations of Section 9(a) of the Act, 415 ILCS 5/9(a) (2012);
4. Assessing against the Defendant, KCBX TERMINALS COMPANY, a civil penalty of Fifty Thousand Dollars (\$50,000.00) for each violation of the Act, and an additional penalty of Ten Thousand Dollars (\$10,000.00) for each day of each violation;
5. Ordering the Defendant, KCBX TERMINALS COMPANY, to pay all costs, pursuant to Section 42(f) of the Act, 415 ILCS 5/42(f) (2012), including any attorney, expert witness, and consultant fees expended by the State in its pursuit of this action; and

6. Granting such other relief as this Court deems appropriate and just.

"COUNT II

**FAILURE TO AMEND AND MAINTAIN A CURRENT FUGITIVE PARTICULATE  
MATTER OPERATING PROGRAM**

1. This Count is brought on behalf of the People of the State of Illinois, *ex rel.* Lisa Madigan, Attorney General of the State of Illinois, on her own motion, against the Defendant, pursuant to the terms and provisions of Sections 42(d) and (e) of the Act, 415 ILCS 5/42(d) and (e) (2012).

2-14. Plaintiff realleges and incorporates by reference herein paragraphs 3 through 14 of Count I as paragraphs 2 through 14 of this Count II.

15. Section 212.309(a) of the Illinois Pollution Control Board's regulations for fugitive particulate matter (the "Board Fugitive Particulate Matter Regulations"), 35 Ill. Adm. Code 212.309(a), provides as follows:

a) The emission units described in Sections 212.304 through 212.308 and Section 212.316 of this Subpart shall be operated under the provisions of an operating program, consistent with the requirements set forth in Sections 212.310 and 212.312 of this Subpart, and prepared by the owner or operator and submitted to the Agency for its review. Such operating program shall be designed to significantly reduce fugitive particulate matter emissions.

16. Sections 212.304(a) entitled "Storage Piles," 212.305 entitled "Conveyor Loading Operations," 212.306 entitled "Traffic Areas," and 212.308 entitled "Spraying or Choke-Feeding Required" of the Board Fugitive Particulate Matter Regulations, 35 Ill. Adm. Code 212.304(a), 212.305, 212.306, and 212.308, provide, in pertinent part, as follows:

212.304(a) All storage piles of materials with uncontrolled emissions of fugitive particulate matter in excess of 45.4 Mg per year (50 T/yr) which are located within a source whose potential particulate emissions from all emission units exceed 90.8 Mg/yr (100 T/yr)

shall be protected by a cover or sprayed with a surfactant solution or water, on a regular basis, as needed, or treated by an equivalent method, in accordance with the operating program required by Sections 212.309, 212.310 and 212.312 of this Subpart.

212.305 All conveyor loading operations to storage piles specified in Section 212.304 of this Subpart shall utilize spray systems, telescopic chutes, stone ladders or other equivalent methods in accordance with the operating program required by Sections 212.309, 212.310 and 212.312 of this Subpart.

212.306 All normal traffic pattern access areas surrounding storage piles specified in Section 212.304 of this Subpart and all normal traffic pattern roads and parking facilities which are located on mining or manufacturing property shall be paved or treated with water, oils or chemical dust suppressants. All paved areas shall be cleaned on a regular basis. All areas treated with water, oils or chemical dust suppressants shall have the treatment applied on a regular basis, as needed, in accordance with the operating program required by Sections 212.309, 212.310 and 212.312 of this Subpart.

212.308 Crushers, grinding mills, screening operations, bucket elevators, conveyor transfer points, conveyors, bagging operations, storage bins and fine product truck and railcar loading operations shall be sprayed with water or a surfactant solution, utilize choke-feeding or be treated by an equivalent method in accordance with an operating program.

17. On August 30, 2013, and such other dates better known to the Defendant, the Defendant maintained (a) storage piles at the Site which have uncontrolled emissions of fugitive particulate matter in excess of 50 tons per year that are located within a source whose potential particulate emissions from all emission units exceeds 100 tons per year, (b) conveyor loading operations, (c) traffic areas, and (d) activities/equipment requiring spraying or choke-feeding at the Site as covered by Sections 212.304(a), 212.305, 212.306 and 212.308 of the Board Fugitive Particulate Matter Regulations, 35 Ill. Adm. Code 212.304(a), 212.305, 212.306 and 212.308, thereby requiring the Defendant to operate pursuant to a fugitive particulate matter operating

program in accordance with Section 212.309 of the Board Fugitive Particulate Matter Regulations, 35 Ill. Adm. Code 212.309.

18. Section 212.310 of the Board Fugitive Particulate Matter Regulations, 35 Ill. Adm. Code 212.310, provides as follows:

As a minimum the operating program shall include the following:

- a) The name and address of the source;
- b) The name and address of the owner or operator responsible for the execution of the operating program;
- c) A map or diagram of the source showing approximate locations of storage piles, conveyor loading operations, normal traffic pattern access areas surrounding storage piles and all normal traffic patterns within the source;
- d) Location of unloading and transporting operations with pollution control equipment;
- e) A detailed description of the best management practices utilized to achieve compliance with this Subpart, including an engineering specification of particulate collection equipment, application systems for water, oil chemicals and dust suppressants utilized and equivalent methods utilized;
- f) Estimated frequency of application of dust suppressants by location of materials; and
- g) Such other information as may be necessary to facilitate the Agency's review of the operating program.

19. Section 212.312 of the Board Fugitive Particulate Matter Regulations, 35 Ill. Adm. Code 212.312, provides as follows:

The operating program shall be amended from time to time by the owner or operator so that the operating program is current. Such amendments shall be consistent with this Subpart and shall be submitted to the Agency for its review.

20. Between December 20, 2012 and October 3, 2013, the fugitive particulate matter operating program for the Site was a three-page Fugitive Dust Plan submitted to the Illinois EPA by DTE Chicago Fuels Terminal, LLC, the former owner of the Site, and adopted by the

Defendant. A true and correct copy of the Fugitive Dust Plan is attached hereto as Exhibit 1 (the "Fugitive Dust Plan").

21. The Fugitive Dust Plan did not, among other things, (a) list the current owner or operator responsible for the execution of the operating program; (b) provide a current map or diagram showing approximate locations of storage piles, conveyor loading operations, normal traffic pattern access areas surrounding storage piles and all normal traffic patterns within the Site; (c) provide a detailed description of the Site's best management practices; (d) set forth the estimated frequency of application of dust suppressants by location of materials; (e) indicate a person or persons in a managerial position that is responsible for ensuring that particulates are adequately controlled; (f) delineate ways to evaluate control measures; and (g) provide information concerning the types and amounts of materials received and shipped and any inactive piles. In addition, the Fugitive Dust Plan utilized language, including "as needed" and "as necessary," which is vague and self-regulating.

22. Between December 20, 2012 and October 3, 2013, the Defendant did not amend the Site's fugitive particulate matter operating program and did not submit an amended operating program to the Illinois EPA for review.

23. By failing to maintain a complete fugitive particulate matter operating program, amend the operating program to reflect current operations at the Site and submit an amended operating program to the Illinois EPA for review, the Defendant violated Sections 212.310 and 212.312 of the Board Fugitive Particulate Matter Regulations, 35 Ill. Adm. Code 212.310 and 212.312, and thereby also violated Section 9(a) of the Act, 415 ILCS 5/9(a) (2012).



24. Plaintiff is without an adequate remedy at law. Plaintiff will be irreparably injured and violations of pertinent environmental statutes and regulations will continue unless this Court grants equitable relief in the form of permanent injunctive relief.

WHEREFORE, Plaintiff, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that this honorable Court enter a preliminary and, after trial, a permanent injunction in favor of Plaintiff and against the Defendant, KCBX TERMINALS COMPANY, a North Dakota corporation, as follows:

1. Finding that the Defendant, KCBX TERMINALS COMPANY, has violated Section 9(a) of the Act, 415 ILCS 5/9(a) (2012), and Sections 212.310 and 212.312 of the Board Fugitive Particulate Matter Regulations, 35 Ill. Adm. Code 212.310 and 212.312;

2. Enjoining the Defendant, KCBX TERMINALS COMPANY, from any further violations of Section 9(a) of the Act, 415 ILCS 5/9(a) (2012), and Sections 212.310 and 212.312 of the Board Fugitive Particulate Matter Regulations, 35 Ill. Adm. Code 212.310 and 212.312;

3. Ordering the Defendant, KCBX TERMINALS COMPANY, to immediately undertake all necessary corrective action that will result in a final and permanent abatement of violations of Section 9(a) of the Act, 415 ILCS 5/9(a) (2012), and Sections 212.310 and 212.312 of the Board Fugitive Particulate Matter Regulations, 35 Ill. Adm. Code 212.310 and 212.312;

4. Assessing against the Defendant, KCBX TERMINALS COMPANY, a civil penalty of Fifty Thousand Dollars (\$50,000.00) for each violation of the Act, and an additional penalty of Ten Thousand Dollars (\$10,000.00) for each day of each violation;

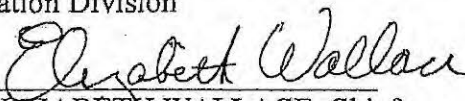
5. Ordering the Defendant, KCBX TERMINALS COMPANY, to pay all costs, pursuant to Section 42(f) of the Act, 415 ILCS 5/42(f) (2012), including any attorney, expert witness, and consultant fees expended by the State in its pursuit of this action; and

6. Granting such other relief as this Court deems appropriate and just.

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS  
ex rel. LISA MADIGAN, Attorney General  
of the State of Illinois

MATTHEW J. DUNN, Chief  
Environmental Enforcement/Asbestos  
Litigation Division

BY:   
ELIZABETH WALLACE, Chief  
Environmental Bureau

Of Counsel  
Kathryn A. Pamenter  
Assistant Attorney General  
69 W. Washington Street, 18<sup>th</sup> Floor  
Chicago, Illinois 60602  
312.814.0608

**EXHIBIT 1**

DTE Chicago Fuels Terminal, LLC  
10730 South Burley Avenue  
Chicago, Illinois 60617  
Facility I.D. No.: 031600GSF

FUGITIVE DUST PLAN

DTE Chicago Fuels Terminal, LLC (DTE) is submitting this Fugitive Dust Plan in accordance to 35 IAC Section 212.310. DTE is owner of the source and is responsible for the execution of this Fugitive Dust Plan operating program. A map of the source showing emission sources and, if applicable, their related control equipment, as set forth in 35 IAC Section 212.310 (c) and (d), is contained in this plan as Figure 1.

A detailed description of the best management practices utilized by the source to achieve compliance is contained below.

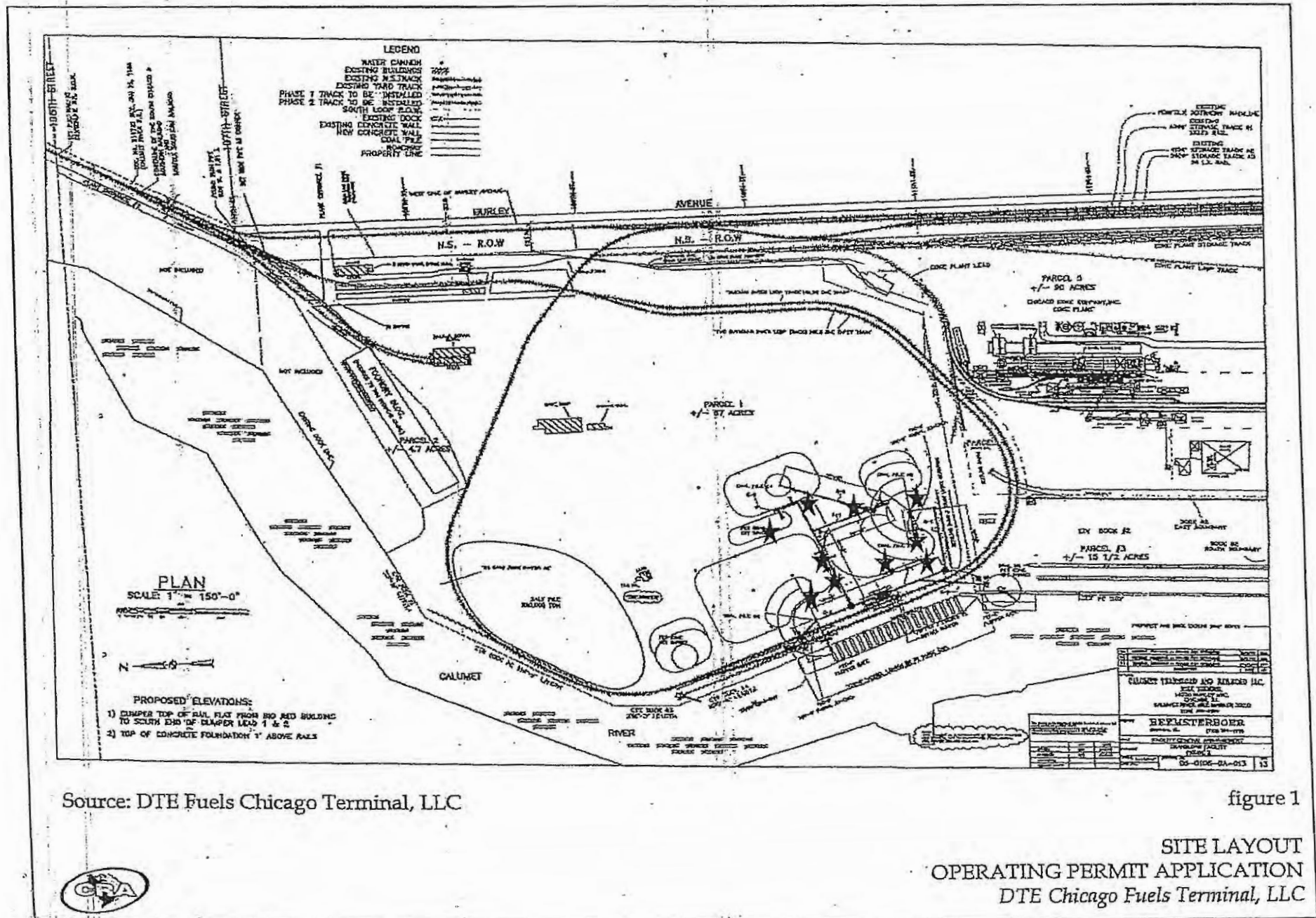
**Storage Piles** - The ten storage piles at the facility, which have uncontrolled emissions of fugitive particulate matter in excess of 50 tons per year that are located within a source whose potential particulate emissions from all emission units exceeds 100 tons per year, are controlled by dust suppression water spray (water cannon). The piles are sprayed with water on an as needed basis depending upon weather conditions. When the temperatures are below freezing water suppression will not be used to control fugitive emissions because this would cause the coal products to freeze, therefore not allowing the coal to be processed throughout the facility as necessary. Records of each dust suppression event on the storage piles will be recorded in a logbook and kept at the source at all times.

**Traffic Areas** - All of the normal traffic pattern access areas surrounding the storage piles and all normal traffic pattern roads and parking facilities which are located on the property shall be treated with water (water truck). The roadways are sprayed with water on an as needed basis depending upon weather conditions. When temperatures are below freezing (32° F or equivalent) water will not be used for dust suppression purposes. While temperatures are below freezing, if dust suppression is needed, a chemical dust suppression agent will be used on an as needed basis. Records of each dust suppression event on the roadways will be recorded in a logbook and kept at the source at all times.

**Conveyor Loading Operations** - All conveyor loading operations to storage piles are controlled by telescoping chutes and the inherent moisture content of the coal product. The coal, when delivered, has an inherently high moisture content. The inherent high

moisture content coupled with the water applied to the storage piles for fugitive dust suppression provides more than adequate fugitive dust suppression for the conveyor loading operations.

Materials Collected by Pollution Control Equipment - All unloading and transporting operations of materials collected by the railcar unloading bag houses will be recycled back to the railcar unloading system. Fugitive dust suppression consisting of water spray may be used when the filter bag is unloaded depending upon moisture content of the coal dust in the filter bag. Records of each dust suppression event on the filter bag unloading will be recorded in a logbook and kept at the source at all times.



Source: DTE Fuels Chicago Terminal, LLC

figure 1

SITE LAYOUT  
OPERATING PERMIT APPLICATION  
DTE Chicago Fuels Terminal, LLC



IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS  
COUNTY DEPARTMENT, CHANCERY DIVISION

PEOPLE OF THE STATE OF ILLINOIS, )  
*ex rel.* LISA MADIGAN, Attorney )  
General of the State Illinois, and )  
THE CITY OF CHICAGO, a )  
municipal corporation, )

Plaintiffs, )

v. )

GEORGE J. BEEMSTERBOER, INC., )  
an Indiana corporation, and )  
BEEMSTERBOER SLAG CORP., )  
an Indiana corporation, )

Defendants. )

No.

2013CH26175  
CALENDAR/ROOM 11  
TIME 00:00  
Injunction

COMPLAINT FOR INJUNCTION AND CIVIL PENALTIES

Plaintiffs, PEOPLE OF THE STATE OF ILLINOIS, *ex rel.* LISA MADIGAN, Attorney General of the State of Illinois ("State"), on her own motion and at the request of the ILLINOIS ENVIRONMENTAL PROTECTION AGENCY ("Illinois EPA"), and the CITY OF CHICAGO ("City"), by its attorney Stephen R. Patton, Corporation Counsel, complains of Defendants GEORGE J. BEEMSTERBOER, INC., an Indiana corporation, and BEEMSTERBOER SLAG CORP., an Indiana corporation (collectively "Defendants"), as follows:

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2013 NOV 21 PM 4:21  
CIRCUIT COURT OF COOK COUNTY ILLINOIS  
CHANCERY DIVISION

COUNT I

AIR POLLUTION  
(by Plaintiff State)

1. This Count is brought on behalf of the People of the State of Illinois, *ex rel.* Lisa Madigan, Attorney General of the State of Illinois, on her own motion, and at the request of the Illinois EPA, against the Defendants, George J. Beemsterboer, Inc. and Beemsterboer Slag

Corp., pursuant to the terms and provisions of Sections 42(d) and (e) of the Act, 415 ILCS 5/42(d) and (e) (2012).

2. The Illinois EPA is an administrative agency of the State of Illinois, created by Section 4 of the Illinois Environmental Protection Act ("Act"), 415 ILCS 5/4 (2012), and charged, *inter alia*, with the duty of enforcing the Act.

3. At all times relevant to this Complaint, Defendant George J. Beemsterboer, Inc. was and is an Indiana corporation in good standing authorized to do business in the State of Illinois.

4. At all times relevant to this Complaint, Defendant Beemsterboer Slag Corp. was and is an Indiana corporation in good standing not authorized to do business in the State of Illinois.

5. Defendant George J. Beemsterboer, Inc. owns a 22.5 acre bulk material handling and storage facility located at 2900 E. 106<sup>th</sup> Street, Chicago, Cook County, Illinois, along the Calumet River ("Facility" or "Site").

6. Defendant Beemsterboer Slag Corp. operates the Facility.

7. Residential neighborhoods are located 0.3 miles to the Southeast of the Facility and 0.3 miles to the West of the Facility. Addams Elementary School is located 0.9 miles from the Facility and Wolf Playground Park is located 0.4 miles from the Facility.

8. At all times relevant to this Complaint, Defendants have been engaged in the storage, handling, screening, loading and unloading of petroleum coke ("Pet Coke"), metallurgical coke ("Met Coke"), iron rich material ("IRM"), pine bark, limestone, quartz, street sweepings and other unpermitted materials (collectively "Unpermitted Materials") and coal at the Facility.



9. At all times relevant to this Complaint, Unpermitted Materials have been shipped to the Facility via the Calumet River on boats and barges, and delivered by truck.

10. At all times relevant to this Complaint, Defendants have stored Unpermitted Materials and coal at the Facility in uncovered piles exposed to the environment.

11. At all times relevant to this Complaint, Defendants have operated a screener at the Facility to separate Unpermitted Materials and coal by grade ("Screener").

12. At all times relevant to this Complaint, Defendants have operated a conveyor to transfer Unpermitted Materials and coal within the Facility ("Conveyor").

13. At all times relevant to this Complaint, Defendants have operated two boat loaders to load Unpermitted Materials and coal onto boats on the Calumet River ("Boat Loaders").

14. At all times relevant to this Complaint, Defendants also loaded and unloaded Unpermitted Materials and coal at the Facility using trucks.

15. On July 10, 2008, the Illinois EPA inspected the Facility. Among other materials, there was approximately 200,000 tons of Pet Coke at the Facility at that time.

16. The Illinois EPA also inspected the Facility on September 6, 2013, September 11, 2013, and September 13, 2013 ("September 2013 Illinois EPA Inspections").

17. During the September 2013 Illinois EPA Inspections, approximately 62,500 tons of Pet Coke, 68,000 tons of Met Coke, 1,000 tons of IRM, 600 tons of pine bark, 800 tons of limestone, 400 tons of quartz, 100 tons of street sweepings and 3,000 tons of coal were stored at the Facility in 18 piles, some up to 75 feet high.

18. At all times relevant to this Complaint, Defendants operated the Facility without a permit authorizing the storage and handling of Unpermitted Materials and without an Illinois

EPA approved operating program designed to control the emission of fugitive particulate matter from Unpermitted Materials and coal.

19. At all times relevant to this Complaint, Defendants have employed either minimal, inadequate, ad hoc dust suppression measures or none at all.

20. Since at least June 2013, fine particles of Unpermitted Materials and coal ("Particulate Matter") – including particles of less than 10 microns in diameter (PM 10) and particles of less than 2.5 microns in diameter (PM 2.5) – have been escaping Defendants' Facility during periods of moderate and heavy wind and inundating the surrounding residential communities with black dust. As a direct result, residents within the surrounding community often must curtail their activities out of concern for their health and well-being. Children attempting to play outdoors are frequently driven into their homes to avoid inhaling black dust. During the dead of summer, even families without air conditioning were forced to keep their windows sealed shut so dust from Defendants' Facility would not blow into their homes. To prevent unsightly damage and discoloration, residents are forced to frequently wash black dust off the exterior of their houses.

21. Unpermitted Materials from Defendants' Facility may also increase the rate of asthma attacks among nearby residents suffering from the condition.

22. Section 9(a) of the Act, 415 ILCS 5/9(a) (2012), provides as follows:

Acts prohibited. No person shall:

- (a) Cause or threaten or allow the discharge or emission of any contaminant into the environment in any State so as to cause or tend to cause air pollution in Illinois, either alone or in combination with contaminants from other sources, or so as to violate regulations or standards adopted by the Board under this Act.

23. Pursuant to the authority granted in Sections 10 and 27 of the Act, 415 ILSC 5/10 and 27 (2012), the Illinois Pollution Control Board has adopted regulations to control air pollution in Illinois ("Board Air Pollution Regulations").

24. Section 201.141 of the Board Air Pollution Regulations, 35 Ill. Adm. Code 201.141, provides as follows:

No person shall cause or threaten or allow the discharge or emission of any contaminant into the environment in any State so as, either alone or in combination with contaminants from other sources, to cause or tend to cause air pollution in Illinois, or so as to violate the provisions of this Chapter, or so as to prevent the attainment or maintenance of any applicable ambient air quality standard.

25. Section 3.315 of the Act, 415 ILCS 5/3.315 (2012), provides the following definition:

"Person" is any individual, partnership, co-partnership, firm, company, limited liability company, corporation, association, joint stock company, trust, estate, political subdivision, state agency, or any other legal entity, or their legal representative, agent or assigns.

26. Defendants are "persons" as that term is defined in Section 3.315 of the Act, 415 ILCS 5/3.315 (2012).

27. Section 3.165 of the Act, 415 ILCS 5/3.165 (2012), contains the following definition:

"Contaminant" is any solid, liquid, or gaseous matter, any odor, or any form of energy, from whatever source

28. Particulate Matter is a "contaminant" as that term is defined in Section 3.165 of the Act, 415 ILCS 5/3.165 (2012).

29. Section 3.115 of the Act, 415 ILCS 5/3.115 (2012), contains the following definition:

“Air pollution” is the presence in the atmosphere of one or more contaminants in sufficient quantities and of such characteristics and duration as to be injurious to human, plant, or animal life, to health, or to property, or to unreasonably interfere with the enjoyment of life or property.

30. When inhaled, Particulate Matter travels deep into the respiratory tract, burrows into and damages lung tissue, and can be absorbed into the blood stream. Particulate Matter can also exacerbate existing cardiovascular and respiratory medical conditions, decrease lung function, and can cause premature death. Particulate Matter from Defendants’ Facility can and is exacerbating symptoms of asthma. Even short term exposure to Particulate Matter can cause eye, nose, throat and lung irritation, coughing, sneezing, runny nose and shortness of breath in healthy adults. In addition to its effects on human health, Particulate Matter from Defendants’ Facility, particularly coke dust, is blackening homes and cars, preventing children from playing out of doors, and generally inhibiting the nearby residents’ enjoyment of public and private outdoor space. The Particulate Matter that has and continues to blow off of Defendants’ Facility into the surrounding residential neighborhoods is therefore “air pollution” as that term is defined in Section 3.115 of the Act, 415 ILCS 5/3.115 (2012).

31. By operating the Facility without adequate, Illinois EPA approved control measures, Defendants are exposing substantial quantities of Particulate Matter to the environment, and thereby causing or threatening the emission of Particulate Matter so as to cause air pollution in Illinois in violation of Section 201.141 of the Board Air Pollution Regulations, 35 Ill. Adm. Code 201.141, and Section 9(a) of the Act, 415 ILCS 5/9(a) (2012).

32. Plaintiff is without an adequate remedy at law. Plaintiff will be irreparably injured and violations of the pertinent environmental statutes and regulations will continue unless

and until this Court grants equitable relief in the form of preliminary and, after trial, permanent injunctive relief.

WHEREFORE, Plaintiff, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that this Court enter an Order granting a preliminary injunction and, after trial, a permanent injunction in favor of Plaintiff, and against the Defendants, GEORGE J. BEEMSTERBOER, INC. and BEEMSTERBOER SLAG CORP.:

1. Finding that the Defendants violated Section 201.141 of the Board Air Pollution Regulations, 35 Ill. Adm. Code 201.141, and Section 9(a) of the Act, 415 ILCS 5/9(a) (2012);
2. Enjoining the Defendants from any further violation of Section 201.141 of the Board Air Pollution Regulations, 35 Ill. Adm. Code 201.141, and Section 9(a) of the Act, 415 ILCS 5/9(a) (2012);
3. Ordering the Defendants to take immediate action to control the emission of Particulate Matter from the Facility so as to eliminate the threat of air pollution;
4. Assessing a civil penalty of Fifty Thousand Dollars (\$50,000.00) against the Defendants for each violation of the Act and pertinent regulations, and an additional civil penalty of Ten Thousand Dollars (\$10,000.00) for each day of violation;
5. Ordering the Defendants, pursuant to 415 ILCS 5/42(f) (2012), to pay all costs, including oversight, sampling and clean-up costs, and attorney, expert witness and consultant fees expended by the Plaintiff in its pursuit of this action; and
6. Granting such other relief as this Court deems appropriate and just.

**COUNT II**

**CONSTRUCTING AND MODIFYING EMISSION SOURCES  
WITHOUT A PERMIT  
(by Plaintiff State)**

1-28. Plaintiff State realleges and incorporates by reference herein paragraphs 1 through 21, 23 and 25 through 30 of Count I as paragraphs 1 through 28 of this Count II.

29. Section 9(b) of the Act, 415 ILCS 5/9(b) (2012), provides as follows:

Acts prohibited. No person shall:

(b) Construct, install, or operate any equipment, facility, vehicle, vessel, or aircraft capable of causing or contributing to air pollution or designed to prevent air pollution, of any type designated by Board regulations, (1) without a permit granted by the Agency unless otherwise exempt by this Act or Board regulations or (2) in violation of any conditions imposed by such permit.

30. Section 201.142 of the Board Air Pollution Regulations, 35 Ill. Adm. Code 201.142, provides as follows:

No person shall cause or allow the construction of any new emission source or any new air pollution control equipment, or cause or allow the modification of any existing emission source or air pollution control equipment, without first obtaining a construction permit from the Agency, except as provided in Sections 201.146 or Section 201.170(b) of this Part.

31. On May 11, 1987, the Illinois EPA issued a permit authorizing Defendants to “operate emission source(s) and/or air pollution control equipment consisting of coal unloading, stock-piling and truck loading for shipment at the rate of 300,000 TPH...” at the Facility.

32. At some time prior to July 10, 2008, the precise date better known to the Defendants, the Defendants installed the Screener at the Facility.

33. Since at least July 10, 2008, the precise dates better known to the Defendants, the Defendant have been storing, handling, screening, loading and unloading Unpermitted Materials at the Facility.

34. Section 201.102 of the Board Air Pollution Regulations, 35 Ill. Adm. Code 201.102, provides the following definitions:

“Construction”: Commencement of on-site fabrication, erection or installation of an emission source or of air pollution control equipment.

“Emission Source”: Any equipment or facility of a type capable of emitting specified air contaminants to the atmosphere.

“Modification”: Any physical change in, or change in the method of operations, of an emission source or of air pollution control equipment which increases the amount of any specified air contaminant emitted by such source or equipment or which results in the emission of any specified air contaminant not previously emitted. It shall be presumed that an increase in the use of raw materials, the time of operation or the rate of production will change the amount of any specified air contaminant emitted. Notwithstanding any other provisions of this definition, for purposes of permits issued pursuant to Subpart D, the Illinois Environmental Agency (Agency) may specify conditions under which an emission source or air pollution control equipment may be operated without causing a modification as herein defined, and normal cyclical variations, before the date operating permits are required, shall not be considered modifications.

“New Emission Source”: Any emission source, the construction or modification of which is commenced on or after April 14, 1972.

35. The Facility and the Screener were and are “emission sources” as that term is defined in Section 201.102 of the Board Air Pollution Regulations, 35 Ill. Adm. Code 201.102.

36. By storing, handling, screening, loading and unloading Unpermitted Materials at the Facility, Defendants changed the method of operations at the Facility in a way that resulted in the emission of air contaminants not previously emitted by the Facility and thereby “modified”

the Facility as that word is defined in Section 201.102 of the Board Air Pollution Regulations, 35 Ill. Adm. Code 201.102.

37. By installing the Screener, Defendants "constructed" a "new emission source" as those terms are defined in Section 201.102 of the Board Air Pollution Regulations, 35 Ill. Adm. Code 201.102.

38. At no time did the Illinois EPA issue Defendants a construction permit to begin storing, handling, screening, loading and unloading Unpermitted Materials at the Facility.

39. At no time did the Illinois EPA issue Defendants a construction permit for the installation of the Screener.

40. By storing, handling, screening, loading and unloading Unpermitted Materials and installing the Screener without a construction permit, Defendants violated Section 9(b) of the Act, 415 ILCS 5/9(b) (2012), and Section 201.142 of the Board Air Pollution Regulations, 35 Ill. Adm. Code 201.142.

41. Plaintiff is without an adequate remedy at law. Plaintiff will be irreparably injured and violations of the pertinent environmental statutes and regulations will continue unless and until this Court grants equitable relief in the form of preliminary and, after trial, permanent injunctive relief.

WHEREFORE, Plaintiff, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that this Court enter an Order granting a preliminary injunction and, after trial, a permanent injunction in favor of Plaintiff, and against the Defendants, GEORGE J. BEEMSTERBOER, INC. and BEEMSTERBOER SLAG CORP.:

1. Finding that the Defendants violated Section 9(b) of the Act, 415 ILCS 5/9(b) (2012), and Section 201.142 of the Board Air Pollution Regulations, 35 Ill. Adm. Code 201.142;



2. Enjoining the Defendants from any further violation of Section 9(b) of the Act, 415 ILCS 5/9(b) (2012), and Section 201.142 of the Board Air Pollution Regulations, 35 Ill. Adm. Code 201.142;

3. Ordering the Defendants to submit an application for a construction permit for the Screener and to allow the storing, handling, screening, loading and unloading of Unpermitted Materials at the Facility to the Illinois EPA;

4. Assessing a civil penalty of Fifty Thousand Dollars (\$50,000.00) against the Defendants for each violation of the Act and pertinent regulations, and an additional civil penalty of Ten Thousand Dollars (\$10,000.00) for each day of violation;

5. Ordering the Defendants, pursuant to 415 ILCS 5/42(f) (2012), to pay all costs, including oversight, sampling and clean-up costs, and attorney, expert witness and consultant fees expended by the Plaintiff in its pursuit of this action; and

6. Granting such other relief as this Court deems appropriate and just.

### COUNT III

#### OPERATING EMISSION SOURCES WITHOUT A PERMIT

(by Plaintiff State)

1-37. Plaintiff State realleges and incorporates by reference herein paragraphs 1 through 21, 23 and 25 through 30 of Count I, and paragraphs 29 through 37 of Count II, as paragraphs 1 through 37 of this Count III.

38. Section 201.143 of the Board Air Pollution Regulations, 35 Ill. Adm. Code 201.143, provides as follows:

No person shall cause or allow the operation of any new emission source or new air pollution control equipment of a type for which a construction permit is required by Section 201.142 without first obtaining an operating permit from the Agency, except for such testing operations as may be authorized by the construction permit. Applications for operating permits

shall be made at such times and contain such information (in addition to the information required by Section 201.157 as shall be specified in the construction permit.

39. Defendants were required to obtain a construction permit to store, handle, screen, load and unload Unpermitted Materials at the Facility and to install the Screener.

40. From at least July 10, 2008, to the date of the filing of this Complaint, the exact dates better known to Defendants, Defendants have been storing, handling, screening, loading and unloading Unpermitted Materials at the Facility and operating the Screener.

41. At no time did the Illinois EPA issue Defendants an operating permit to store, handle, screen, load and unload Unpermitted Materials at the Facility or operate the Screener.

42. By storing, handling, screening, loading and unloading Unpermitted Materials at the Facility and operating the Screener without an operating permit issued by the Illinois EPA, Defendants violated Section 9(b) of the Act, 415 ILCS 5/9(b) (2012), and Section 201.143 of the Board Air Pollution Regulations, 35 Ill. Adm. Code 201.143.

43. Plaintiff is without an adequate remedy at law. Plaintiff will be irreparably injured and violations of the pertinent environmental statutes and regulations will continue unless and until this Court grants equitable relief in the form of preliminary and, after trial, permanent injunctive relief.

WHEREFORE, Plaintiff, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that this Court enter an Order granting a preliminary injunction and, after trial, a permanent injunction in favor of Plaintiff, and against the Defendants, GEORGE J. BEEMSTERBOER, INC. and BEEMSTERBOER SLAG CORP.:

1. Finding that the Defendants violated Section 9(b) of the Act, 415 ILCS 5/9(b) (2012), and Section 201.143 of the Board Air Pollution Regulations, 35 Ill. Adm. Code 201.143;

2. Enjoining the Defendants from any further violation of Section 9(b) of the Act, 415 ILCS 5/9(b) (2012), and Section 201.143 of the Board Air Pollution Regulations, 35 Ill. Adm. Code 201.143;

3. Ordering the Defendants to cease storing, handling, screening, loading and unloading Unpermitted Materials at the Facility and operating the Screener unless and until they receive an operating permit from the Illinois EPA;

4. Assessing a civil penalty of Fifty Thousand Dollars (\$50,000.00) against the Defendants for each violation of the Act and pertinent regulations, and an additional civil penalty of Ten Thousand Dollars (\$10,000.00) for each day of violation;

5. Ordering the Defendants, pursuant to 415 ILCS 5/42(f) (2012), to pay all costs, including oversight, sampling and clean-up costs, and attorney, expert witness and consultant fees expended by the Plaintiff in its pursuit of this action; and

6. Granting such other relief as this Court deems appropriate and just.

#### COUNT IV

#### **FAILURE TO DEVELOP AND SUBMIT FUGITIVE PARTICULATE MATTER OPERATING PROGRAM (by Plaintiff State)**

1-27. Plaintiff State realleges and incorporates by reference herein paragraphs 1 through 23 and 25 through 28 of Count I as paragraphs 1 through 27 of this Count IV.

28. Section 212.309(a) of the Illinois Pollution Control Board's regulations for visible and particulate matter (the "Board Visible and Particulate Matter Regulations"), 35 Ill. Adm. Code 212.309(a), provides as follows:

- (a) The emission units described in Sections 212.304 through 212.308 and Section 212.316 of this Subpart shall be operated under the provisions of an operating program, consistent with the requirements set forth in Sections 212.310 and 212.312 of this Subpart, and prepared by the owner

or operator and submitted to the Agency for its review. Such operating program shall be designed to significantly reduce fugitive particulate matter emissions.

29. Sections 212.304(a) entitled "Storage Piles," 212.305 entitled "Conveyor Loading Operations," 212.306 entitled "Traffic Areas," and 212.308 entitled "Spraying or Choke-Feeding Required" of the Board Visible and Particulate Matter Regulations, 35 Ill. Adm. Code 212.304(a), 212.305, 212.306, and 212.308, provide, in pertinent part, as follows:

- 212.304(a) All storage piles of materials with uncontrolled emissions of fugitive particulate matter in excess of 45.4 Mg per year (50 T/yr) which are located within a source whose potential particulate emissions from all emission units exceed 90.8 Mg/yr (100 T/yr) shall be protected by a cover or sprayed with a surfactant solution or water on a regular basis, as needed, or treated by an equivalent method, in accordance with the operating program required by Sections 212.309, 212.310 and 212.312 of this Subpart.
- 212.305 All conveyor loading operations to storage piles specified in Section 212.304 of this Subpart shall utilize spray systems, telescopic chutes, stone ladders or other equivalent methods in accordance with the operating program required by Sections 212.309, 212.310 and 212.312 of this Subpart.
- 212.306 All normal traffic pattern access areas surrounding storage piles specified in Section 212.304 of this Subpart and all normal traffic pattern roads and parking facilities which are located on mining or manufacturing property shall be paved or treated with water, oils or chemical dust suppressants. All paved areas shall be cleaned on a regular basis. All areas treated with water, oils or chemical dust suppressants shall have the treatment applied on a regular basis, as needed, in accordance with the operating program required by Sections 212.309, 212.310 and 212.312 of this Subpart.
- 212.308 Crushers, grinding mills, screening operations, bucket elevators, conveyor transfer points, conveyors, bagging operations, storage bins and fine product truck and railcar loading operations shall be sprayed with water or a surfactant solution, utilize choke-feeding or be treated by an equivalent method in accordance with an operating program

30. From at least July 10, 2008, until the date of the filing of this Complaint, the exact dates better known to the Defendants, the Defendants maintained (a) storage piles at the Site which have uncontrolled emissions of fugitive particulate matter in excess of 50 tons per year that are located within a source whose potential particulate emissions from all emission units exceeds 100 tons per year, (b) conveyor loading operations, (c) traffic areas, and (d) equipment requiring spraying or choke-feeding at the Site as covered by Sections 212.304(a), 212.305, 212.306, 212.307, 212.308 of the Board Visible and Particulate Matter Regulations, 35 Ill. Adm. Code 212.304(a), 212.305, 212.306 and 212.308, and were therefore required to operate pursuant to a fugitive particulate matter operating program consistent with the requirements set forth in Sections 212.310 and 212.312 of the Board Visible and Particulate Matter Regulations, 35 Ill. Adm. Code 212.310 and 212.312.

31. Section 212.310 of the Board Visible and Particulate Matter Regulations, 35 Ill. Adm. Code 212.310, provides as follows:

As a minimum the operating program shall include the following:

- a) The name and address of the source;
- b) The name and address of the owner or operator responsible for the execution of the operating program;
- c) A map or diagram of the source showing approximate locations of storage piles, conveyor loading operations, normal traffic pattern access areas surrounding storage piles and all normal traffic patterns within the source;
- d) Location of unloading and transporting operations with pollution control equipment;
- e) A detailed description of the best management practices utilized to achieve compliance with this Subpart, including an engineering specification of particulate collection equipment, application systems for water, oil chemicals and dust suppressants utilized and equivalent methods utilized;
- f) Estimated frequency of application of dust suppressants by location of materials; and
- g) Such other information as may be necessary to facilitate the Agency's review of the operating program.

32. From at least July 10, 2008, through the filing of this Complaint, the exact dates better known to the Defendants, the Defendants did not submit an operating program or a proposed operating program consistent with the requirements set forth in Section 212.310 of the Board Visible and Particulate Matter Regulations, 35 Ill. Adm. Code 212.310.

33. On or about November 6, 2013, for the first time Defendants provided the Illinois EPA with a proposed fugitive particulate matter operating program ("Proposed Operating Program").

34. Defendants' Proposed Operating Program does not include (i) a detailed description of the best management practices utilized to achieve compliance with this Subpart, including an engineering specification of particulate collection equipment, application systems for water, oil chemicals and dust suppressants utilized and equivalent methods utilized; (ii) estimated frequency of application of dust suppressants by location of materials; or (iii) other information necessary to facilitate the Agency's review of the operating program, as required by Section 212.310 of the Board Visible and Particulate Matter Regulations, 35 Ill. Adm. Code 212.310.

35. Defendants therefore continue to operate the Facility without an approved operating program consistent with the requirements set forth in Sections 212.310 of the Board Visible and Particulate Matter Regulations, 35 Ill. Adm. Code 212.310.

36. By operating without an approved operating program consistent with the requirements set forth in Sections 212.310 of the Board Visible and Particulate Matter Regulations, 35 Ill. Adm. Code 212.310, Defendants violated Section 212.309(a) of the Board Visible and Particulate Matter Regulations, 35 Ill. Adm. Code 212.309(a), and thereby violated Section 9(a) of the Act, 415 ILCS 5/9(a) (2012).

37. Plaintiff is without an adequate remedy at law. Plaintiff will be irreparably injured and violations of pertinent environmental statutes and regulations will continue unless this Court grants equitable relief in the form of permanent injunctive relief.

WHEREFORE, Plaintiff, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that this Court enter an Order granting a preliminary injunction and, after trial, a permanent injunction in favor of Plaintiff, and against the Defendants, GEORGE J. BEEMSTERBOER, INC. and BEEMSTERBOER SLAG CORP.:

1. Finding that the Defendants violated Section 212.309(a) of the Board Visible and Particulate Matter Regulations, 35 Ill. Adm. Code 212.309(a), and Section 9(a) of the Act, 415 ILCS 5/9(a) (2012);

2. Enjoining the Defendants from any further violation of Section 212.309(a) of the Board Visible and Particulate Matter Regulations, 35 Ill. Adm. Code 212.309(a), and Section 9(a) of the Act, 415 ILCS 5/9(a) (2012);

3. Ordering the Defendants to develop and submit an operating program that is consistent with the requirements of Section 212.310 of the Board Visible and Particulate Matter Regulations, 35 Ill. Adm. Code 212.310;

4. Assessing a civil penalty of Fifty Thousand Dollars (\$50,000.00) against the Defendants for each violation of the Act and pertinent regulations, and an additional civil penalty of Ten Thousand Dollars (\$10,000.00) for each day of violation;

5. Ordering the Defendants, pursuant to 415 ILCS 5/42(f) (2012), to pay all costs, including oversight, sampling and clean-up costs, and attorney, expert witness and consultant fees expended by the Plaintiff in its pursuit of this action; and

6. Granting such other relief as this Court deems appropriate and just.

COUNT V

**FAILURE TO SUBMIT ANNUAL AND QUARTERLY REPORTS**

(by Plaintiff State)

1-27. Plaintiff State realleges and incorporates by reference herein paragraphs 1 through 23 and 25 through 28 of Count I as paragraphs 1 through 27 of this Count V.

28. Section 212.316(g) of the Board Visible and Particulate Matter Regulations, 35

Ill. Adm. Code 212.316.(g), provides, in pertinent part:

(g) Recordkeeping and Reporting

- (1) The owner or operator of any fugitive particulate matter emission unit subject to this Section shall keep written records of the application of control measures as may be needed for compliance with the opacity limitations of this Section and shall submit to the Agency an annual report containing a summary of such information.

\* \* \*

- (5) A quarterly report shall be submitted to the Agency stating the following: the dates any necessary control measures were not implemented, a listing of those control measures, the reasons that the control measures were not implemented, and any corrective actions taken. This information includes, but is not limited to, those dates when controls were not applied based on a belief that application of such control measures would have been unreasonable given prevailing atmospheric conditions, which shall constitute a defense to the requirements of this Section. This report shall be submitted to the Agency thirty (30) calendar days from the end of a quarter. Quarters end March 31, June 30, September 30, and December 31.

29. Section 212.316(a) of the Board Visible and Particulate Matter Regulations, 35

Ill. Adm. Code 212.316(a), provides as follows:

Applicability. This Section shall apply to those operations specified in Section 212.302 of this Subpart and that are located in areas defined in Section 212.324(a)(1) of this Part.



30. Section 212.302(a) of the Board Visible and Particulate Matter Regulations, 35

Ill. Adm. Code 212.302(a), provides as follows:

- a) Sections 212.304 through 212.310 and 212.312 of this Subpart shall apply to all mining operations (SIC major groups 10 through 14), manufacturing operations (SIC major groups 20 through 39 except for those operations subject to Subpart S of this Part (Grain-Handling and Grain-Drying Operations) that are outside the areas defined in Section 212.324(a)(1) of this Part), and electric generating operations (SIC group 491), which are located in the areas defined by the boundaries of the following townships, notwithstanding any political subdivisions contained therein, as the township boundaries were defined on October 1, 1979, in the following counties:

Cook: All Townships

31. The Facility is a manufacturing operation as that term is used in Section 212.302(a) of the Board Visible and Particulate Matter Regulations, 35 Ill. Adm. Code 212.302(a).

32. Section 212.324(a)(1)(B), 35 Ill. Adm. Code 212.324(a)(1)(B), provides as follows:

(a) Applicability

- (1) This Section shall apply to any process emission unit located in any of the following areas:

\* \* \*

- (B) That area bounded by lines from Universal Transmercator (UTM) coordinate 445000mE, 4622180mN, east to 456265mE, 4622180mN, south to 456265E, 4609020N, west to 445000mE, 4609020mN, north to 445000mE, 4622180mN, in the vicinity of Lake Calumet in Cook County, as shown in Illustration E of this Part;

33. The Facility is located within the area bounded by the lines from Universal Transmercator (UTM) coordinate 445000mE, 4622180mN, east to 456265mE, 4622180mN,

south to 456265E, 4609020N, west to 445000mE, 4609020mN, north to 445000mE, 4622180mN, in the vicinity of Lake Calumet in Cook County, and is therefore subject to the requirements of Section 212.316 of the Board Visible and Particulate Matter Regulations, 35 Ill. Adm. Code 212.316.

34. Since May 11, 1993, Defendants failed to submit any annual reports to the Illinois EPA of the application of control measures needed for compliance with the opacity limitations of Section 212.316 of the Board Visible and Particulate Matter Regulations, 35 Ill. Adm. Code 212.316, in violation of Section 212.316(g)(1) of the Board Visible and Particulate Matter Regulations, 35 Ill. Adm. Code 212.316(g)(1).

35. Since May 11, 1993, Defendants failed to submit any quarterly reports to the Illinois EPA stating the dates any necessary control measures were not implemented, a listing of those control measures, the reasons that the control measures were not implemented, and any corrective actions taken, in violation of Section 212.316(g)(5) of the Board Visible and Particulate Matter Regulations, 35 Ill. Adm. Code 212.316(g)(5).

36. By violating Sections 212.316(g)(1) and 212.316(g)(5) of the Board Visible and Particulate Matter Regulations, 35 Ill. Adm. Code 212.316(g)(1) and 212.316(g)(5), Defendants violated Section 9(a) of the Act, 415 ILCS 5/9(a) (2012).

37. Plaintiff is without an adequate remedy at law. Plaintiff will be irreparably injured and violations of the pertinent environmental statutes and regulations will continue unless and until this Court grants equitable relief in the form of preliminary and, after trial, permanent injunctive relief.

WHEREFORE, Plaintiff, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that this Court enter an Order granting a preliminary injunction and, after trial, a permanent

injunction in favor of Plaintiff, and against the Defendants, GEORGE J. BEEMSTERBOER, INC. and BEEMSTERBOER SLAG CORP.:

1. Finding that the Defendants violated Sections 212.316(g)(1) and 212.316(g)(5) of the Board Visible and Particulate Matter Regulations, 35 Ill. Adm. Code 212.316(g)(1) and 212.316(g)(5), and Section 9(a) of the Act, 415 ILCS 5/9(a) (2012);

2. Enjoining the Defendants from any further violation of Sections 212.316(g)(1) and 212.316(g)(5) of the Board Visible and Particulate Matter Regulations, 35 Ill. Adm. Code 212.316(g)(1) and 212.316(g)(5), and Section 9(a) of the Act, 415 ILCS 5/9(a) (2012);

3. Ordering the Defendants to submit all annual and quarterly reports for the period between May 11, 1993 and the present;

4. Assessing a civil penalty of Fifty Thousand Dollars (\$50,000.00) against the Defendants for each violation of the Act and pertinent regulations, and an additional civil penalty of Ten Thousand Dollars (\$10,000.00) for each day of violation;

5. Ordering the Defendants, pursuant to 415 ILCS 5/42(f) (2012), to pay all costs, including oversight, sampling and clean-up costs, and attorney, expert witness and consultant fees expended by the Plaintiff in its pursuit of this action; and

6. Granting such other relief as this Court deems appropriate and just.

#### COUNT VI

#### FAILURE TO DEVELOP, MAINTAIN AND SUBMIT A PM-10 CONTINGENCY MEASURE PLAN (by Plaintiff State)

1-29. Plaintiff State realleges and incorporates by reference herein paragraphs 1 through 23 and 25 through 28 of Count I and paragraphs 32 and 33 of Count V as paragraphs 1 through 29 of this Count VI.

30. Subpart U of the Board Visible and Particulate Matter Regulations ("Subpart U"), 35 Ill. Adm. Code 212.700(a), provides as follows:

- (a) This Subpart shall apply to those sources in the areas designated in and subject to Sections 212.324(a)(1) or 212.423(a) and that have actual annual source-wide emissions of PM-10 of at least fifteen (15) tons per year.

31. The Facility is within an area designated by Section 212.324(a)(1) of the Board Visible and Particulate Matter Regulations and has actual annual source-wide emissions of PM-10 of at least fifteen (15) tons per year. Defendant is therefore subject to the requirements of Subpart U.

32. Section 212.701 of the Board Visible and Particulate Matter Regulations, 35 Ill. Adm. Code 212.701, provides:

- (a) Those sources subject to this Subpart shall prepare contingency measure plans reflecting the PM-10 emission reductions set forth in Section 212.703 of this Subpart. These plans shall become federally enforceable permit conditions. Such plans shall be submitted to the Agency by November 15, 1994. Notwithstanding the foregoing, sources that become subject to the provisions of this Subpart after July 1, 1994, shall submit a contingency measure plan to the Agency for review and approval within ninety (90) days after the date such source or sources became subject to the provisions of this Subpart or by November 15, 1994, whichever is later. The Agency shall notify those sources requiring contingency measure plans, based on the Agency's current information; however, the Agency's failure to notify any source of its requirement to submit contingency measure plans shall not be a defense to a violation of this Subpart and shall not relieve the source of its obligation to timely submit a contingency measure plan.

33. Defendants have not submitted any contingency measure plans to reduce PM-10 to the levels set forth in Section 212.703 of the Board Visible and Particulate Matter Regulations, 35 Ill. Adm. Code 212.703, thereby violating Section 212.701 of the Board Visible and Particulate Matter Regulations, 35 Ill. Adm. Code 212.701.

34. By violating Section 212.701 of the Board Visible and Particulate Matter Regulations, 35 Ill. Adm. Code 212.701, Defendants violated Section 9(a) of the Act, 415 ILCS 5/9(a) (2012).

35. Plaintiff is without an adequate remedy at law. Plaintiff will be irreparably injured and violations of the pertinent environmental statutes and regulations will continue unless and until this Court grants equitable relief in the form of preliminary and, after trial, permanent injunctive relief.

WHEREFORE, Plaintiff, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that this Court enter an Order granting a preliminary injunction and, after trial, a permanent injunction in favor of Plaintiff, and against the Defendants, GEORGE J. BEEMSTERBOER, INC. and BEEMSTERBOER SLAG CORP.:

1. Finding that the Defendants Section 212.701 of the Board Visible and Particulate Matter Regulations, 35 Ill. Adm. Code 212.701, and Section 9(a) of the Act, 415 ILCS 5/9(a) (2012);

2. Enjoining the Defendants from any further violation of Section 212.701 of the Board Visible and Particulate Matter Regulations, 35 Ill. Adm. Code 212.701, and Section 9(a) of the Act, 415 ILCS 5/9(a) (2012);

3. Ordering the Defendants to submit a PM-10 contingency measure plan;

4. Assessing a civil penalty of Fifty Thousand Dollars (\$50,000.00) against the Defendants for each violation of the Act and pertinent regulations, and an additional civil penalty of Ten Thousand Dollars (\$10,000.00) for each day of violation;

5. Ordering the Defendants, pursuant to 415 ILCS 5/42(f) (2012), to pay all costs, including oversight, sampling and clean-up costs, and attorney, expert witness and consultant fees expended by the Plaintiff in its pursuit of this action; and

6. Granting such other relief as this Court deems appropriate and just.

## COUNT VII

### **FAILURE TO SUBMIT ANNUAL EMISSIONS REPORT** (by Plaintiff State)

1-27. Plaintiff State realleges and incorporates by reference herein paragraphs 1 through 23 and 25 through 28 of Count I as paragraphs 1 through 27 of this Count VII.

28. Section 201.302(a) of the Board Air Pollution Regulations, 35 Ill. Adm. Code 201.302(a), provides as follows:

- (a) The owner or operator of any emission unit or air pollution control equipment shall submit to the Agency as a minimum, annual reports detailing the nature, specific source and total annual quantities of all specified air contaminant emissions, provided, however, that the Agency may require more frequent reports where necessary to accomplish the purposes of the Act and this Chapter.

29. Section 211.1950 of the Board Air Pollution Regulations, 35 Ill. Adm. Code 211.1950, provides the following definition:

“Emission unit” means any part or activity at a stationary source that emits or has the potential to emit any air pollutant.

30. Defendants’ Unpermitted Materials Piles, Screener, Conveyor and Boat Loaders are all “emission units” as that term is defined in Section 211.1950 of the Board Air Pollution Regulations, 35 Ill. Adm. Code 211.1950.

31. Pursuant to the authority granted in Section 4 of the Act, 415 ILSC 5/4 (2012), the Illinois EPA has adopted regulations to control air pollution in Illinois ("Illinois EPA Air Pollution Regulations").

32. Section 254.137(a) of the Illinois EPA Air Pollution Regulations, 35 Ill. Adm. Code 254.137(a), provides as follows:

- (a) All Annual Emissions Reports are due by May 1 of the year following the calendar year in which the emissions took place.

33. Section 254.132(a) of the Illinois EPA Air Pollution Regulations, 35 Ill. Adm. Code 254.132(a), provides as follows:

Failure to file a complete Annual Emissions Report by the applicable deadlines prescribed in Section 254.137(a) of this Subpart shall be a violation of this Part and 35 Ill. Adm. Code 201.302(a).

34. As of the date of the filing of this Complaint, Defendants have failed to submit an Annual Emissions Report for the calendar year 2012, in violation of Section 254.137(a) of the Illinois EPA Air Pollution Regulations, 35 Ill. Adm. Code 254.137(a), and Section 201.302(a) of the Board Air Pollution Regulations, 35 Ill. Adm. Code 201.302(a).

35. By violating Section 201.302(a) of the Board Air Pollution Regulations, 35 Ill. Adm. Code 201.302(a), Defendants violated Section 9(a) of the Act, 415 ILCS 5/9(a) (2012).

36. Plaintiff is without an adequate remedy at law. Plaintiff will be irreparably injured and violations of the pertinent environmental statutes and regulations will continue unless and until this Court grants equitable relief in the form of preliminary and, after trial, permanent injunctive relief.

WHEREFORE, Plaintiff, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that this Court enter an Order granting a preliminary injunction and, after trial, a permanent

injunction in favor of Plaintiff, and against the Defendants, GEORGE J. BEEMSTERBOER, INC. and BEEMSTERBOER SLAG CORP.:

1. Finding that the Defendants violated Section 254.137(a) of the Illinois EPA Air Pollution Regulations, 35 Ill. Adm. Code 254.137(a), Section 201.302(a) of the Board Air Pollution Regulations, 35 Ill. Adm. Code 201.302(a), and Section 9(a) of the Act, 415 ILCS 5/9(a) (2012);

2. Enjoining the Defendants from any further violation of Section 254.137(a) of the Illinois EPA Air Pollution Regulations, 35 Ill. Adm. Code 254.137(a), Section 201.302(a) of the Board Air Pollution Regulations, 35 Ill. Adm. Code 201.302(a), and Section 9(a) of the Act, 415 ILCS 5/9(a) (2012);

3. Ordering the Defendants to submit an Annual Emissions Report for the calendar year 2012;

4. Assessing a civil penalty of Fifty Thousand Dollars (\$50,000.00) against the Defendants for each violation of the Act and pertinent regulations, and an additional civil penalty of Ten Thousand Dollars (\$10,000.00) for each day of violation;

5. Ordering the Defendants, pursuant to 415 ILCS 5/42(f) (2012), to pay all costs, including oversight, sampling and clean-up costs, and attorney, expert witness and consultant fees expended by the Plaintiff in its pursuit of this action; and

6. Granting such other relief as this Court deems appropriate and just.



COUNT VIII

**FAILURE TO PAY CONSTRUCTION PERMIT APPLICATION FEES**  
**(by Plaintiff State)**

1-30. Plaintiff State realleges and incorporates by reference herein paragraphs 1 through 21 of Count I and paragraphs 29 through 37 of Count II as paragraphs 1 through 30 of this Count VIII.

31. Section 9.12(a) of the Act, 415 ILCS 5/9.12 (2012), provides as follows:

- (a) An applicant for a new or revised air pollution construction permit shall pay a fee, as established in this Section, to the Agency at the time that he or she submits the application for a construction permit

32. Defendants were required to apply for an air pollution construction permit and pay a fee before they installed the Screener and began storing, handling, screening, loading and unloading Unpermitted Materials at the Facility.

33. Defendants did not pay the air pollution construction permit fee until November 6, 2013.

34. By failing to timely pay the air pollution permit construction fee, Defendants violated Section 9.12(a) of the Act, 415 ILCS 5/9.12(a) (2012).

WHEREFORE, Plaintiff, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that this Court enter an Order granting a preliminary injunction and, after trial, a permanent injunction in favor of Plaintiff, and against the Defendants, GEORGE J. BEEMSTERBOER, INC. and BEEMSTERBOER SLAG CORP.:

1. Finding that the Defendants violated Section 9.12(a) of the Act, 415 ILCS 5/9.12(a) (2012);

2. Enjoining the Defendants from any further violation of Section 9.12(a) of the Act, 415 ILCS 5/9.12(a) (2012);

3. Assessing a civil penalty of Fifty Thousand Dollars (\$50,000.00) against the Defendants for each violation of the Act and pertinent regulations, and an additional civil penalty of Ten Thousand Dollars (\$10,000.00) for each day of violation;

4. Ordering the Defendants, pursuant to 415 ILCS 5/42(f) (2012), to pay all costs, including oversight, sampling and clean-up costs, and attorney, expert witness and consultant fees expended by the Plaintiff in its pursuit of this action; and

5. Granting such other relief as this Court deems appropriate and just.

In this lawsuit, the City seeks injunctive relief and civil penalties for air and water pollution-related violations of the Municipal Code of the City of Chicago ("MCC") arising from or associated with Defendants' improper and inadequate material handling and storage practices at their Site.

#### COUNT IX

**VIOLATION OF CHICAGO MUNICIPAL CODE §11-4-760(a)**  
**(by Plaintiff City)**

1-13. Plaintiff City realleges and incorporates by reference herein paragraphs 3 through 14 and 19 of Count I as paragraphs 1 through 13 of this Count IX.

14. Defendant Beemsterboer Slag Corp. is an Indiana corporation doing business in the City of Chicago at its Facility located at 2900 E. 106<sup>th</sup> St., Chicago, Cook County, Illinois.

15. Defendant George J. Beemsterboer, Inc. is an Indiana corporation doing business in the City of Chicago, holding a certificate of operation from the Chicago Department of Public Health ("CDPH") to operate certain processing equipment at the Site and a business license from

the Chicago Department of Business Affairs and Consumer Protection ("BACP") to store solid fuels at the Site.

16. Plaintiff City is an Illinois municipal corporation and home rule unit of local government.

17. On September 6, 2013, a representative of CDPH inspected the Site and observed that: (i) portions of the bank on-Site were eroded, indicating run off of materials into the Calumet River; (ii) dray and dusty conditions existed at and upon on-site roads and large piles of materials being stored on Site were dry, not watered, and susceptible to becoming windborne; and (iii) on-site material had migrated on to the public way at 106<sup>th</sup> Street.

18. On September, 10, 2013, CDPH again inspected the Site and observed that: (i) the access road was very dusty and material from the Site had migrated off-site on to Muskegon Avenue; (ii) materials from the Site were being discharged into a public sewer; (iv) on-site particulate dust emissions were visible; and (v) the truck wheel wash station on Site was not in operational condition.

19. Section 11-4-760(a) of the MCC provides:

- (a) Material handling: No person shall cause or permit the use, handling, loading, unloading, storing, depositing, or scattering of any substance or material that may become airborne or be scattered by the wind without taking reasonable precautions to minimize air pollution.

20. Section 11-4-610 of the MCC defines "air contaminant" and "air pollution" as follows:

"Air contaminant" means any individual substance or matter, including but not limited to smoke, soot, fly ash, dust, cinders, dirt, acids, fumes, oxides, gases, vapors, odors, toxic or radioactive substances, volatile organic compounds, ozone, waste, particulate, solid, liquid or gaseous matter, or any other material, which is a component of or precursor to air pollution.

"Air pollution" means the presence in the outdoor atmosphere of any air contaminants that (1) endanger the health, safety or welfare of the public; (2) cause or may cause injury, detriment, nuisance or annoyance to the public or damage to business or property; or (3) leave the premises on which they originated so as to interfere with the reasonable and comfortable use and enjoyment of property.

21. Section 11-4-120 of the MCC defines "owner or operator" and "person" as follows:

"Owner or operator" means any person who has legal title to any premises, who has charge, care or control of any premises, who is in possession of the premises or any part thereof, or who is entitled to control or direct the management of the premises.

"Person" means any individual natural person, trustee, court-appointed representative, syndicate, association, partnership, firm, club, company, corporation, business trust, institution, agency, government corporation, municipal corporation, city, county, municipality, district or other political subdivision, department, bureau, agency or instrumentality of federal, state or local government, contractor, supplier, vendor, installer, operator, user or owner, or any officers, agents, employees, factors, or any kind of representatives of any thereof, in any capacity, acting either for himself, or for any other person, under either personal appointment or pursuant to law, or other entity recognized by law as the subject of rights and duties. The masculine, feminine, singular or plural is included in any circumstances.

22. Defendants are persons within the meaning of §11-4-120 of the MCC. Defendant Beemsterboer Slag Corp. operates the Site and is, therefore, an owner or operator of the Site within the meaning of §11-4-120 of the MCC. Defendant George J. Beemsterboer, Inc., as holder of a certificate of operation from CDPH for the operation of processing equipment associated with the storage and handling of materials at the Site and as the holder of a business license from the BACP to store solid fuels on the Site, is also an owner or operator within the meaning of §11-4-120 of the MCC.

23. The materials that Defendants store and handle at the Site are air contaminants within the meaning of Section 11-4-610 of the MCC.

24. By causing and permitting the conditions observed by CDPH on September 6 and 10, 2013, as alleged in paragraphs 10 and 11 above, Defendants caused or permitted the use, handling, loading, unloading, storing, depositing, or scattering of substance(s) or material(s) that may become airborne or be scattered by the wind without taking reasonable precautions to minimize air pollution in violation of §11-4-760(a) of the MCC.

25. The City has no adequate remedy at law. The City will be irreparably injured and violations of the pertinent sections of the MCC will continue or re-occur unless and until this Court grants equitable relief in the form of preliminary and, after trial, permanent injunctive relief.

WHEREFORE, Plaintiff, CITY OF CHICAGO, respectfully requests that this Court enter an Order granting a preliminary injunction and, after trial, a permanent injunction in favor of Plaintiff, and against the Defendants, GEORGE J. BEEMSTERBOER, INC. and BEEMSTERBOER SLAG CORP.:

1. Finding that the Defendants have violated §11-4-760(a) of the MCC;
2. Ordering the Defendants to cease and desist from any further violations of §11-4-760(a) of the MCC;
3. Ordering the Defendants to immediately undertake all necessary corrective actions that will result in a final and permanent abatement of the violation of §11-4-760(a) of the MCC, including but not limited to implementing adequate and appropriate fugitive dust control practices as required to remedy the violation;

4. Assessing against the Defendants a civil penalty consistent with §§11-4-810 (a)(7) and -(b) of the MCC, to wit: not less than \$1,000 nor more than \$5,000 per violation with each day of any violation constituting a separate and distinct offense;
5. Ordering the Defendants to pay all costs expended by the City in its pursuit of this action, including attorney, expert witness, and consultant fees; and
6. Granting such other relief as this Court deems appropriate and just.

**COUNT X**

**VIOLATION OF CHICAGO MUNICIPAL CODE §11-4-760(b)**  
**(by Plaintiff City)**

1-22. Plaintiff City realleges and incorporates by reference herein paragraphs 1 through 18 and paragraphs 20 through 23 of Count IX, as paragraphs 1 through 22 of this Count X.

23. Section 11-4-760(b) of the Chicago Municipal Code provides:

- (b) Material storage: No person shall operate or maintain, or cause to be operated or maintained, any building, structure, premises, open area, right-of-way or enterprise which contains, uses or involves any substance or material that may become airborne or be scattered by the wind without taking reasonable precautions to minimize air pollution.

24. By causing and permitting the conditions observed by CDPH on September 6 and 10, 2013, as alleged in paragraphs 17 and 18 of Count IX, Defendants caused or permitted the use, handling, loading, unloading, storing, depositing, or scattering of any substance or material that may become airborne or be scattered by the wind without taking reasonable precautions to minimize air pollution in violation of §11-4-760(b) of the MCC.

25. The City has no adequate remedy at law. The City will be irreparably injured and violations of the pertinent sections of the MCC will continue or re-occur unless and until this

Court grants equitable relief in the form of preliminary and, after trial, permanent injunctive relief.

WHEREFORE, Plaintiff, CITY OF CHICAGO, respectfully requests that this Court enter an Order granting a preliminary injunction and, after trial, a permanent injunction in favor of Plaintiff, and against the Defendants, GEORGE J. BEEMSTERBOER, INC. and BEEMSTERBOER SLAG CORP.:

1. Finding that the Defendants have violated §11-4-760(b) of the MCC;
2. Ordering the Defendants to cease and desist from any further violations of §11-4-760(b) of the MCC;
3. Ordering the Defendants to immediately undertake all necessary corrective actions that will result in a final and permanent abatement of the violation of §11-4-760(b) of the MCC, including but not limited to implementing adequate and appropriate fugitive dust control practices as required to remedy the violation;
4. Assessing against the Defendants a civil penalty consistent with §§11-4-810 (a)(7) and -(b) of the MCC, to wit: not less than \$1,000 nor more than \$5,000 per violation with each day of any violation constituting a separate and distinct offense;
5. Ordering the Defendants to pay all costs expended by the City in its pursuit of this action, including attorney, expert witness, and consultant fees; and
6. Granting such other relief as this Court deems appropriate and just.

**COUNT XI**

**VIOLATION OF CHICAGO MUNICIPAL CODE §11-4-1500**  
**(by Plaintiff City)**

1-20. Plaintiff realleges and incorporates by reference herein paragraphs 1 through 18 and paragraphs 21 and 22 of Count IX, as paragraphs 1 through 20 of this Count XI.

21. Section 11-4-1500 of the MCC provides in pertinent part:

**Treatment and disposal of solid or liquid waste.**

\* \* \*

No persons shall (1) cause or allow the open dumping of any waste, (2) abandon or dispose of any waste upon public property, except in a sanitary landfill approved by the Illinois Environmental Protection Agency and the Commissioner, (3) dispose, treat, abandon or transport any waste, except at a site or facility which meets the requirements of the Illinois Environmental Protection Act and which is permitted pursuant to this chapter.

Disposal or treatment of any waste without a permit is hereby declared to be a nuisance.

22. Section 11-4-120 of the MCC defines "dispose" and "waste" as follows:

"Dispose" means to discharge, deposit, inject, dump, spill, leak or place any waste into or on any land or water or into any well so that such waste or hazardous waste or any constituent thereof may enter the environment or be emitted into the air or be discharged into any water, including groundwaters.

"Waste" means any discarded or abandoned material in solid, semisolid, liquid or contained gaseous form, including but not limited to, industrial process waste, hazardous waste, municipal waste, special waste, garbage, sludge from a waste treatment plant, water supply treatment plant, or air pollution control facility, but excludes:

- (1) Sewage collected and treated in a municipal or regional sewage system; or
- (2) Recyclable materials managed in compliance with the provisions of this chapter and regulations of the City of Chicago.

23. As observed by CDPH on September 6, and 10, 2013, Defendants caused or allowed on-Site material to migrate off of the Site and on to the public way at 106<sup>th</sup> Street.



24. By causing or allowing on-Site material to migrate off of the Site and on to the public way at 106<sup>th</sup> Street, Defendants disposed of waste within the meaning of §11-4-120 of the MCC.

25. Defendants do not have any permit that authorizes Defendants to dispose of any waste on the public way at 106<sup>th</sup> Street.

26. By causing or allowing on-Site material to migrate off of the Site and on to the public way at 106<sup>th</sup> Street, Defendants caused or allowed the disposal of waste upon public property without a permit in violation of §11-4-1500 of the MCC.

27. In addition, as observed on September 10, 2013 by CDPH, Defendants caused or allowed materials from their Site to enter a public sewer.

28. Defendants do not have any permit that authorizes Defendants to dispose of any waste in the public sewer.

29. By causing or allowing materials from their Site to enter a public sewer, Defendants caused or allowed the disposal of waste without a permit in violation of §11-4-1500 of the MCC.

30. The City has no adequate remedy at law. The City will be irreparably injured and violations of the pertinent sections of the MCC will continue or re-occur unless and until this Court grants equitable relief in the form of preliminary and, after trial, permanent injunctive relief.

WHEREFORE, Plaintiff, CITY OF CHICAGO, respectfully requests that this Court enter an Order granting a preliminary injunction and, after trial, a permanent injunction in favor of Plaintiff, and against the Defendants, GEORGE J. BEEMSTERBOER, INC. and BEEMSTERBOER SLAG CORP.:

1. Finding that the Defendants have violated §11-4-1500 of the MCC;
2. Ordering the Defendants to cease and desist from any further violations of §11-4-1500 of the MCC;
3. Ordering the Defendants to immediately undertake all necessary corrective actions that will result in a final and permanent abatement of the violation of §11-4-1500 of the MCC, including but not limited to developing and continuously implementing adequate and appropriate best management practices as required to assure that no further violations will occur in the future;
4. Assessing against the Defendants a civil penalty consistent with §§11-4-1600 of the MCC, to wit: "not less than \$1,500.00 and not more than \$2,500.00 for the first load dumped, deposited, disposed, released, treated or placed, and not less than \$2,500.00 nor more than \$3,500.00 for the second and each subsequent load.... For each subsequent day that a load dumped, deposited, disposed, released, treated or placed in violation of Section 7-28-390, 7-28-440, or 11-4-1500 remains at the location where it was dumped, deposited, disposed, released, treated or placed, or any load that migrated to another location remains at that location to which it has migrated, the person shall be punished by a fine of not less than \$2,500.00 per load, per day, and not more than \$3,500.00 per load, per day. In addition to any such fine, incarceration, community service or other penalty provided by law, a penalty surcharge in the amount of \$20.00 shall be imposed on any person found in violation of Sections 7-28-440 or 11-4-1500. Such penalty surcharge shall be (1) deposited in the corporate fund of the city for the non-exclusive purpose of ensuring ample funding for the reward program authorized under Section 7-28-445; and (2) imposed so long as the reward program authorized under Section 7-28-445 remains in effect.";

5. Ordering the Defendants to pay all costs expended by the City in its pursuit of this action, including attorney, expert witness, and consultant fees; and

6. Granting such other relief as this Court deems appropriate and just.

**COUNT XII**

**VIOLATION OF CHICAGO MUNICIPAL CODE §7-28-080**

**(by Plaintiff City)**

1-20. Plaintiff realleges and incorporates by reference herein paragraphs 1 through 18 and paragraphs 21 and 22 of Count IX, as paragraphs 1 through 20 of this Count XII.

21. Section 7-28-080 of the MCC provides in pertinent part:

Nuisance in connection with business.

...(N)o nuisance shall be permitted to exist in connection with any business or in connection with any such work or labor. Any person who violates this section shall be subject to a fine of not less than \$300.00 and not more than \$1,000 for each offense. Each day that such a violation continues shall be considered a separate and distinct offense.

22. By causing and permitting the conditions observed by CDPH on September 6 and 10, 2013, as alleged in paragraphs 17 and 18 of Count IX, Defendants created a nuisance in connection with their business in violation of §7-28-080 of the MCC.

23. The City has no adequate remedy at law. The City will be irreparably injured and violations of the pertinent sections of the MCC will continue or re-occur unless and until this Court grants equitable relief in the form of preliminary and, after trial, permanent injunctive relief.

WHEREFORE, Plaintiff, CITY OF CHICAGO, respectfully requests that this Court enter an Order granting a preliminary injunction and, after trial, a permanent injunction in favor of Plaintiff, and against the Defendants, GEORGE J. BEEMSTERBOER, INC. and BEEMSTERBOER SLAG CORP.:

1. Finding that the Defendants have violated §7-28-080 of the MCC;
2. Ordering the Defendants to cease and desist from any further violations of §7-28-080 of the MCC;
3. Ordering the Defendants to immediately undertake all necessary corrective actions that will result in a final and permanent abatement of the violation of §7-28-080 of the MCC, including but not limited to implementing adequate and appropriate fugitive dust control practices as required to remedy the violation;
4. Assessing against the Defendants a civil penalty consistent with §7-28-080 of the MCC, to wit: not less than \$300 nor more than \$1,000 per violation with each day of any violation constituting a separate and distinct offense;
5. Ordering the Defendants to pay all costs expended by the City in its pursuit of this action, including attorney, expert witness, and consultant fees; and
6. Granting such other relief as this Court deems appropriate and just.

**COUNT XIII**

**VIOLATION OF CHICAGO MUNICIPAL CODE §7-28-090**

1-20. Plaintiff realleges and incorporates by reference herein paragraphs 1 through 18 and paragraphs 21 and 22 of Count IX, as paragraphs 1 through 20 of this Count XIII.

21. Section 7-28-090 of the MCC provides in pertinent part:

Nuisance brought into city.

No person shall bring into the city, or keep therein for sale or otherwise, either for food, or for any other purpose, any dead or live animal, nor any matter, substance, or thing which shall be a nuisance or which shall occasion a nuisance in the city, or which may or shall be dangerous or detrimental to health.

22. Defendants bring various bulk materials, including coal, Pet Coke, and Met Coke, into the City from other locations in the State of Illinois and/or from other states such as Indiana. Such materials are brought to the Site by barge and/or by truck and are kept at the Site until such time as they are transported off of the Site by barge or truck.

23. By causing and permitting the conditions observed by CDPH on September 6 and 10, 2013, as alleged in paragraphs 17 and 18 of Count IX, Defendants created a nuisance in connection with bringing substances into the City, in violation of §7-28-090 of the MCC.

24. The City has no adequate remedy at law. The City will be irreparably injured and violations of the pertinent sections of the MCC will continue or re-occur unless and until this Court grants equitable relief in the form of preliminary and, after trial, permanent injunctive relief.


WHEREFORE, Plaintiff, CITY OF CHICAGO, respectfully requests that this Court enter an Order granting a preliminary injunction and, after trial, a permanent injunction in favor of Plaintiff, and against the Defendants, GEORGE J. BEEMSTERBOER, INC. and BEEMSTERBOER SLAG CORP.:

1. Finding that the Defendants have violated §7-28-090 of the MCC;
2. Ordering the Defendants to cease and desist from any further violations of §7-28-090 of the MCC;
3. Ordering the Defendants to immediately undertake all necessary corrective actions that will result in a final and permanent abatement of the violation of §7-28-090 of the MCC, including but not limited to implementing adequate and appropriate fugitive dust control practices as required to remedy the violation;

4. Assessing against the Defendants a civil penalty consistent with §7-28-800(1) of the MCC, to wit: not less than \$250 nor more than \$500 per violation with each day of any violation constituting a separate and distinct offense;
5. Ordering the Defendants to pay all costs expended by the City in its pursuit of this action, including attorney, expert witness, and consultant fees; and
6. Granting such other relief as this Court deems appropriate and just.

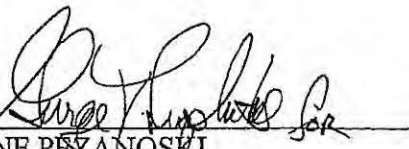
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UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS

KEVIN P. MURPHY, JOANN PODKUL, SUSAN  
SADLOWSKI GARZA, PATRICIA A. FISHER  
and ROSALIO CAMPOS, on behalf of themselves  
and all others similarly situated,

Plaintiffs,

vs.

BP PRODUCTS NORTH AMERICA, INC.,  
KCBX TERMINALS COMPANY,  
KOCH CARBON, LLC  
GEORGE J. BEEMSTERBOER, INC., and  
KM RAILWAYS, LLC

Defendants.

CASE NO.:

JURY TRIAL DEMANDED

**CLASS ACTION COMPLAINT**

Plaintiffs, individually on behalf of themselves and all others similarly situated, bring this Class Action Complaint against Defendant BP Products North America, Inc (“BP”) KCBX Terminals Company (“KCBX”), Koch Carbon, LLC (“Koch Carbon”), George J. Beemsterboer, Inc. (“Beemsterboer”) KM Railways, LLC (“KMR”) in support alleges as follows:

**INTRODUCTION**

1. This is an action brought by Plaintiffs, who are each owners and residents of real property contaminated by petroleum coke (hereinafter “petcoke”) manufactured by BP and distributed and marketed by all of the Defendants.

2. The petcoke is a waste byproduct produced at BP’s oil refinery in Whiting, Indiana. Petcoke contains high levels of heavy metals such as nickel and vanadium that are possibly carcinogenic in addition to large amounts of sulfur. The Safety Data Sheet for Petroleum Coke indicates that exposure to petcoke can cause skin, eye, or respiratory tract



irritation. It also warns that people should avoid accumulations of finely ground dust, and recommends that people not breathe the dust, and further recommends that “[i]ndirect vented, dust-tight goggles are recommended if dust is generated when handling” petcoke. (Safety Data Sheet -- Petroleum Coke, attached hereto as Exhibit A).

3. Instead of safely disposing of or deconstructing the petcoke, Defendants have chosen to sell it and to distribute it and to market it for profit. This joint marketing enterprise is an abnormally dangerous activity which consciously and deliberately disregards the known dangers of petcoke. It is a marketing enterprise that despoils and degrades every environment it touches.

### PARTIES

#### **The Defendants**

4. BP is a Maryland corporation. Its headquarters and principal place of business are located at 28100 Torch Parkway, Warrenville, Illinois.

5. KCBX is a North Dakota corporation located and doing business at 3259 East 100<sup>th</sup> Street, Chicago, Illinois. KCBX owns, operates, and/or controls petcoke storage facilities located along or near the Calumet River, including but not limited to locations at 3259 East 100<sup>th</sup> Street, Chicago Illinois and 10730 South Burley Avenue. KCBX is a subsidiary of Koch Industries, Inc.

6. Koch Carbon is a Delaware limited liability company. Its principal place of business is 4111 E. 37<sup>th</sup> St. N. Wichita, Kansas. On information and belief it owns, operates and/or controls a petcoke storage facility located at or near 2900 East 106<sup>th</sup> Street, Chicago Illinois. Koch Carbon is a subsidiary of Koch Industries, Inc.

7. George J. Beemsterboer, Inc. is an Indiana corporation located and doing business at 2900 E. 106<sup>th</sup> Street, Chicago, Illinois. Beemsterboer owns, operates, and/or controls a petcoke storage and transfer facility at that location.

8. KMR is a Delaware limited liability company which owns the petcoke storage facility located at 10730 South Burley Avenue, along with adjacent rail equipment. KMR purchased this petcoke storage facility in December 2012. KMR is a subsidiary of Koch Industries, Inc.

#### **The Plaintiffs**

9. Plaintiff Kevin P. Murphy is a citizen and resident of Chicago, Illinois. He, together with his wife, Plaintiff Joann Podkul, is the owner of the property located at 9913 S. Avenue H, which is in a community which has been and is being damaged by the migration of fugitive petcoke dust. Mr. Murphy and his family have been exposed to the airborne fugitive petcoke dust contamination of his home and property.

10. Plaintiff Joann Podkul is a citizen and resident of Chicago, Illinois. She, together with her husband, Plaintiff Kevin P. Murphy, is the owner of the property located at 9913 S. Avenue H, which is in a community which has been and is being damaged by the migration of fugitive petcoke dust. Ms. Podkul and her family have been exposed to the airborne fugitive petcoke dust contamination of her home and property.

11. Plaintiff Susan Sadlowski Garza is a citizen and resident of Chicago, Illinois. She is the homeowner of the property located at 10654 South Avenue G which is in a community which has been and is being damaged by the migration of fugitive petcoke dust. Ms. Garza and her family have been exposed to the airborne fugitive petcoke dust contamination of her home and property.

12. Plaintiff Patricia A. Fisher is a citizen and resident of Chicago, Illinois. She is the homeowner of the property located at 3457 East 106th Street, which is in a community which has been and is being damaged by the migration of fugitive petcoke dust. Ms. Fisher has been exposed to the airborne fugitive petcoke dust contamination of her home and property.

13. Plaintiff Rosalio Campos is a citizen and resident of Chicago, Illinois. He is the owner of property located at 10748 S. Mackinaw Avenue, which is in a community which has been and is being damaged by the migration of fugitive petcoke dust. Mr. Campos and his family have been exposed to the airborne fugitive petcoke dust contamination of her home and property.

#### **VENUE & JURISDICTION**

14. This Court has jurisdiction over Plaintiff's claims pursuant to 28 U.S.C. § 1332(d). The claims are brought as a class action pursuant to Fed. R. Civ. P. 23 and involve an amount that exceeds \$5,000,000 in controversy.

15. Venue is proper in this district pursuant to 28 U.S.C. § 1391 because Defendants committed the wrongful conduct against members in this district, which is where most, if not all, class members reside.

#### **FACTUAL BACKGROUND**

##### **Canadian Tar Sands Oil**

16. Petcoke is the waste byproduct of refining tar sands oil extracted from beneath forests in Alberta Canada. This extraction, begun in earnest over the past decade, is itself highly controversial. It has been described as "the largest and most destructive project on earth" which "represents a major environmental disaster in Alberta." (Exhibit B – Executive Summary & Bibliography, 2010 Joint Report of National Resources Defense Counsel, Sierra Club,

EARTHWORKS, Corporate Ethics International, pp. 7, 5.)

17. Because Canadian tar sands oil is much heavier than conventional Crude oil, it could not be refined into transportation fuel with traditional refining machinery.

18. In order to refine and process Canadian Extra Heavy Oil ("CXHO") Defendant BP undertook an approximately \$4 billion update and expansion of its oil refinery in Whiting Indiana. This project was identified by BP as Operation Canadian Crude in its Fugitive Air Permit 25484-2008 (1-30-2008) (hereinafter "the permit" and attached hereto as Exhibit C).

#### **Operation Canadian Crude**

19. The centerpiece of the refinery expansion was the construction of a new coker (coker #2), the largest coker in North America. According to the permit, the maximum rate of petcoke production at the refinery would go from 2,000 to 6,000 tons per day.

20. The BP permit specifically detailed precautions to be taken regarding the handling, storage and transfer of the petcoke at the Whiting refinery:

Potential fugitive dust emissions may result from coke handling, storage and transfer operations. The coke handling system will be designed to minimize fugitive dust emission from the coke handling process[...]When the coking process is complete [and following the coke's watering and dewatering][...]it is moved by a bridge crane to a partially enclosed crusher. From the crusher the coke is conveyed in an enclosed conveyor to a transfer tower. The coke is then transferred using a series of enclosed conveyors to either the day bin for loadout into rail cars, or if necessary to the enclosed coke storage pile for temporary storage.

21. BP's coker #2 in Whiting is not yet fully operational. It has been operating at only partial capacity through 2012 and 2013.

22. Coker #2 is expected to become fully operational in the first quarter of 2014. Once fully operational the amount of petcoke waste byproduct created at the Whiting refinery will have increased from 700,000 tons per year to 2.2 million tons per year as a result of

Operation Canadian Crude.

**The Waste Product of Operation Canadian Crude –  
The Distribution and Marketing of Petcoke**

23. Instead of safely disposing of or deconstructing its petcoke waste byproduct, BP has chosen to sell, distribute and market it for profit.

24. BP knows that petcoke cannot be used or marketed for use in the United States because of environmental restrictions and regulations. Consequently BP has chosen to market petcoke for use outside the United States rather than safely dispose of it or deconstruct it.

25. In order to market petcoke, BP and its co-defendants have chosen to distribute it through three distribution sites located in the center of a densely populated residential community in Chicago, Illinois, along the Calumet River at 100<sup>th</sup>, 106<sup>th</sup> and 108<sup>th</sup> streets on the city's far southeast side. Schools, churches, parks and public playgrounds line and are adjacent to both sides of the Calumet River from 100<sup>th</sup> to 108<sup>th</sup> streets. (Exhibit D – map & indices of the relevant location).

26. Petcoke is stored and distributed from these distribution sites completely unenclosed in the open air. This is so despite the fact that BP is required to enclose the petcoke at its Whiting refinery.

27. These open air distribution centers have been located in a community which is:
- a) environmentally scarred and vulnerable from decades of use as a worldwide center of steel production and petroleum refining; and
  - b) now the center of a national environmental restoration campaign known as the Millennium Reserve – Calumet Core. The community contaminated by the petcoke is in the heart of the Calumet Core as described by Illinois Governor Patrick Quinn in his 2013 Executive Order (Attached as Exhibit E). The

Executive Order significantly notes:

- Calumet Core has a rich industrial heritage and associated labor culture that led to a richly diverse and vibrant immigrant community.
- Residents of the Millennium Reserve: Calumet Core have a justifiable pride in their role in building the United States of America;
- Calumet Core[...] now includes significant areas of existing or former industrial and manufacturing land that suffers from contamination, abandonment and fragmented ownership that stands in the way of economic revitalization in the area;
- The area within the Millennium Reserve: Calumet Core boundary has been economically challenged by the decline of heavy industry, the loss of jobs and that there is an opportunity to create new jobs in the land conservation, brownfield remediation, and public recreation industries.

28. Although BP's Operation Canadian Crude has not yet ramped up to full production, its effects are already being felt in the community.

29. In November 2013, the Attorney General of the State of Illinois on her own motion and at the request of the Illinois Environmental Protection Agency filed a Complaint (Attached hereto as Exhibit F) against one of the defendants herein, KCBX Terminals Company, regarding the storage and distribution of BP's petcoke at the 108<sup>th</sup> street distribution site. The Complaint alleges the following:

- Paragraph 8, in relevant part – “On September 20, 2013, and such other dates better known to the Defendant, the Defendant had approximately 350,000 tons of petroleum coke and coal at the site.”
- Paragraph 9 – “At all times relevant to the Complaint, the Defendant has left the petroleum coke and coal piles at the Site uncovered and open to the environment.”
- Paragraph 13 – “Petroleum coke and coal dust is a type of particulate

matter that can be emitted into the environment and carried by the wind into areas surrounding the Site. When petroleum coke and coal dust is blown off the Site into the nearby residential neighborhood, the dust gets into people's eyes, is inhaled and coats people's homes, outside play areas, cars and other personal property, thereby threatening human health and unreasonably interfering with the local residents' enjoyment of life and property."

- Paragraph 14 – "Particulate matter, including petroleum coke and coal dust, may be inhaled into the lungs and cause serious health problems, including aggravated asthma, decreased lung function, increased respiratory symptoms such as difficulty in breathing, irregular heartbeat, nonfatal heart attacks and premature death in people with heart or lung disease."

30. Each of the plaintiffs and other members of the community have experienced the petcoke invasion of their property as described above in the Attorney General's Complaint.

#### **CLASS ALLEGATIONS**

31. Plaintiffs bring this class action pursuant to Federal Rule of Civil Procedure 23(a), (b)(2), and (b)(3) on behalf of a class consisting of: All persons who own real property that has been contaminated with petcoke waste produced from the Whiting Refinery.

32. Specifically excluded from the Class are Defendants and any of their officers, any entity in which Defendants have a controlling interest or which has a controlling interest in Defendants, Defendants' legal representatives, and any municipal or governmental entity.

33. Members of the Class are so numerous that joinder is impracticable. While the exact number of Class members is unknown to Plaintiffs, it is believed that the Class is comprised of at least thousands of members. The Class will be readily identifiable from public records.

34. Common questions of law and fact exist as to all members of the Class. The resolution of these common questions of law and fact will drive the resolution of the litigation.

35. Common legal and factual questions that will drive the resolution of the litigation include, but are not limited to:

- a) Whether Defendants released or discharged petcoke waste during the process of operating the Whiting Refinery;
- b) Whether Defendants' conduct in the refining, manufacture, handling, transport, or storage of oil byproducts resulted in the release, discharge, or spilling of petcoke waste;
- c) Whether Defendants had knowledge of the petcoke waste's likelihood to contaminate Plaintiffs' property;
- d) Whether Defendants manufacturing and distributing petcoke as alleged constituted an abnormally dangerous activity;
- e) Whether Defendants' conduct in marketing and distributing petcoke as alleged was willful and wanton;
- f) Whether petcoke waste released, discharged, or spilled by Defendants has trespassed on or contaminated Plaintiffs' property;
- g) Whether Defendants have created an unnatural dispersion or distribution of petcoke waste resulting in contamination of Plaintiffs' property; and
- h) Identification of the precise area of impact of the contamination caused by Defendants;

36. Plaintiffs' claims are typical of the members of the Class. Plaintiffs, like all other members of the Class, have sustained damages arising from Defendants' conduct alleged herein. Plaintiffs and the Class have been similarly or identically harmed by the same unlawful conduct



of Defendants.

37. Plaintiffs will fairly and adequately protect the interests of the Class and the Illinois Subclass because Plaintiffs have no interests antagonistic to, or in conflict with, the Class that Plaintiffs seek to represent. Furthermore, Plaintiffs have retained counsel experienced and competent in the prosecution of complex class action litigation.

38. The class action mechanism is superior to other available means for the fair and efficient adjudication of the claims of the Class. Besides the predominance of questions common to all Class members, individual Class members lack resources to undertake the burden and expense of individual prosecution of these claims against these large corporate defendants, especially in comparison with the maximum individual recovery to which each Class member would be entitled. Individualized litigation increases the delay and expense to all parties and multiplies the burden on the judicial system presented by the complex legal and factual issues of this case. It also presents a potential for inconsistent or contradictory judgments. In contrast, the class action device presents far fewer management difficulties and provides the benefits of a single adjudication, economy of scale, and comprehensive supervision by a single court on the issue of Defendants' liability.

## **CLAIMS FOR RELIEF**

### **COUNT I**

#### **Willful and Wanton Conduct Claim**

39. Plaintiffs re-allege paragraphs 1 through 30 as if fully set forth herein.

40. The Defendants marketed and distributed petcoke from BP's Whiting refinery consciously and deliberately disregarding the known danger to the Plaintiffs and to their property.

41. This willful and wanton conduct of the Defendants in its conscious and deliberate

disregard of the known dangers to the Plaintiffs was a proximate cause of damage to the Plaintiffs and to their property. This includes damage to the value of the affected property, damage to the use and enjoyment of the affected property and the ongoing costs of cleaning their property.

## **Count II**

### **Abnormally Dangerous Activity Claim**

42. Plaintiffs re-allege paragraphs 1 through 30 as if fully set forth herein.

43. The distribution and marketing of petcoke as alleged is an abnormally dangerous activity in that it:

- a. Creates a high degree of risk of harm to the persons and property of the Plaintiffs;
- b. The harm resulting is great;
- c. Defendants have located distribution sites in the center of a densely populated residential community;
- d. So located this activity cannot be made safe;
- e. The petcoke has no value to the community while presenting a danger to the community;
- f. This activity is not commonly conducted in the center of a densely populated residential community.

44. Defendants' conduct in carrying out this abnormally dangerous activity is a proximate cause of damage to the Plaintiffs and to their property. This includes damage to the value of the affected property, damage to the use and enjoyment of the affected property and the ongoing costs of cleaning their property.

**Count III**

**Strict Liability in Tort Claim**

45. Plaintiffs repeat and re-allege paragraphs 1 through 30 as if fully set forth herein.

46. The Defendants have manufactured, sold, distributed and marketed a product, petcoke, in a condition which was unreasonably dangerous, to the property and persons of the Plaintiffs.

47. The product was in this condition when it damaged the persons and property of the Plaintiffs. This damage includes damage to the value of the affected property, to the use and enjoyment of the affected property and the ongoing costs of cleaning their property.

**COUNT IV  
Trespass Claim**

48. Plaintiffs repeat and re-allege paragraphs 1 through 30 as if fully set forth herein.

49. Defendants had and have a duty to Plaintiffs and the Class to use reasonable care handling, maintenance, storage, and transport of petcoke waste, to prevent the discharge, or other escape of petcoke waste, to remediate any such discharge, to prevent any discharge from contaminating the property of others, and to remediate any such contamination.

50. Defendants breached the foregoing duty, failing to use reasonable care to ensure that petcoke waste would not be discharged or otherwise escape during the handling, maintenance, storage, and transport of petcoke waste.

51. Defendants' failure to take steps to ensure that petcoke waste would not trespass onto Plaintiffs' property was wrongful.

52. As a direct and proximate result of Defendants' intentional, willful and wanton, or negligent conduct, toxic chemicals in the form of petcoke waste have contaminated and continues to contaminate Plaintiffs' property.

53. Each time petcoke waste found and continues to find its way onto Plaintiffs' property a separate trespass occurred or occurs.

54. Damages from the petcoke waste that trespasses and has trespassed onto Plaintiffs' property continues to accrue and will continue to accrue.

55. Defendants' ongoing trespasses onto Plaintiffs' property is intentional, willful, and wanton, and/or negligent, and wrongful.

56. Defendants' ongoing trespasses onto Plaintiffs' property have interfered with Plaintiffs' use and enjoyment of their property, including but not limited to causing a diminution of value to that property.

57. Defendants' ongoing trespasses onto Plaintiffs' property have caused economic loss to Plaintiffs, including but not limited to reducing the value of the property and the ongoing costs of cleaning their property.

**COUNT V**  
**Public Nuisance Claim**

58. Plaintiffs repeat and re-allege paragraphs 1 through 30 as if fully set forth herein.

59. The general public, including, Plaintiffs and the Class, has a public right to the use of streets, alleys, and other premises for recreational and commercial purposes in the areas contaminated by petcoke waste from the Whiting Refinery.

60. The general public, including, Plaintiffs and the Class, has a right to public health and safety.

61. Defendants have substantially and unreasonably interfered with these rights of the general public by continuing to allow discharge or other escape of petcoke waste.

62. Damages from the discharge or other escape of petcoke waste produced at the Whiting Refinery are ongoing, and will continue to accrue.

63. Plaintiffs and the Class have suffered special and particular injuries distinct from the general public, including diminution of the value of their property and the ongoing costs of cleaning their property. These distinct injuries are fairly traceable to Defendants' conduct as alleged herein.

64. Defendants' conduct described herein proximately caused the distinct injuries to Plaintiffs and the Class, which were direct and foreseeable consequences of Defendants failure to properly handle, maintain, store, and transport petcoke waste produced at the Whiting Refinery.

**COUNT VI**  
**Private Nuisance Claim**

65. Plaintiffs repeat and re-allege paragraphs 1 through 30 as if fully set forth herein.

66. Petcoke waste has and continues to discharge or otherwise escape from Defendants' storage and transportation facilities and invaded Plaintiffs' and the Class' property, creating a physically offensive nuisance.

67. The invasions of Plaintiffs' and the Class' property are the direct and proximate result of Defendants' intentional, willful and wanton, or negligent conduct in failing to prevent or remediate the discharge or other escape of petcoke waste, and to prevent or remediate the contamination of others' property from petcoke waste.

68. The invasions of Plaintiffs property are substantial because the petcoke waste contamination is extensive and cumulative.

69. The invasions of Plaintiffs property is unreasonable because reach and extend of the damages to Plaintiffs as measured against the lack of utility of the nuisance weighs in favor of Plaintiffs' interests.

70. Plaintiffs and the Class have suffered injury as a result of Defendants' nuisance, including diminution of value of their property and the ongoing costs of cleaning their property.

be sought.”

81. Defendants handled, transported, and stored petcoke waste from the Whiting Refinery in such a way to cause discharge or other escape of petcoke waste onto Plaintiffs’ and the Class’ property.

82. Accordingly, Plaintiffs seek a declaration (a) stating Defendants have caused the discharge of petcoke waste onto Plaintiffs’ property, (b) stating that Defendants had and have knowledge that petcoke waste is abnormally dangerous, (c) stating Defendants are liable under each of the above-referenced causes of action by virtue of the complained of conduct, (d) requiring Defendants to take all necessary measures to prevent the discharge of petcoke waste in the future, including prohibiting BP from distributing petcoke into the subject densely populated residential community, (e) requiring Defendants to remedy all past and future petcoke waste discharge, (f) stating that Defendants are liable for all appropriate damages, including punitive damages, under said causes of action, and (g) stating that Defendants are liable for all appropriate attorneys’ fees and costs under said causes of action.

#### **REQUESTS FOR RELIEF**

WHEREFORE, Plaintiffs, on behalf of themselves and all others similarly situated, seek judgment against Defendants as follows:

- A. For an order certifying the Class under Rule 23 of the Federal Rules of Civil Procedure and naming Plaintiffs as Class Representatives and their attorneys as Class Counsel to represent the Class;
- B. For an order finding in favor of the Plaintiffs and the Class on all counts asserted herein;
- C. For an order awarding damages, including punitive damages, in an amount to be determined by the Court or jury;
- D. For prejudgment interest on all amounts awarded;
- E. For an order of restitution and all other forms of equitable monetary relief;

- F. Appropriate injunctive relief, including prohibiting BP from distributing petcoke into the subject densely populated residential community;
- G. For an order awarding Plaintiffs and the Class reasonable attorneys' fees and expenses and costs of suit; and
- H. For further relief as the Court deems appropriate.

Date: November 25, 2013

Respectfully submitted,

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DEPARTMENT OF PUBLIC HEALTH  
CITY OF CHICAGO

Notice of Proposed Regulations

**For the Handling and Storage of Bulk Material Piles**

Pursuant to Sections 2-112-160(b), 11-4-760(e), 11-4-770, and 11-4-800 of the Municipal Code of Chicago, notice is hereby given this 19<sup>th</sup> day of December 2013 that the Department of Public Health (CDPH) solicits written comments with respect to its proposed regulations for the handling and storage of bulk material piles.

To be considered, written comments must be received by CDPH on or before **January 24<sup>th</sup>, 2014**. The mailing address to send written comments with respect to the proposed regulations is the following:

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

Comments will also be accepted at the following email address: [petcokecomments@cityofchicago.org](mailto:petcokecomments@cityofchicago.org).

In addition, a public hearing will be scheduled to provide the public an opportunity to provide verbal comments on the regulations. Notice of the date, time and location of the hearing will be forthcoming.

Copies of the proposed regulations may be obtained in person at CDPH's offices, 333 South State Street, Room 200, during regular business hours (8:30 a.m. to 4:30 p.m.).

The proposed regulations may also be viewed on CDPH's website at <http://www.cityofchicago.org/health>. (Click on Environmental Permits & Regulation, and then Environmental Rules and Regulations.)

Bechara Choucair, M.D.  
Commissioner of Health

333 SOUTH STATE STREET, ROOM 200, CHICAGO, ILLINOIS 60604

SETP EXHIBIT SIX