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.	)	No. 2013CH26175 CALENDAR/ROOM 11 TIME 00:00 Injunction
GEORGE J. BEEMSTERBOER, INC., an Indiana corporation, and BEEMSTERBOER SLAG CORP., an Indiana corporation,	)	
Defendants.	)	

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:

FILED 2013 NOV 2 PM 4:24 CIRCUIT COURT OF COOK COUNTY, ILLINOIS CHANCERY DIV. DOROTHY BROWN CLERK

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 and 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. 106th 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-feeing 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. 106th 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 106th 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 106th Street.

24. By causing or allowing on-Site material to migrate off of the Site and on to the public way at 106th 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 106th Street.

26. By causing or allowing on-Site material to migrate off of the Site and on to the public way at 106th 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;

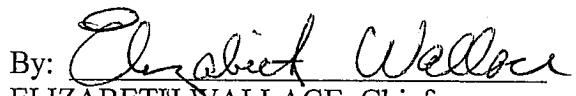
4. Assessing against the Defendants a civil penalty consistent with §7-28-800(1) of the MCC, to wit: not less than $250 nor more than $500 per violation with each day of any violation constituting a separate and distinct offense;

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.

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: 
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