

**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.)

Judge Kathleen G. Kennedy

DEC 19 2013

Circuit Court – 1718

No. 13 CH 26175

AGREED INTERIM ORDER

This cause coming before the Court on Plaintiff State of Illinois’s Motion for Preliminary Injunction pursuant to Section 42(e) of the Illinois Environmental Protection Act, 415 ILCS 5/42(e) (2012); the parties being given due notice; the Court having jurisdiction over the parties and subject matter and being duly advised in the premises;

NOW THEREFORE, Plaintiffs having alleged that Defendants are currently in violation of Sections 9(a) and (b) of the Illinois Environmental Protection Act (“Act”), 415 ILCS 5/9(a) and (b) (2012), and Sections 11-4-760(a) & (b), 11-4-1500, 7-28-080 and -090 of the Municipal Code of the City of Chicago (“MCC”) and the parties having agreed to the entry of this Agreed Interim Order, the Court enters the following preliminary injunction pursuant to Section 42(e) of the Act, 415 ILCS 5/42(e) (2012), and Section 11-4-810(a) of the MCC, which shall remain in effect until further order of this Court.

IT IS HEREBY ORDERED THAT:

I. BACKGROUND

1. Plaintiffs incorporate by reference herein the allegations in their Complaint for Injunction and Civil Penalties filed on November 21, 2013 (the "Complaint"), which allegations are neither admitted nor denied by the Defendant.

II. GENERAL PROVISIONS

2. This Agreed Interim Order ("Order") is not a final resolution of the merits of Plaintiffs' Complaint, but rather addresses the Plaintiffs' most immediate concerns regarding Defendant Beemsterboer Slag Corporation's receipt, storage, and handling of certain materials, specifically, coke blend, petroleum coke ("Pet Coke"), metallurgical coke ("Met Coke"), iron rich material ("IRM"), pine bark, coal and street sweepings (collectively "Materials"), at the facility which is operated by Defendant Beemsterboer Slag Corporation and owned by Defendant George J. Beemsterboer, Inc., and located at 2900 East 106th Street, Chicago, Cook County, Illinois, along the west bank of the Calumet River ("Facility").

3. This Order does not, nor is it intended to, determine the liability of the Defendants for the subject matter of the Complaint, except as to its compliance with the requirements of this Order.

4. By entering into this Order and complying with its terms, the Defendants do not affirmatively admit, and specifically deny all allegations of violation within the Complaint and referenced above, and this Order and compliance therewith shall not be interpreted as including such admission.

5. This Order shall apply to and bind the Plaintiff and the Defendants.

III. IMMEDIATE ACTION

6. Effective immediately upon entry of this Agreed Interim Order, GEORGE J. BEEMSTERBOER, INC. and BEEMSTERBOER SLAG CORP. (collectively, “Beemsterboer” or “Defendants”), shall cease and desist from accepting any Materials at the Facility.

7. Within one (1) week after the entry of this Order by the Court, Defendants shall submit to Plaintiff, specifically, to the persons listed in Section IV of this Order, a work plan for the removal of the Materials from the Facility (“Work Plan”) for Plaintiffs’ review and approval.

8. The Work Plan shall include a scope of work and schedule, including start and completion dates for the work, and shall also include emissions control measures to be utilized at all times during removal of the Materials from the Facility. Additionally, the Work Plan shall:

- a. Specify the equipment that will be utilized by Defendants for the removal of all Materials from the Facility;
- b. Itemize the types and quantities of all Materials being stored at the Facility, as of the date of the entry of this Interim Agreed Order;
- c. Identify the location(s) at the Facility of each of the Materials being stored at the Facility, as of the date of the entry of this Interim Agreed Order;
- d. Identify the length of time each of the Materials identified in response to Paragraph 8.b, above, has been stored at the Facility, from the earliest point in time that the material was brought to the Facility;
- e. Identify the ownership of all of the Materials identified in response to Paragraphs 8.b and 8.c, above;
- f. Identify where all of the Materials removed by the Defendants have been transported to and shall further list the means by which all of the materials were transported;
- g. Identify the source(s) of each of the Materials identified in response to Paragraphs 8.b and 8.c, above; and,

- h. Provide copies of Material Safety Data Sheets (“MSDS”) for all of the materials identified pursuant to Paragraph 8.b, above, or other analysis.

9. If, after reviewing the Work Plan, Illinois EPA rejects any portion thereof, Illinois EPA shall notify the Defendants, pursuant to the notice provisions of Section IV of this Order, below, and shall advise the Defendants regarding the specific portion(s) of the Work Plan that it has rejected (“Rejection Notice”). Upon receipt of a Rejection Notice, Defendants shall have ten (10) business days to revise the Work Plan, consistent with the comments provided to it by Illinois EPA, and to resubmit it, pursuant to the notice provisions under Section IV of this Order, below. After Illinois EPA has approved the Work Plan, Defendants shall not thereafter make any changes to the Work Plan.

10. On or before January 20, 2014, Defendants shall cover the flue dust pile, which is partially vegetated and which is located in the southeastern corner of the Facility, with a tarp and shall secure the tarp so that the flue dust cannot become airborne. Defendants shall thereafter keep the flue dust pile tarped until such time as the Plaintiffs and Defendants agree in writing that it may be removed, or, alternatively, until further order of the Court.

11. Within thirty (30) days following the entry of this Interim Agreed Order, Defendant shall submit to Plaintiffs a sampling and analysis plan for the flue dust which is presently stored at the Facility. Upon approval of the sampling and analysis plan, Defendants shall implement the approved plan.

12. On or before February 28, 2014, Defendants shall remove all Materials from the Facility, pursuant to the approved Work Plan.

13. Within fourteen (14) days after Defendants complete the removal of all Materials from the Facility, Defendants shall submit to Plaintiff a certification by a responsible corporate official for each Defendant, under penalty of perjury, specifying that all Materials have been removed from the Facility in accordance with the approved Work Plan ("Certification") and identifying the location(s) to which all of the materials were shipped.

14. After all of the Materials have been removed from the Facility, Defendants shall not, thereafter, accept any Materials at the Facility for storage and/or handling, until such time as Defendant(s) has/have obtained all necessary permits from the Illinois Environmental Protection Agency ("Illinois EPA") Bureau of Air authorizing the handling and storage of such materials at the Facility and has installed appropriate dust controls, and has obtained Illinois EPA approval for a fugitive dust control plan, as required by 35 Ill. Adm. Code 212.310.

IV. NOTICES

15. All submittals and correspondence relating to the requirements of this Order shall be directed to the following persons:

FOR THE PLAINTIFFS

Ryan G. Rudich
Evan J. McGinley
Assistant Attorneys General
Environmental Bureau
Illinois Attorney General's Office
69 W. Washington Street, Suite 1800
Chicago, Illinois 60602
FAX: (312) 814-2347
rrudich@atg.state.il.us
emcginley@atg.state.il.us

Christopher Pressnall
Michael Roubitchek
Assistant Counsel
Division of Legal Counsel
Illinois Environmental Protection Agency
1021 North Grand Avenue East
Springfield, Illinois 62794
FAX (217) 782-9807
chris.pressnall@Illinois.gov
mike.roubitchek@Illinois.gov

Julie Armitage
Chief
Bureau of Air
Illinois Environmental Protection Agency
1021 North Grand Avenue East
Springfield, Illinois 62794
julie.armitage@illinois.gov

Otis T.W. Omenazu
Chief Air Engineer
Chicago Department of Public Health
333 S. State St.
Chicago, Illinois 60604
FAX: (312) 747-9716
otis.omenazu@cityofchicago.org

George Theophilos
Senior Counsel
City of Chicago Department of Law
30 N. LaSalle, Suite 1400
Chicago, Illinois 60602
FAX: (312) 742-3832
george.theophilos@cityofchicgo.org

FOR THE DEFENDANT

Simon Beemsterboer
President
Beemsterboer Slag Corporation
3411 Sheffield Avenue
Hammond, Indiana 46327
FAX (219) 931-74636

Michael J. Maher
Swanson, Martin & Bell, LLP
330 North Wabash Avenue, Suite 3300
Chicago, Illinois 60611
FAX (312) 321-0990
mmaher@smbtrials.com

V. DUTY TO COOPERATE

16. The Parties shall cooperate with each other in the implementation of this Order.

VI. COMPLIANCE WITH OTHER LAWS AND REGULATIONS

17. This Order in no way affects the responsibilities of the Defendants to comply with any other federal, state, or local laws or regulations, including but not limited to the Act and the MCC.

VII. STIPULATED PENALTIES

18. If Defendants fail to complete any respective requirement in this Order, it shall pay to the Plaintiff State of Illinois stipulated penalties from the date the violation occurred, according to the following schedule:

<u>Period of Noncompliance</u>	<u>Stipulated Penalty</u>
1 st to 30 th Calendar Days	\$500.00 per day, per violation
30 th through 60 th Calendar Day	\$1,000.00 per day, per violation
After 61 st Calendar Day	\$2,500.00 per day, per violation

17. Following the Plaintiff State of Illinois's determination that Defendants have failed to complete the performance of any task or other portion of its respective work and/or failed to submit a required submittal, including any report or notification, as otherwise identified herein, the Plaintiff State of Illinois may give the Defendants written notice of the same. This

notice may also indicate the amount of stipulated penalties claimed by the Plaintiff State of Illinois. Failure by the Plaintiff State of Illinois to provide written notification shall not constitute a waiver of Plaintiff State of Illinois's right to seek stipulated penalties. Should Defendant contest the amount of stipulated penalties claimed by the Plaintiff State of Illinois, as provided for under the Dispute Resolution provisions contained in Section VIII of this Interim Agreed order, below, the stipulated penalties shall not become due until after a final determination of violation has been made by the Court. Plaintiff State of Illinois will provide notice per court rules of any proceeding brought in this Court to enforce this stipulated penalties provision.

18. All penalties owed the Plaintiff State of Illinois under Section VII of this Order that have not been paid shall be payable within thirty (30) days of the date they are determined to be due pursuant to the provisions of this Order. All stipulated penalties shall be paid by certified check payable to the Illinois EPA for deposit into the Environmental Protection Trust Fund ("EPTF") and delivered to:

Illinois Environmental Protection Agency
Fiscal Services
1021 North Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794-9276

19. The case name and case number shall appear on the face of the check. A copy of the check(s) and the transmittal letter shall be sent to:

Ryan G. Rudich
Evan J. McGinley
Assistant Attorneys General
Environmental Bureau
Illinois Attorney General's Office
69 W. Washington Street, Suite 1800

Chicago, Illinois 60602

20. The stipulated penalties shall be enforceable by the Plaintiff State of Illinois and shall be in addition to, and shall not preclude the use of, any other remedy or sanctions arising from the failure to comply with this Order.

VIII. DISPUTE RESOLUTION

21. The parties shall use their best efforts to resolve any and all disputes or differences of opinion arising with regard to this Order, informally and in good faith within seven (7) days of written initiation of dispute resolution proceedings. If, however, a dispute arises concerning this Order that the parties are unable to resolve informally, either party may, by written motion, within three (3) days of conclusion of the informal resolution efforts, request that an evidentiary hearing be held before the Cook County Circuit Court, to resolve the dispute between the parties. Upon the Plaintiff State of Illinois' establishment of a prima facie violation of the Order, the Defendant shall bear the burden of proving that it did not violate this Order.

IX. FORCE MAJEURE

22. For the purpose of this Order, *force majeure* is an event arising beyond the reasonable control of Defendants which prevents the timely performance of any of the requirements of this Order. For purposes of this Order, *force majeure* shall include, but is not limited to, events such as floods, fires, tornadoes, other natural disasters and labor disputes beyond reasonable control of the Defendants, or prohibitions imposed by any court having jurisdiction over the Defendants.

23. When, in the opinion of Defendants, circumstances have occurred that cause or may cause a delay in the performance of any of the requirements of this Order, Defendants shall

notify the Illinois Attorney General's Office ("Attorney General"), the Illinois EPA and the City of Chicago in writing as soon as practicable, but oral notice shall be given to the Attorney General and the Illinois EPA within 48 hours of the occurrence and written notice shall be given to the Attorney General, the Illinois EPA and the City of Chicago no later than ten (10) calendar days after the claimed occurrence. Failure to so notify the Attorney General, the Illinois EPA and the City of Chicago shall constitute a waiver of any defense under this Section of this Order arising from said circumstances. Defendants shall provide a detailed written description of the precise cause or causes of the claimed occurrence which resulted or will result in the delay, the nature of the delay and its expected duration, the measures taken or to be taken to prevent or mitigate the delay and the timetable under which such measures will be taken. Defendants shall adopt all reasonable measures to avoid or minimize such delay.

24. If the parties agree that the delay has been or will be caused by circumstances beyond the control of Defendants, the time for performance may be extended for a period equal to the length of the delay as determined by the parties.

25. In the event that the parties cannot agree that a *force majeure* event has occurred or the extent thereof, the dispute shall be resolved in accordance with Section VIII of this Order. Provided however, that the invocation of the Dispute Resolution provisions of Section VIII of this Order is not in and of itself a *force majeure* event. Defendants have the burden of proving *force majeure* by a preponderance of the evidence as a defense to compliance with this Order.

26. An increase in costs associated with implementing any requirement of this Order shall not, by itself, excuse Defendants under the provisions of this Section of the Order from a failure to comply with such a requirement.

X. RIGHT OF ENTRY

27. In addition to any other authority, the Illinois EPA, its employees and representatives, the Attorney General, her agents and representatives, and the City of Chicago and its employees and representatives shall have the right of entry into and upon the Facility, at all reasonable times for the purposes of carrying out inspections. In conducting such inspections, the Illinois EPA, its employees and representatives, the Attorney General, her employees and representatives, and the City of Chicago and its employees and representatives may take such photographs, samples, and collect information, as they deem necessary.

XI. EXTENSIONS AND MODIFICATIONS

28. The parties may, by mutual consent, extend any compliance dates or modify the terms of this Order without leave of court. Any such agreed modification shall be in writing, signed by authorized representatives of each party and incorporated into this Order by reference. Any request for modification shall be made by the Defendants in writing and shall be independent of any other submittal made pursuant to this Order. Moreover, notice of a request for any proposed modification shall be provided to Plaintiff's representatives listed in Section IV of this Order.

29. Any failure by Defendants to comply with any requirement of this Agreed Interim Order shall not be a violation of this Agreed Interim Order if such failure is the result of action(s) by persons or events beyond the reasonable control of Defendants including, but not limited to, acts of God, act of public enemy, war, blockade, public riot, fire, flood or labor dispute. Disputes relative to compensation payable to agents, employees, or servants, or increased costs shall not be considered circumstances beyond the control of Defendants.

30. Nothing contained herein shall be deemed, at this time, an admission of any wrongful conduct or violation of any applicable statute, law or regulations thereunder by the Defendants or a finding of fact or adjudication by this Court of any of the facts or claims contained in the Complaint.

XII. RESERVATION OF RIGHTS

31. This Agreed Interim Order is not a final resolution on the merits of Plaintiffs' Complaint filed herein, but rather addresses the Plaintiffs' immediate concerns regarding the releases alleged in the Complaint and Plaintiffs and Defendants reserve the rights they have with respect to any other matter, including, but not limited to, the regulatory status and requirements related to the flue dust pile.

XIII. RETENTION OF JURISDICTION

32. This Court shall retain jurisdiction of this matter and shall consider any motion by Plaintiffs or the Defendants for the purposes of interpreting and enforcing the terms and conditions of this Order.

XIV. SIGNATURE

33. This Order may be signed in counterparts, all of which shall be considered one agreement.

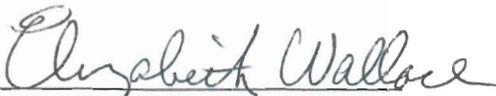
XV. STATUS CONFERENCE WITH THE COURT

34. This matter is set for status on January 30, 2014 at 10:15 a.m. p.m. in Courtroom 2502 of the Richard J. Daley Center, 50 West Washington Street, Chicago, Illinois.

WHEREFORE the parties, by their representatives, enter into this Agreed Interim Order and submit it to the Court that it may be approved and entered.

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
Assistant Attorney General

DATE: 2/18/13

CITY OF CHICAGO

STEPHEN R. PATTON,
Corporation Counsel
CITY OF CHICAGO

By: _____
DIANE PEZANOSKI
Deputy Corporation Counsel
George D. Theophilos
Senior Corporation Counsel
(312) 742-3990
Attorney No. 90909

DATE: _____

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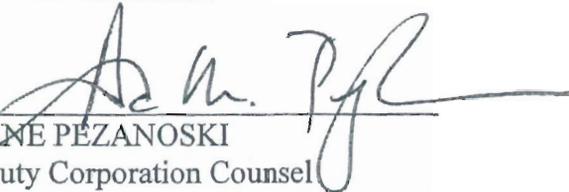
MATTHEW J. DUNN, Chief
Environmental Enforcement/
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By: _____
ELIZABETH WALLACE, Chief
Environmental Bureau
Assistant Attorney General

DATE: _____

CITY OF CHICAGO

STEPHEN R. PATTON,
Corporation Counsel
CITY OF CHICAGO

By: 
DIANE PEZANOSKI
Deputy Corporation Counsel
George D. Theophilos
Senior Corporation Counsel
(312) 742-3990
Attorney No. 90909

DATE: 12/18/2015

BEEMSTERBOER SLAG CORP.

By: Simon Beemsterboer

Its: President

DATE: 12/18/2013

GEORGE BEEMSTERBOER, INC.

By: Simon Beemsterboer

Its: Secretary

DATE: 12/18/2013

ENTERED:

Judge Kathleen G. Kennedy

JUDGE

DEC 19 2013

Circuit Court - 1718

DATE: _____

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EVAN J. MCGINLEY
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