

238589

BEFORE THE SURFACE TRANSPORTATION BOARD

ENTERED
Office of Proceedings
June 10, 2015
Part of
Public Record

FINANCE DOCKET NO. 35935

CALUMET TRANSLOAD RAILROAD, LLC

v.

CITY OF CHICAGO, ILLINOIS and CITY OF CHICAGO
DEPARTMENT OF PUBLIC HEALTH

DECLARATORY ORDER

PETITION FOR DECLARATORY ORDER

Calumet Transload Railroad, LLC petitions the Surface Transportation Board ("Board") for a declaratory order that the City of Chicago's ("City") attempts to regulate and effectively ban Calumet Transload Railroad, LLC's rail activities are preempted by the Interstate Commerce Commission Termination Act ("ICCTA"), 49 USC §10501.

INTRODUCTION

Calumet Transload Railroad, LLC operates a railroad abutting the Calumet River in Chicago, Illinois, for transloading, transportation, loading, unloading, handling, and storing bulk materials. The rail terminal and switching operation is part of Calumet Transload Railroad, LLC's business, which includes transportation, transloading, and bulk storage facility. Calumet Transload Railroad, LLC has transported, received, unloaded, stored, handled, and loaded several kinds of bulk materials, including salt, coal, petroleum coke ("pet coke"), and metallurgical coke ("met coke"). The City is using its environmental ordinances as part of its campaign against facilities which store coal, pet coke, and met coke. In so doing, the City has impermissibly intruded upon the Board's authority under

FEE RECEIVED
June 10, 2015
SURFACE
TRANSPORTATION BOARD

FILED
June 10, 2015
SURFACE
TRANSPORTATION BOARD

the ICCTA. The City's attempts to enforce its environmental ordinances have effectively banned Calumet Transload Railroad, LLC's rail activities. The City's ordinances, as applied to Calumet Transload Railroad, LLC, are preempted by the ICCTA.

FACTS

Calumet Transload Railroad, LLC's Operations

Calumet Transload Railroad, LLC (located at 10730 South Burley, Chicago, Illinois) owns and operates one mile of railroad track in Chicago. Part of Calumet Transload Railroad, LLC's business is the transporting, transloading, and temporary storage of bulk materials. The modes of transportation for Calumet Transload Railroad, LLC's operations include interstate rail, interstate barge, interstate shipping, and interstate trucking. Calumet Transload Railroad, LLC employs a rail system to transport, transload, load, unload, handle and temporarily store coal, met coke, ores, calcium chloride, pet coke, salt, and other bulk materials that arrive from, and then leave to, locations inside and outside Illinois. Those bulk materials arrive via interstate rail, and subsequently leave via interstate rail, boat, ship, and trucking. Calumet Transload Railroad, LLC also uses the dock system on its property along the Calumet River (a federal waterway) to transport, transload, load, unload, handle, and temporarily store coal, met coke, calcium chloride, pet coke, salt, and other bulk materials that arrive and leave to/from locations inside and outside Illinois via barge and ships. Some of the bulk materials leave Calumet Transload Railroad, LLC's facility via interstate trucking. (Exhibit A, affidavit of Simon Beemsterboer, par. 2-5.)

Pursuant to contract and for a fee, Calumet Transload Railroad, LLC has transported, transloaded, loaded, unloaded, handled and stored ores, coal, met coke, pet coke, sodium chloride, salt, and other bulk materials whose origin or destination includes

the following states: Arkansas, Colorado, Illinois, Indiana, Kentucky, Louisiana, Michigan, Minnesota, Missouri, New York, Ohio, Oklahoma, Pennsylvania, South Carolina, Tennessee, Utah, Virginia, West Virginia, and Wisconsin. Calumet Transload Railroad, LLC receives sodium chloride and salt via rail and barge from Scotwood Industries, Inc. ("Scotwood") of Overland, Kansas. Calumet Transload Railroad, LLC receives, transloads, and ships Scotwood's bulk materials by truck to the Dri-Rite Company, a Scotwood customer with locations in Illinois, Indiana, Iowa, Kentucky, Michigan, Missouri, Ohio, and Wisconsin. Pursuant to contract and for a fee, Calumet Transload Railroad, LLC routinely accepts bulk materials from Compass Minerals of Kansas. Calumet Transload Railroad, LLC receives, transloads, and ships these materials by barge and truck to Compass Mineral customers in Kansas, Louisiana, Minnesota, Utah, and Wisconsin. (Exhibit A, par. 7-12.)

Calumet Transload Railroad, LLC also contracts with adjacent and nearby facilities that use Calumet Transload Railroad, LLC's rail system to receive and transport goods to and from locations inside and outside Illinois. These nearby facilities include DTE Chicago Fuels Terminal, Beemsterboer Slag Corp., and KCBX Terminals Company ("KCBX"). KCBX uses Calumet Transload Railroad, LLC's rail system to receive and ship intrastate and interstate deliveries of similar bulk materials. Additionally, Reserve Marine Terminals use Calumet Transload Railroad, LLC's freight rail system to temporarily store materials in railroad cars. Norfolk Southern Railway also uses Calumet Transload Railroad, LLC for storage and staging of railroad cars. (Exhibit A, par. 13-15.)

City Ordinance

On March 13, 2014, the City enacted a new ordinance entitled, "Rules and Regulations for Control of Emissions from the Handling and Storage of Bulk Materials Piles" ("Bulk Materials Regulations" or "new ordinance"). The new ordinance is directed to facilities that transport, transload, and store bulk materials that arrive and leave via rail, via ship, via barge, and via trucking. (Exhibit B, Bulk Materials Regulations.) The new ordinance imposes new permit requirements and requires prohibitively expensive expenditures to handle materials shipped via rail, barge, ship, and truck. Pursuant to the new ordinance, operations must cease if the transporter/transloader does not comply with new requirements. The new ordinance is targeted against transportation and transloading of bulk materials (specifically ores, coal, pet coke, and met coke) that arrive and leave Calumet Transload Railroad, LLC to/from locations inside and outside Illinois.

The new ordinance requires construction of fully enclosed new structures for transloading, loading, unloading, handling or storing certain bulk materials, including coal and coke. (Exhibit B, Section 4.0, at pp. 11-13.) Without adding new structures and equipment, transloading, handling or storage of those bulk materials is prohibited. (Exhibit A, par. 6.) The cost of construction of the required new structures is prohibitive, preventing Calumet Transload Railroad, LLC from its transportation and transloading business. (Exhibit A, par. 16-17.)

On August 7, 2014, the City, acting through its Department of Public Health, issued an "Amended Emergency Cease and Desist Order for Unpermitted Activity" against

Calumet Transload Railroad, LLC for the handling and storage of bulk materials.¹ The Amended Emergency Cease and Desist Order prohibited storing and handling (transloading) of bulk materials (met coke, pet coke, coal or other carbonaceous petroleum-based bulk materials) without a new permit from the City. (Exhibit C, August 7, 2014 Amended Emergency Cease and Desist Order.) On September 17, 2014, the City's administrative law judge found Calumet Transload Railroad, LLC guilty of transporting, transloading, handling, and temporarily storing bulk materials without a permit. The City imposed a fine of \$50,000. (Exhibit D, City's September 18, 2014 Findings, Decision, and Order.)

The City has threatened further enforcement of similar bulk operations by Calumet Transload Railroad, LLC under the new ordinance. Calumet Transload Railroad, LLC is unable to conduct its transportation and other operations regarding bulk materials, including coal, pet coke, and met coke.

ARGUMENT

Calumet Transload Railroad, LLC seeks a declaratory order on three issues.

ISSUE ONE: Calumet Transload Railroad, LLC's operations fall within the Board's jurisdiction.

Calumet Transload Railroad, LLC's operations fall within the jurisdiction of the Board. The Board's general jurisdiction is set forth at 49 U.S.C. §10501:

- "(1) ... the Board has jurisdiction over transportation by rail carrier that is (A) only by railroad; or (B) by railroad and water, when the transportation is under common control, management or arrangement for a continuous carriage or shipment.
- (2) [Board] Jurisdiction...applies only to transportation in the United States between – (A) a State and a place in the same or another State as part of the interstate rail network."

¹ The Department of Public Health issued a cease and desist order on August 5, 2014. Two days later, on August 7, 2014, the Department of Public Health amended that order. The City proceeded against Calumet Transload Railroad, LLC only on the August 7, 2014 amended cease and desist order.

The ICCTA broadly defines “transportation” to include “a locomotive ... vessel ... pier ... dock ... facility ... instrumentality ... of any kind related to the movement of ... property by rail [and] services related to the movement, including receipt ... storage, handling ... of ... property.” 49 USC §101012(9)(A-B). The ICCTA defines “rail carrier” as a “common carrier railroad transportation for compensation ... as part of the general system of rail transportation” (Id. at (5).)

Calumet Transload Railroad, LLC’s operations include transportation and stevedore services for rail cargo. (Exhibit A, par. 2-5.) Transloading has repeatedly been found to meet the definition of “transportation” under the ICCTA. *Green Mountain RR Corp. v. Vermont*, 404 F.3d 638, 644 (2d Cir. 2005)(“the proposed transloading and storage facilities are integral to the railroad’s operation and are easily encompassed with the [Surface] Transportation Board’s exclusive jurisdiction over ‘rail transportation’.”). *See also Canadian National Railway Co. v. City of Rockwood*, 2005 U.S. Dist. LEXIS 40131, *7 (E.D. Mich. 2005)(activities which take place at transload facilities are considered “transportation” by the ICCTA); *Norfolk Southern Railway Co. v. City of Austell*, 1997 U.S. Dist. LEXIS 17236, *15, *23 (N.D. Ga. 1997)(an intermodal facility is within the ICCTA’s expansive definition of “transportation,” so a city zoning ordinance and land-use permitting requirement is expressly preempted as to the construction of the intermodal facility). Calumet Transload Railroad, LLC’s transloading operations are “transportation” and thus fall within this Board’s exclusive jurisdiction.

In Calumet Transload Railroad, LLC’s custom and practice, bulk materials from out-of-state arrive via rail, barge or ship on the Calumet River (a federal waterway), are temporarily off-loaded and stored at Calumet Transload Railroad, LLC, and then

transported to other states (and within Illinois). For instance, from its dock facilities on the Calumet River, Calumet Transload Railroad, LLC has received, transloaded, unloaded, stockpiled, temporarily stored, and handled bulk materials arriving from out-of-state via ship and barge. Similarly, via its rail system, Calumet Transload Railroad, LLC has transloaded, unloaded, stockpiled, stored, and transported sodium chloride and salt bulk materials for shipment throughout the U.S. Depending upon the customer's destination, bulk materials that arrive by rail, barge or ship can also be loaded onto trucks for interstate shipment. (Exhibit A, par.3-5, 7-12.) The City's Bulk Materials Regulations are an impermissible infringement on the Board's jurisdiction over Calumet Transload Railroad, LLC's operations.

Calumet Transload Railroad, LLC's implementation of a trucking component to transport bulk materials to their final destination does not remove the operations from the jurisdiction of the Board. See *Grafton & Upton R.R. Co. v. Town of Milford*, 337 F. Supp. 2d 233, 239 (D. Mass. 2004) (Although the [facility] will clearly have a trucking component...a non-rail component is still subject to the preemptive effect of the ICCTA.) Calumet Transload Railroad, LLC also contracts the use of its railway system to other nearby bulk storage facilities. (Exhibit A, par. 13-15.)

Calumet Transload Railroad, LLC's railway and docks are immediately adjacent to Indiana, are used to receive and ship bulk materials to other states, and are part of the general network of interstate commerce. See *Napa Valley Wine Train, Inc. Petition for Declaratory Order*, 7 I.C.C. 2d 954, 12-13 ("[J]urisdiction over intrastate operations by interstate carriers when those operations are sufficiently linked to, and part of, "interstate commerce"); *Burlington Northern Santa Fe Corp. v. Anderson*, 959 F. Supp. 1288 (D. Mont.

1997)(ICCTA preempts state law regulating intrastate railroad). Several suppliers of bulk materials are located outside Illinois, and use interstate rail, barges, and ships on the Calumet River to transport their bulk materials to and from Calumet Transload Railroad, LLC. For example, both Scotwood and Compass Minerals are located in the State of Kansas, but ship their materials to Calumet Transload Railroad, LLC via rail, barge, and ship for transloading and transportation. With rail/barge/vessel shipments arriving from and going to 20 states, Calumet Transload Railroad, LLC's operations and system are part of the general network of interstate commerce. (Exhibit A, par. 7-12.)

Calumet Transload Railroad, LLC's temporary bulk storage business does not militate against the finding it is a common carrier. Calumet Transload Railroad, LLC is not a distribution center for its own products. Calumet Transload Railroad, LLC "interacts with shippers, quotes rates, and collects." *Canadian Nat'l Ry. Co.*, 2005 LEXIS 40131, at *12, *18 (E.D. Mich. 2005) *distinguishing Fla E. Coast Ry. Co. v. City of West Palm Beach*, 266 F.3d 1324 (11th Cir. 2001)(aggregate materials distributor who leased land on railroad property to use as a distribution center was not engaged in rail transportation). Calumet Transload Railroad, LLC's operations are integrally related to the provision of interstate rail service. As such, these operations are subject to the Board's jurisdiction and federal preemption.

ISSUE TWO: The City of Chicago's new Bulk Materials Regulations are preempted because they purport to regulate bulk materials transported via interstate rail, via barge/shipping, and via trucking.

In March 2014, the City of Chicago enacted a new ordinance imposing new permit requirements, requiring new and burdensome construction obligations, and new operational restrictions on the loading/unloading, handling, stockpiling, storage, and

transportation of certain bulk materials by railcars, barges, ships, and trucks. (Exhibit B.) The materials targeted in Chicago's ordinance include coal, met coke, and pet coke, which were handled by Calumet Transload Railroad, LLC prior to the ordinance's enactment.

Calumet Transload Railroad, LLC seeks a determination that its operations are shielded from the Bulk Materials Regulations and other Chicago ordinances which impinge on interstate transportation, by the preemption provisions of the ICCTA. *City of Alexandria, Virginia*, Docket 35157 at 1 (S.T.B Feb. 17, 2009); *see also Coastal Distrib., LLC v. Town of Babylon*, 2005 LEXIS 40795, 27 (E.D. N.Y. 2005)(courts have consistently held that the ICCTA preempts state and local regulations). ICCTA specifically provides that the Board's jurisdiction is exclusive. The provisions of ICCTA preempt other provisions of federal or state law. 49 USC §10501(b).

The City's Bulk Materials Regulations are preempted by the ICCTA because: 1) they discriminate against rail operations, and 2) are unduly burden rail operations.

1. The City of Chicago Bulk Materials Regulations Discriminate Against Rail, Barge, and Truck Interstate Transportation.

There is little genuine question the City's new ordinance is targeted against interstate transportation of bulk materials. Although the Bulk Materials Regulations purport to regulate "any facility," the only facilities covered by the new regulations are directly related to interstate transportation. (Exhibit B, Section 3.0(11) "Truck Loading and Unloading," Section 3.0(12) "Railcar Loading and Unloading," and Section 3.0(13) "Barge and Boat Loading and Unloading," p. 9-10.)

While federal law does not preempt activities which are of merely peripheral concern to federal law, rail transportation is a significant federal issue which supports preemption. *San Diego Bldg. Trades Council v. Gammon*, 359 U.S. 236, 243 (1959). Although some

local ordinances, such as building and fire codes, avoid federal preemption – because of their widespread application – the same cannot be said for the new Bulk Materials Regulations, which are targeted at and which discriminate against transporting and transloading of bulk materials via railcar, barge, and boat loading. Tellingly, the new ordinance exempts bulk materials from local operations where the bulk materials are part of manufacturing, recycling, reprocessing or waste handling. (Exhibit B, Paragraph 2.0(3), p 2.) The exemption of local operations highlights the targeting of interstate transportation and transloading out-of-state bulk materials when the same materials are excluded when generated by local operations. While purporting to address city-wide air emission concerns, the new regulations plainly require more of facilities handling materials from out-of-state than of facilities handling, using or generating the same materials. This warrants preemption under the ICCTA. *See e.g., Adrian Blissfield R.R. Co. v. Village of Blissfield*, 550 F.3d 533, 540 (6th Cir. 2008)(discrimination exists where the state has chosen to require something of a railroad that it does not require of similarly situated entities).

Part B, paragraph 3.0(12) of the Bulk Storage Regulations specifically targets the transloading/unloading of bulk materials via railcar. That paragraph requires major new construction at Calumet Transload Railroad, LLC's facility. Required new construction includes the enclosure of transloading and handling operations in an enclosed structure, with a mechanical spray and/or new equipment. Railcars cannot be loaded or unloaded outside the newly required enclosed structure. (Exhibit B, par. 3.0(12), p. 9.) Similarly, barges can only be loaded and unloaded in an enclosed chute. (Exhibit B, par. 3.0(13), p. 9-10.) The requirement that railcars, trucks, and barges be loaded and unloaded only in enclosed structures is a significant impediment on interstate transportation.

It is noteworthy the same burdensome requirements do not apply to local operations. The new regulations specify local operations from the new ordinance. (Exhibit B, Paragraph 2.0(3), p 2.) Because materials from specific local operations are not “Bulk Materials,” the onerous requirements of the new ordinance, including the construction of enclosed structures, do not apply to local operations. The Bulk Materials Regulations discriminate against interstate rail, barge, and trucking transportation.

2. The City’s New Regulations Are Unduly Burdensome.

Additionally, the City’s Bulk Materials Regulations, as applied, unreasonably burden protected rail operations at Calumet Transload Railroad, LLC. Under Board precedent, a local regulation is unreasonably burdensome if it prevents the railroad from carrying out its business in a sensible fashion or fosters open-ended delays through discretionary permitting procedures. *Blissfield*, 550 F.3d at 540. The result is to foreclose and prohibit interstate transloading, loading, unloading, handling, and storage of bulk materials.

a. The Bulk Materials Regulations Provide Unlimited Discretion to Local Officials.

The City’s new regulations impose an unreasonable burden on rail transportation because the regulations contain unsettled and indefinite compliance requirements and create a permitting scheme with open-ended delays. *Blissfield*, 550 F.3d at 541. Numerous provisions of the Bulk Materials Regulations allow for improper discretionary approval or rejection by local officials. See *e.g.*, *Green Mountain*, 404 F.3d at 643.

The Bulk Materials Regulations require Calumet Transload Railroad, LLC to comply with operating and maintenance practices that are vague, undefined, and are subject to unlimited discretion by local officials. For example, Paragraph 3.0(1) requires that Calumet Transload Railroad, LLC must obtain a “certificate of operation.” However, the Department

of Public Health reserves the right to impose additional dust control requirements to those in the operating permit – if the Commissioner “finds” the facility has failed to control fugitive dust. These additional dust control requirements are undefined and the procedures for determining that a facility failed to control fugitive dust are also undefined. Additionally, under paragraph 3.0 (3), transport/transloading/unloading require a “Fugitive Dust Plan,” which the Commissioner may disapprove if he decides the information is “insufficient to ensure compliance....” There is no definition of what is “sufficient” to ensure compliance. Nevertheless, additional – but undefined – construction can be required. (Exhibit B, par. 3.0(1) and 3.0(3), p. 4-6.)

Similarly, Paragraph 4.0(1)-4.0(3) specifically imposes detailed new requirements for the enclosure of all rail car, barge, and vessel transfer points. There is also a requirement to obtain an approved Interim Fugitive Dust Plan, which may be denied if a City Commissioner deems it “insufficient.” (Exhibit B, par. 4.0(1)-4.0(3), pp. 11-13.) In the event the dust plan is rejected, operations must cease. However, no standards are provided for any such rejection (“insufficiency”) by the Commissioner. Although Paragraph 3.0(2) contains dust opacity limits (10 percent opacity) for all transloading/unloading, Paragraph 4.0(1)(b)(iv) merely requires “minimization or control of dust” without defining “minimization.” These requirements are inconsistent, and provide unfettered discretion to prohibit transportation and transloading/unloading via railcar, via barges, and via ships on the Calumet River. The Bulk Materials Regulations impermissibly provide unfettered discretion to local officials.

Additionally, paragraph 6.0(7) grants the City Commissioner “sole discretion” to extend deadlines for “good cause” – but “good cause” is never defined or explained.

(Exhibit B, par. 6.0(7), pp. 16-17.) Rail and barge operations trying to comply with the requirements of the Bulk Materials Regulations are subjected to undefined and ungoverned discretion on subjective issues by a City ordinance that targets railcar, barge, ship, and interstate trucking. Likewise, the Commissioner has sole discretion to grant a variance in the Commissioner's "sole discretion." Furthermore, the variance may be revoked at any time if the Commissioner decides the "operation...is creating a public nuisance or...adversely affecting the surrounding area...." (Exhibit B, par. 8.0(3)(a)-(d), p. 18.) Whether an activity is a "nuisance" is subjective and subject to abuse by City officials seeking to exclude targeted bulk materials operations, transportation, and handling operations involving coal, salt, met coke, and pet coke. This unfettered discretion creates an environment in which facilities and railroads cannot be sure their operations will continue.

The Bulk Materials Regulations permit and compliance requirements impermissibly grant local authorities unlimited discretion and control over federally protected rail transportation. *Boston & Me. Corp. v. Town of Ayer*, 330 F.3d 12, 16 (1st Cir. 2003)(preclearance requirements – including environmental requirements – are preempted because by they unduly interfere with interstate commerce by giving the local body unfettered and undefined power to deny a carrier the right to conduct operations). Calumet Transload Railroad, LLC seeks a determination that the Bulk Materials Regulations are preempted under ICCTA.

b. The Bulk Materials Regulations Impose Unreasonable Operational and Construction Costs that Will End Interstate Rail Operations.

It is "well established that a state or local law that ...restrict[s] or prohibit[s] the operations of a rail carrier is preempted under the ICCTA." *Norfolk S. Ry. Co. v. City of*

Alexandria, 608 F.3d 150, 158 (4th Cir. 2010); see also *Ridgefield Park v. New York Susquehanna & W. Ry. Corp.*, 750 A.2d 57, 58 (N.J. 2000)(state and local government entities retain police powers to protect public health and safety only so long as their actions do not foreclose or restrict the railroad's ability to conduct its operations).

Chicago's new regulations impose unreasonable economic burdens on rail carriers that prevent compliance, as well as foreclose and restrict Calumet Transload Railroad, LLC's rail car, barge, and ship transloading, loading/unloading operations. The new ordinance is directed at rail operations. In the case of Calumet Transload Railroad, LLC, the effect is to deny operations activities which have been ongoing for many years.

Under the new regulations, all rail, ship, and barge transloading, loading/unloading, handling, and storage are prohibited unless the activity takes place in new facilities, pursuant to new permit requirements which impose new restrictions and limitations. Federal courts have held that environmental regulations imposing a significant economic burden on federal activity are preempted under the ICCTA. See *City of Auburn v. United States*, 154 F.3d 1025, 1027-28 (9th Cir. 1998). It would be prohibitively expensive for Calumet Transload Railroad, LLC to build new enclosed structures and new equipment to satisfy new regulations targeting interstate rail, barge, and ship transloading. (Exhibit A, par. 16.) The new ordinance impinges on the exclusive jurisdiction of the Board to regulate Calumet Transload Railroad, LLC's rail operations. See e.g., *Grafton & Upton R.R. Co. v. Town of Milford*, 337 F.Supp.2d 233, 239 (D. Mass. 2004)(discussing breadth of the ICCTA preemption and finding state environmental regulations and local zoning bylaws preempted).

Compliance with the City of Chicago's new regulations will substantially interfere with, restrict, and terminate Calumet Transload Railroad, LLC's interstate rail operations, interstate barge, interstate shipping, and interstate trucking operations, and will impose a heretofore nonexistent economic burden limited to non-local, transloading materials. Therefore, the City's Bulk Materials regulations, as applied to Calumet Transload Railroad, LLC, are preempted under the ICCTA.

ISSUE THREE: The City is precluded from enforcing an air pollution control ordinance that regulates transloading, unloading, handling, and storage of bulk materials transported to Calumet Transload Railroad, LLC via interstate rail, via barge/shipping, and via trucking.

On August 7, 2014, the City of Chicago issued a cease and desist order to Calumet Transload Railroad, LLC to halt the transloading, loading/unloading, storage, and handling of certain bulk materials. (Exhibit C.) The basis of the City's order was the alleged failure to obtain a city-approved permit regarding Calumet Transload Railroad, LLC's rail, ship, and barge operations.

The City of Chicago's Bulk Materials Regulations were enacted pursuant to rule-making authority found in the City's air pollution control ordinance. Calumet Transload Railroad, LLC is incapable of obtaining an air pollution control permit absent compliance with the Bulk Storage Regulations because Calumet Transload Railroad, LLC's business involves transloading of bulk materials. The City now seeks \$50,000 in fines under a municipal nuisance ordinance for the alleged permit violation. As a result of the City's order, Calumet Transload Railroad, LLC was forced to refuse coal and other materials from ArcelorMittal in Indiana and was prevented from transporting and transloading materials by truck, barge, ship, and rail to Portsmouth, Ohio; St. Louis, Missouri; and Canada. (Exhibit A, par. 17.)

The City of Chicago's ordinance imposes a substantial burden on the operation of Calumet Transload Railroad, LLC's rail line and barge/ship operations because the ordinance requires compliance with unreasonably burdensome new requirements. Calumet Transload Railroad, LLC takes no position regarding federal regulations which already govern air pollution aspects of transloading these bulk materials. However, the preemptive effect of the ICCTA on local (Chicago) requirements is clear. See *Cities of Auburn and Ken, WA – Petition for Declaratory Order – Burlington Northern Railroad Company – Stampede Pass Line*, 2 S.T.B. 330, 14 (local laws that impose local permitting or environmental process on BN's operations [on...maintenance or upgrading]...are preempted to the maximum extent permitted by the Constitution) *aff'd by City of Auburn v. United States*, 154 F.3d 1025, 1027-28 (9th Cir. 1998); see also *Green Mt. R.R. Corp.*, 404 F.3d at 639 (denial of environmental construction permit for facility that unloaded bulk salt arriving by rail and temporarily stored ... was preempted as interfering with interstate commerce). Similarly, until its operations were halted, Calumet Transload Railroad, LLC's operation involved the transporting and transloading of bulk materials (coal, pet coke, and met coke) which was temporarily stored. The similarities are astounding. The City prosecuted Calumet Transload Railroad, LLC under a local nuisance ordinance that is triggered by the lack of a permit which Calumet Transload Railroad, LLC cannot obtain because Calumet Transload Railroad, LLC is engaged in interstate commerce – not local activities. Chicago's ordinance infringes on the Board's exclusive jurisdiction over Calumet Transload Railroad, LLC's rail operation. See *Ridgefield Park*, 163 N.J. at 462 (common law nuisance claims raised in state court infringe on the Board's exclusive jurisdiction over the location and operations of the railroad facilities).

The City's Bulk Materials Regulations and its air pollution control permitting system interfere with the operation of Calumet Transload Railroad, LLC's rail, barge, and shipping operations, and interstate trucking operations. Calumet Transload Railroad, LLC was forced to turn away bulk materials that could have been transloaded and further shipped. Since the cease and desist order was issued, Calumet Transload Railroad, LLC was required to remove bulk materials such as coal and met coke, and cease associated rail, barge, and ship transloading operations. The City's Bulk Materials Regulations, as applied to Calumet Transload Railroad, LLC, are preempted by the ICCTA. The City cannot enforce the Bulk Materials Regulations or its air pollution permitting system against Calumet Transload Railroad, LLC.

CONCLUSION

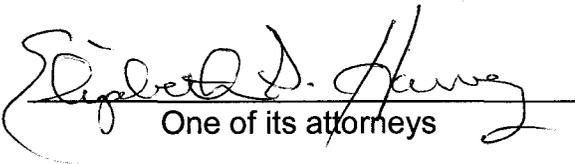
Calumet Transload Railroad, LLC does not contend that all state and local environmental regulations, applied to railroads, are preempted by the ICCTA. However, Calumet Transload Railroad, LLC has demonstrated that the City's Bulk Materials Regulations and the associated air pollution permitting system, as applied to Calumet Transload Railroad, LLC, are indeed preempted. Calumet Transload Railroad, LLC asks the Board to issue an order:

- a) Declaring that Calumet Transload Railroad, LLC's operations fall within the Board's jurisdiction pursuant to the ICCTA;
- b) Declaring that the City's Bulk Materials Regulations, as applied to Calumet Transload Railroad, LLC, are preempted by the ICCTA;

- c) Declaring that the City is precluded from enforcing its air pollution permitting system to the extent that permitting system requires compliance with the Bulk Materials Regulations, which are preempted by federal law; and
- d) Declaring such other relief as the Board deems appropriate.

Respectfully submitted,

CALUMET TRANSLOAD RAILROAD, LLC

By: 
One of its attorneys

Michael J. Maher
Elizabeth S. Harvey
SWANSON, MARTIN & BELL, LLP
330 North Wabash, Suite 3300
Chicago, Illinois 60611
312.321.9100 (main)
312.321.0990 (facsimile)

mmaher@smbtrials.com
312.923.8261

eharvey@smbtrials.com
312.923.8260

CERTIFICATE OF SERVICE

I hereby certify that on the ninth day of June 2015, I served the following with this document via Federal Express overnight delivery:

Stephen R. Patton
Corporation Counsel
City of Chicago Legal Department
30 North La Salle Street
Suite 800
Chicago, Illinois 60602

Rey A. Phillips Santos
Assistant Corporation Counsel
City of Chicago Legal Department
30 North La Salle Street
Suite 800
Chicago, Illinois 60602

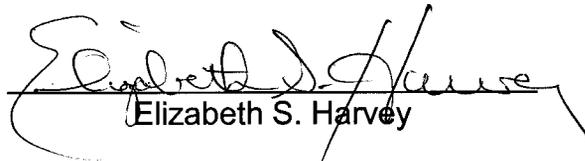

Elizabeth S. Harvey
Counsel for Petitioner
Calumet Transload Railroad, LLC

Exhibit A

State of Illinois)
) ss
County of Cook)

AFFIDAVIT OF SIMON BEEMSTERBOER

I, Simon Beemsterboer, being over 21 years of age, and upon being duly sworn on oath, testify to the following:

1. I am the Managing Partner of Calumet Transload Railroad, LLC.
2. Calumet Transload Railroad, LLC is a Class III terminal and switching facility which operates one mile of railroad for transporting, transloading, loading, unloading, handling, and temporary storage of bulk materials at 10730 South Burley, Chicago, Illinois.
3. Calumet Transload Railroad, LLC employs a dock system on its property through which it accepts, transloads, loads, unloads, and handles bulk materials from locations outside Illinois, that arrive via barge and via ship on the Calumet River.
4. Calumet Transload Railroad, LLC employs a freight rail system on its property through which it transports, transloads, loads, unloads, and handles bulk materials from locations inside and outside Illinois, that arrive and leave via rail.
5. For many years, Calumet Transload Railroad, LLC's dock system and freight rail system accepted, transloaded, loaded, unloaded, handled, temporarily stored, and transported bulk materials, including potassium chloride, coal, met coke, pet coke, salt, and other bulk materials from locations inside and outside Illinois via rail, via boat, via ship, and via interstate trucking.
6. Because of requirements set forth in a new City of Chicago ordinance, Calumet Transload Railroad, LLC no longer accepts, transloads, loads, unloads, handles, and stores coal, met coke, pet coke, and certain other bulk materials.
7. Calumet Transload Railroad, LLC's dock system and freight rail system accepted and transported bulk materials to and from the following states:

Arkansas	New York
Colorado	Ohio
Illinois	Oklahoma
Indiana	South Carolina
Kentucky	Tennessee
Louisiana	Utah
Michigan	Virginia
Minnesota	West Virginia
Missouri	Wisconsin
8. Calumet Transload Railroad, LLC has contracts for unloading salt and sodium chloride received from rail cars via Calumet Transload's rail and from barges and ships via Calumet Transload's dock on the Calumet River.
9. Materials handled pursuant to contracts referenced in paragraph 8 are transloaded and transported via truck to locations in Illinois, Iowa, Kentucky, Michigan, Missouri, Ohio, and Wisconsin.

10. Calumet Transload's business includes interchanging of freight (bulk materials) from rail, barges, and ships with interstate trunk rail lines regarding the states identified in paragraph 7, above.
11. Loading/unloading, handling and storage on rail lines, barges, and ships can occur any time of day or night, seven days per week, 52 weeks per year.
12. Calumet Transload Railroad, LLC has accepted and will continue to accept rail deliveries of sodium chloride and salt via its freight rail system and via its dock on the Calumet River to transload, load, unload, handle, and temporarily store bulk materials for out-of-state customers, including Scotwood of Kansas; Compass Minerals of Overland Park, Kansas; DTE Chicago Fuels Terminal; and Beemsterboer Slag, Inc. of Indiana. Calumet Transload transloads and ships Scotwood bulk materials by truck to The Dri-Rite Company (a Scotwood customer) with locations in Illinois, Indiana, Iowa, Kentucky, Ohio, Michigan, Missouri, and Wisconsin.
13. KCBX Terminal, Inc. (KCBX), an abutting property owner to Calumet Transload, uses Calumet Transload's rail system for interstate rail transportation of bulk material, including pet coke, to/from KCBX. The only rail access to KCBX is via Calumet Transload's rail system.
14. The Reserve Marine Terminals Company uses Calumet Transload's freight rail system to transport and store material in railroad cars at Calumet Transload.
15. Norfolk Southern Railway uses Calumet Transload's rail system for staging and transportation of rail cars.
16. Requirements in the City of Chicago's new Ordinance governing Handling and Storage of Bulk Material require construction of new buildings and equipment which cost between \$6 and \$18 million. These costs are prohibitively expensive and have resulted in cessation of transload operations of certain bulk materials at Calumet Transload Railroad, LLC.
17. As a result of the City of Chicago's August 2014 Amended Cease and Desist Order, Calumet Transload Railroad, LLC was forced to refuse accepting coal and other bulk materials from ArcelorMittal, and was prevented from transloading such materials to truck, barge, ship, and rail for delivery to Portsmouth, Ohio; St. Louis, Missouri; and Canada.

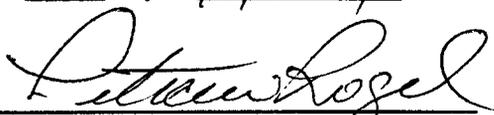
FURTHER AFFIANT SAYETH NAUGHT.



Simon Beemsterboer
President of Calumet Transload Railroad, LLC

Subscribed and sworn to before me

this 20 day of March 2015.



Notary Public, State of Illinois
My Commission expires: 07/30/2015

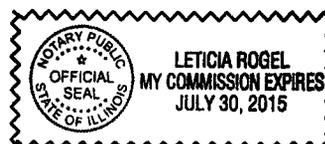


Exhibit B

**CITY OF CHICAGO
DEPARTMENT OF PUBLIC HEALTH**

**ARTICLE II. AIR POLLUTION CONTROL
RULES AND REGULATIONS**

For Control of Emissions from the Handling and Storage of Bulk Material Piles

Whereas, pursuant to Chapters 2-112 and 11-4 of the Municipal Code of Chicago (the "Code"), the Department of Public Health (the "Department") is charged with enforcement of environmental regulations within the City of Chicago, including the enforcement of regulations intended to reduce the risk of harm to public health or the environment from air pollution; and

Whereas, pursuant to the authority granted by Section 2-112-160(b) of the Code, the Commissioner of Health (the "Commissioner") is authorized to issue rules and regulations necessary or proper for the implementation of environmental ordinances and to accomplish the purposes of Chapter 11-4 of the Code, and is further authorized to make reasonable administrative and procedural regulations or rules interpreting or clarifying the requirements which are specifically prescribed in Chapter 11-4 of the Code; and

Whereas, this general rule-making authority includes any rules necessary to implement Article II of Chapter 11-4 of the Code, Sections 11-4-600 through 11-4-810, the "Air Pollution Control Ordinance"; and

Whereas, this general rule-making authority also includes any rules necessary to implement Article VIII of Chapter 11-4 of the Code, Sections 11-4-1410 through 11-4-1460, "Pollution of Waters"; and

Whereas, Section 11-4-800 of the Code further authorizes the Commissioner to issue rules and regulations to implement Article II of Chapter 11-4 of the Code; and

Whereas, Section 11-4-760(e) of the Code authorizes the Commissioner to promulgate additional rules and regulations for the proper management of any substance or material that may become airborne or be scattered by the wind; and

Whereas, in addition, Section 11-4-770 of the Code provides that, for the purpose of minimizing air pollution, the Commissioner may prescribe, by rules and regulation, reasonable, specific operating and maintenance practices for buildings, structures, premises, open areas, automobiles and/or truck parking and sales lots, private roadways, rights-of-way, storage piles of materials, yards, vessels, Vehicles, construction, sandblasting, alteration, building, demolition or wrecking operations and any other enterprise which has or involves any matter, material or substance susceptible to being windborne and for the handling, transportation, disposition or other operation with respect to any material subject to being windborne; and

Whereas, Chicago is a densely populated metropolitan area, such that industrial uses are sometimes in close proximity to residential uses; now, therefore,

I, Bechara Choucair, M.D., Commissioner, Department of Health, City of Chicago, issue the following rules and regulations pursuant to the authority granted to me by Sections 2-112-160, 11-4-760(e), 11-4-770, and 11-4-800 of the Municipal Code of Chicago.

PART A: INTRODUCTION

1.0 Scope and Purpose. The purpose of these rules and regulations is to prescribe reasonable, specific operating and maintenance practices to minimize emissions of airborne particulate matter from the storage, on-site handling, loading, unloading, stockpiling, and Processing of Bulk Solid Materials as defined herein, including but not limited to ores, coal, and coke, including petroleum coke (“petcoke”) and metallurgical coke (“metcoke”). These rules and regulations apply to any owner, operator, or other person who stores, loads, unloads, stockpiles, handles on-site, Processes, or uses Bulk Solid Materials. Part B sets forth requirements that are applicable to all Bulk Solid Material Facilities. Part C sets forth requirements that are applicable only to Coke or Coal Bulk Material Facilities. Part D sets forth requirements that are applicable only to Bulk Solid Material Facilities that have outdoor storage piles and that are not Coke or Coal Bulk Material Facilities. Part E sets forth compliance and variance provisions for all Bulk Solid Material Facilities.

2.0 Definitions. For purposes of these rules and regulations, the following definitions shall apply:

- (1) ASTM means the American Society for Testing and Materials.
- (2) BLEND or MIX means combining two or more Bulk Solid Materials.
- (3) BULK SOLID MATERIAL means any solid substance or material that can be used as a fuel or as an ingredient in a manufacturing process that may become airborne or be scattered by the wind and that, except for coke and coal, is stored at a Facility in an amount equal to or greater than 25 cubic yards at any one time, including but not limited to ores, coal, and coke, including petcoke and metcoke, but shall not include salt, grains, Construction and Demolition Materials, materials that are handled or stored pursuant to a recycling, reprocessing, or waste handling Facility permit under Chapter 11-4 of the Code, or materials used in manufacturing cement at a facility that has obtained a construction permit and prevention of significant deterioration approval from the Illinois Environmental Protection Agency.
- (4) CHEMICAL STABILIZER is any chemical dust suppressant which is not prohibited for the uses proposed in these rules or by any other applicable law, and which meets all applicable specifications required by any federal, state, or local agency.
- (5) COAL is a solid, brittle, carbonaceous rock classified as anthracite, bituminous, subbituminous, or lignite by ASTM Designation D388-77.
- (6) COKE is a solid carbonaceous material derived from the distillation of coal (including metallurgical coke) or from oil refinery coker units or other cracking processes (including petroleum coke).

- (7) **COKE OR COAL BULK MATERIAL FACILITY** is a source, site, or facility where coke or coal is stored, loaded, unloaded, stockpiled, handled on-site, blended, Processed, or otherwise managed.
- (8) **CONSTRUCTION OR DEMOLITION MATERIAL** means material used in or resulting from the construction, remodeling, repair, landscaping, or demolition of utilities, structures, buildings, and roads, including but not limited to stockpiles of crushed stone, sand and gravel, hot mix asphalt plants or ready mixed concrete plants.
- (9) **EXISTING FACILITY** is a Facility that is properly permitted by the Commissioner, and subject to a Certificate of Operation issued by the Commissioner, as of the issuance date of these Rules and Regulations and is limited to operations within Facility boundaries as the boundaries exist on the issuance date of these Rules and Regulations.
- (10) **FACILITY** is all contiguous land, and structures, other appurtenances, and improvements on the land, used for storing, on-site handling, loading, unloading, stockpiling or Processing Bulk Solid Material.
- (11) **FUGITIVE DUST** means any solid particulate matter that becomes airborne by natural or human-made activities, excluding engine combustion exhaust and particulate matter emitted from a properly permitted exhaust stack equipped with a pollution control device.
- (12) **HIGH WIND CONDITIONS** is when average wind speeds exceed 15 miles per hour over two consecutive five minute intervals of time.
- (13) **INTERNAL ROAD** means any route within a facility that is not located in an area normally used for staging or storage of material and that has evidence of repeated prior travel by, or is otherwise regularly used by, Vehicles for transporting materials to, from, or within a Facility.
- (14) **METALLURGICAL COKE, or METCOKE**, is a carbon material resulting from the manufactured purification of multifarious blends of bituminous coal.
- (15) **MOIST MATERIAL** means material with a moisture content of 3% by weight as determined by ASTM analysis, unless another standard is established by an applicable State Permit, Law, Rule or Regulation.
- (16) **OWNER OR OPERATOR** means any person who has legal title to any Facility, who has charge, care or control of any Facility, who is in possession of any Facility or any part thereof, or who is entitled to control or direct the management of any Facility.
- (17) **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.
- (18) **PETROLEUM COKE, or PETCOKE**, is a solid carbonaceous residue produced from a coker after cracking and distillation from petroleum refining operations, including such residues produced by petroleum upgraders in addition to petroleum refining.
- (19) **PROCESS OR PROCESSING** means any chemical, industrial, commercial, or manufacturing operation or activity that causes, or has the potential to cause, the emission of airborne particles including, but not limited to,

blending, mixing, crushing, screening, breaking, wet or dry cleaning, thermal drying, and chemically treating.

- (20) **REPORTABLE ACTION LEVEL** means the positive difference between the level of PM10 measured at the upwind monitor(s) at a Facility and the level of PM10 measured at the downwind monitor(s) at a Facility that will trigger response activities under a contingency plan pursuant to Section 3.0(3)(f) as established in the Fugitive Dust Plan submitted by a Facility under Section 3.0(3). The Reportable Action Level may vary based on the value of the difference, and based on the concentration of PM10 detected at the downwind monitor(s) at a Facility.
- (21) **TRANSFER POINT** is the location at or within a facility where material being moved, carried, or conveyed is dropped or deposited.
- (22) **VEHICLE** is any car, truck, railcar, or marine vessel.

PART B: BULK SOLID MATERIAL FACILITIES

3.0 Operating and Maintenance Practices. Any Facility that Processes, handles on-site, transfers, loads, unloads, stockpiles, or stores Bulk Solid Materials shall comply with all of the following requirements:

- (1) **Certificate of Operation – Required.** Every Owner or Operator of a Facility subject to these Rules and Regulations must possess a certificate of operation issued in accordance with Section 11-4-660 of the Code. The Department reserves the right to impose dust control requirements, in addition to the requirements set forth in these Rules and Regulations, as conditions of the Facility's certificate of operation, if the Commissioner finds that the Facility has failed to control fugitive dust.
- (2) **Fugitive Dust – Prohibited.** The Facility Owner or Operator shall prevent the discharge into the atmosphere of visible fugitive dust as specified below:
 - a) **Visible Dust.** The Facility Owner or Operator shall not cause or allow any Fugitive Dust that is visible beyond the property line of the Facility;
 - b) **Opacity Limit.** The Facility Owner or Operator shall not cause or allow any Fugitive Dust within the property line of the Facility at any Bulk Solid Material storage pile, Transfer Point, roadway or parking area that exceeds 10% opacity, or other applicable opacity standard set forth in an applicable State Permit, Law, Rule or Regulation, including but not limited to the Environmental Protection Act and 35 Ill. Admin Code Part 212.
 - c) **Measurement of Opacity.** Opacity shall be determined based on a visual reading in accordance with the measurement method specified in 35 Ill. Admin. Code 212.109.
 - d) **Testing of Visual Emissions and Opacity Limits.** The Facility Owner or Operator shall, on at least a quarterly basis, periodically perform tests of

visual fugitive dust and opacity in accordance with the protocol set forth in the approved Fugitive Dust Plan.

(3) **Fugitive Dust Plan – Required.** Every Owner or Operator of a Facility subject to these Rules and Regulations must prepare, submit, and follow a Fugitive Dust Plan. The Fugitive Dust Plan shall be updated on an annual basis and submitted to the Department for review and approval on or before January 31 every year, provided that the first Fugitive Dust Plan shall be due within ninety (90) days of the issuance of these Rules and Regulations. For Facilities that are constructed or become subject to these regulations after they take effect, the first Fugitive Dust Plan shall be submitted with the Facility's application for a certificate of operation and before the Facility accepts any Bulk Solid Materials. If the Commissioner finds that the submitted Fugitive Dust Plan is missing any required information or is insufficient to ensure compliance with these Regulations, the Commissioner may disapprove the Fugitive Dust Plan and request submission of a modified Fugitive Dust Plan. If there is any change, modification, or addition to any Facility component described in an approved Fugitive Dust Plan, the Facility Owner or Operator shall submit an amended Fugitive Dust Plan to the Department for review and approval at least thirty (30) days prior to such change, modification, or addition. The Fugitive Dust Plan shall include, at a minimum, the following components:

- a) A site map, drawn to scale, depicting the following information:
 - i. Facility boundaries;
 - ii. All buildings, Internal Roads and utilities on Facility property;
 - iii. All roadways within one quarter mile of the perimeter of the Facility that are within the City of Chicago and that are used for transport of material to or from the Facility;
 - iv. All potential emissions points at the Facility, including a depiction of the footprints of all Bulk Solid Material storage piles; and
 - v. The locations of all control devices and monitoring devices, including the fugitive dust monitors required under 3.0(4) and the wind speed monitor required under 3.0(5);
- b) A description of the Facility's operations, including a list of all Bulk Solid Materials handled at the Facility;
- c) A description of the truck routes within one quarter mile of the perimeter of the Facility that are used to transport material to and from the Facility, including an explanation of how dust will be minimized during transport (e.g., travel on paved roads where possible, minimize truck speeds, etc.) and a description of the measures that will be used to ensure trucks are cleaned of loose material before they leave the Facility;

- d) A calculation showing the Facility's maximum total indoor and outdoor Bulk Solid Material storage capacity in tons or cubic yards. In the first Fugitive Dust Plan, due within ninety days of the issuance of these Rules and Regulations, the calculation shall be certified by signature of an authorized representative of the Owner or Operator and shall be accompanied by evidence of authority to sign on behalf of the Owner or Operator;
 - e) A description of all control measures, devices, and technologies to be used to minimize and control Fugitive Dust, a statement certifying that all control measures, devices, and technologies have been properly calibrated and maintained, and a statement that all appropriate Facility staff have been trained on the proper application and operation of all such control measures, devices, and technologies;
 - f) A dust monitoring plan that describes:
 - i. the placement, operation, and maintenance of the PM10 monitors required under paragraph 3.0(4); and
 - ii. The schedule and plan for quarterly testing to ensure compliance with the prohibition on Fugitive Dust set forth in 3.0(2). Such testing must be a) conducted by a professional trained and certified to read opacity in accordance with the measurement method specified in 35 Ill. Admin. Code 212.107, and b) conducted during a range of weather conditions to ensure that representative conditions at the Facility are covered;
 - g) A contingency plan describing the Owner's or Operator's response activities when the monitors required under paragraph 3.0(4) detect PM10 that exceeds the Reportable Action Level as defined in Section 2.0 above. The response activities should consist of a range of increasingly aggressive measures appropriate to different levels of exceedance;
 - h) A contingency plan for an alternative method of monitoring in the event of malfunction or failure of the approved PM10 monitors;
 - i) A description of the Facility's recordkeeping system, which shall include a schedule for routine inspection, testing, and maintenance as required in 3.0(17); and
 - j) A factsheet or executive summary of the Fugitive Dust Plan designed to inform the public of the Facility's plan to control and minimize fugitive dust. The Department will post the summary, together with the approved Fugitive Dust Plan, on the City's website.
- (4) Fugitive Dust Monitoring. Unless, pursuant to the Variance procedure set forth in 8.0 below, the Facility Owner or Operator establishes that the Facility's operations

do not result in off-site fugitive dust emissions, the Facility Owner or Operator must install, operate, and maintain, according to manufacturer's specifications, permanent, continuous Federal Equivalent Method (FEM) real-time PM10 monitors around the perimeter of the Facility in accordance with the requirements specified below:

- a) During the first year of monitoring, at least one monitor shall be placed along each side facing the four cardinal directions (north, south, east, and west) around the Facility to monitor for Fugitive Dust in the ambient air around the Facility;
 - b) During the second and subsequent years of monitoring, monitors shall be placed in accordance with an approved dust monitoring plan that shall be based on the data observed in the first year, with monitors located at a minimum of two upwind and two downwind locations and additional monitors as appropriate depending on the size of the facility and other relevant factors such as variability of wind direction at the site and the proximity of neighborhoods;
 - c) All data collected shall be consistent with units in the National Ambient Air Quality Standards for PM10, and ambient monitoring practices must comply with current U.S. Environmental Protection Agency protocols and guidance for ambient air quality monitoring, including but not limited to those for data completeness, calibration, inspection, maintenance, and site and instrument logs;
 - d) A data logger shall be attached to the monitors to record readings from the monitors, and the Facility Owner or Operator shall notify the Department, in writing within 24 hours, each time the monitors exceed the Reportable Action Level set forth in the Fugitive Dust Plan and any time monitoring equipment has malfunctioned preventing readings or logging of data; and
 - e) The Facility Owner or Operator shall maintain a log of all routine and non-routine maintenance and calibration activities associated with each fugitive dust monitor.
- (5) Wind Monitoring. The Facility Owner or Operator shall install, operate and maintain, according to manufacturer's specifications, a weather station or other permanent device to monitor and log wind speed and wind direction at the Facility at an unobstructed, unsheltered area, centrally positioned in relation to the storage piles, and at a minimum height of 10 meters above ground level, unless another height is appropriate pursuant to applicable U.S. Environmental Protection Agency protocols and guidance.
- (6) Conveyors. All conveyors shall be covered or enclosed conveyors in order to reduce or eliminate fugitive dust emissions to the maximum extent practicable.

(7) Transfer Points. The Facility Owner or Operator shall maintain all material transfer points in compliance with one of the following measures in order to ensure compliance with the opacity limit set forth in 3.0(2)(b):

- a) Total enclosure;
- b) Water spray system sufficient to control Fugitive Dust emissions during operations;
- c) Vented to air pollution control equipment which is in full operation and permitted by the Commissioner; or
- d) Transfer only Moist Material and conduct such transfer in a manner that minimizes the exposed drop.

(8) Transport. When transport is by truck, the Facility Owner or Operator shall ensure that:

- a) All vehicles and off-road mobile heavy equipment handling or transporting bulk solid material shall adhere to the posted speed limit within the Facility, which shall be no more than 8 miles per hour;
- b) Except for Existing Facilities, material is received or transferred only in truck trailers that, within one quarter mile of the perimeter of the Facility and within the City of Chicago, are driven only on paved roads;
- c) All outgoing material transport trucks, whether loaded or empty, are cleaned so that:
 - i. Any part of any tractor, trailer or tire exterior surface, excluding the inside of the trailers, are free of all loose material; and
 - ii. The material removed by the truck cleaning operation is collected and recycled or otherwise disposed of so that it does not result in Fugitive Dust emissions.
- d) All outgoing material transport trucks, whether loaded or empty, pass through a wheel wash station and pass over rumble strips that will vibrate the trucks and shake off loose material and dust, unless the approved Fugitive Dust Plan specifies other measures to ensure that the trucks will not cause any track-out of materials onto the public way.

(9) Vehicle Covering and other Dust Control. The Facility Owner or Operator shall not load material into any truck trailer, railcar, or barge unless measures are in place to prevent material from escaping from the Vehicle as follows:

- a) Truck trailers must be immediately covered before leaving the Facility in one of the following manners:
 - i. A solid sliding cover or stackable cover on the top of the truck trailer that is kept completely closed except during loading; or
 - ii. A continuous tarp that completely covers the truck trailer and that is installed or constructed to prevent wind from entering over the leading edge of the trailer rim into the interior of the trailer.
 - b) Railcars and barges must be loaded in a manner that will control dust through the use of best management practices such as, but not limited to, the use of solid covers, the application of dust suppression agents and/or water, and the profiling of materials to prevent wind erosion.
- (10) Vehicle Leaking. Facility owners or operators shall not load material into truck trailers, railcars, or barges such that a vehicle leaks material or liquid that contains material onto Internal Roads or into waterways. If a vehicle leaks material or liquid that contains material onto an Internal Road or into a waterway, the Facility Owner or Operator shall clean the affected road within one hour with a street sweeper or water and shall clean the affected waterway immediately.
- (11) Truck Loading and Unloading. For enclosed Coke or Coal Bulk Material storage piles, the Facility Owner or Operator shall conduct material truck loading and unloading only in an enclosed structure that is either equipped with a water spray system to be used as needed to prevent visible dust emissions or vented to permitted air pollution control equipment that is operated during loading and unloading activities. The ends of the structure shall have overlapping flaps that reduce the opening, sliding doors which shall remain closed except to allow the trucks to enter and leave, or other equally effective devices. For outdoor Bulk Solid Material storage, the Facility Owner or Operator shall ensure that truck loading and unloading occurs in compliance with the requirements for Transfer Points specified in 3.0(7).
- (12) Railcar Loading and Unloading. For enclosed Coke or Coal Bulk Material storage piles, the Facility Owner or Operator shall conduct railcar material loading and unloading only in an enclosed structure that is either equipped with a water spray system operated to prevent visible dust emissions, or vented to permitted air pollution control equipment that is operated during loading and unloading activities. The ends of the structure shall have overlapping flaps, sliding doors or other equally effective devices, which shall remain closed except to allow the railcars to enter and leave. For outdoor Bulk Solid Material storage, the Facility Owner or Operator shall ensure that railcar loading and unloading occurs in compliance with the requirements for Transfer Points specified in 3.0(7).
- (13) Barge and Boat Loading and Unloading. The Facility Owner or Operator shall conduct barge/boat material loading only through an enclosed chute that uses a water spray system, or an air pollution control system or other mechanism described in the approved Fugitive Dust Plan, in order to control Fugitive Dust emissions during

operations. Barge unloading shall be conducted in a manner that will minimize dust in accordance with measures set forth in the Fugitive Dust Plan and in compliance with the requirements for Transfer Points specified in 3.0(7).

- (14) Paving. The Facility Owner or Operator shall pave, with a durable material that is not susceptible to becoming windborne, and in a manner sufficient to bear the expected level of traffic at the Facility, and maintain as paved all Internal Roads within the Facility that are used for transporting or moving material.
- (15) Roadway Cleaning. In order to clean roads of spilled and tracked material, the Facility Owner or Operator shall use a street sweeper to clean any paved road that is used to transport material inside or within one quarter mile of the perimeter of the Facility and shall comply with all of the following requirements:
- a) The street sweeper shall be equipped with a water spray, for use during non-freezing weather, and a vacuum system to prevent Fugitive Dust during street sweeping;
 - b) The street sweeping shall be sufficient so that not more than 4 hours elapses between each street sweeper cleaning or after every 100 truck material receipts or dispatches, but not less than one time daily when the Facility is open for business, unless the roads are free and clear of any material transported to or from the Facility; and
 - c) Each 24 hour day, the day beginning at 12:01 A.M., the Facility Owner or Operator shall document whether for that day the Facility Owner or Operator is street sweeping every four hours or every 100 trucks, or whether the roads are free and clear of any material transported to or from the Facility. The record shall show the date and time when street sweeping was performed and the truck count, as applicable.
- (16) Spilled Material. The Facility Owner or Operator shall maintain all areas within the Facility not regularly used for storage of material free of any spilled or misplaced material by removing such material by the end of each work shift.
- (17) Recordkeeping. The Facility Owner or Operator shall keep and maintain Facility logs as follows:
- a) Record daily, all cleaning and street sweeping;
 - b) Record daily, the weather conditions, including wind speed and direction, documented by the weather station or other device installed pursuant to 3.0(5);
 - c) Record the application of water and/or Chemical Stabilizer pursuant to paragraphs 3.0(7), 3.0(9), 3.0(11), 3.0(12), 3.0(13), and/or 5.0(5), as applicable, and

note any instances when such application is suspended for any reason, including but not limited to, weather conditions;

d) Record any instances when activities are suspended due to high winds as required by paragraph 5.0(4), as applicable;

e) Record the results of the continuous monitoring for Fugitive Dust as required in paragraph 3.0(4), indicate any instances when a monitor detects Fugitive Dust that exceeds the Reportable Action Level set forth in the Fugitive Dust Plan, and record the action taken to respond to the detection of Fugitive Dust;

f) Record quarterly, the results of the tests of visual Fugitive Dust and opacity as required in paragraph 3.0(2)(d);

g) Maintain a schedule for routine inspection, maintenance, and testing of all control measures, devices, and technologies, including a schedule for inspection of Bulk Solid Material piles, inspection of all monitors, and inspection of off-site areas for the presence of dust; and identify the person or persons responsible for such inspections, maintenance, and testing;

h) All records required to be kept pursuant to these Rules and Regulations shall be kept and maintained at the Facility and be available for inspection for a minimum of three (3) years from the date the record is created.

PART C: COKE OR COAL BULK MATERIAL FACILITIES

4.0 Enclosure of Coke and Coal. The Owner or Operator of a Coke or Coal Bulk Material Facility shall maintain all Coke and Coal in fully enclosed structures in accordance with the enclosure requirements set forth in 4.0(2).

(1) Enclosure Plan. The owner or operator of any Coke or Coal Bulk Material Facility shall submit to the Department for review and approval a plan (the "Enclosure Plan") for total enclosure of all coke piles, coal piles, conveyors, Transfer Points, and Processing areas at the Facility. The Enclosure Plan shall include:

- a) A construction schedule prepared using the critical path method for completion of engineering, procurement, permitting, and construction of the enclosure; and
- b) An Interim Fugitive Dust Plan that shall include, at a minimum, the following components:
 - i. A site map, drawn to scale, depicting the following information:
 - 1. Facility boundaries;
 - 2. All buildings, Internal Roadways and utilities on Facility property;

3. All roadways within one quarter mile of the perimeter of the Facility that are within the City of Chicago and that are used for transport of material to or from the Facility;
 4. All potential emissions points at the Facility, including a depiction of the footprints of all Coke or Coal Bulk Material piles;
 5. The locations of all control devices and monitoring devices, including the fugitive dust monitors required under 3.0(4) and the wind speed monitor required under 3.0(5);
- ii. A site map, drawn to scale, depicting the boundaries of any associated Coke or Coal Bulk Material Facility owned or operated by the Owner or Operator at which the Owner or Operator intends to temporarily store Coke or Coal Bulk Materials during implementation of the Enclosure Plan, and including all the information required in 4.0(1)(b)(i) above;
 - iii. A description of the Facility's operations, including a list of all Coke or Coal Bulk Materials handled at the Facility or any associated Coke or Coal Bulk Material Facility;
 - iv. A description of all control measures, devices, and technologies to be used to minimize and control Fugitive Dust during transport to and from the Facility and any associated Coke or Coal Bulk Material Facility while materials are staged, loaded, unloaded, Processed, or otherwise handled at the Facility and any associated Coke or Coal Bulk Material Facility;
 - v. A dust monitoring plan that describes the placement, operation, and maintenance of the PM10 monitors required under paragraph 3.0(4), including an explanation of the positive difference between background levels of PM10 leaving a Facility or any associated Coke or Coal Bulk Material Facility that will determine the Reportable Action Level, which Reportable Action Level may vary based on the value of the difference, and based on the concentration of PM10 detected at the downwind monitor(s) at a Facility or any associated Coke or Coal Bulk Material Facility;
 - vi. A contingency plan describing the Owner's or Operator's response activities when the monitors required under paragraph 3.0(4) detect PM10 that exceeds the Reportable Action Level established pursuant to 3.0(3)(e)(i) above, and a contingency plan for an alternative method of monitoring in the event of malfunction or failure of the approved PM10 monitors; and
 - vii. A description of the Facility's recordkeeping system, which shall include a schedule for routine inspection and maintenance of the control

measures, devices, and technologies, and the identity of the person or persons responsible for such maintenance and testing.

(2) Enclosure Requirements. Fully enclosed structures for all Coke and Coal handling, storage, and transfer operations must meet the following requirements:

- a) Structures used to store, handle, or transfer Coke or Coal Bulk Materials shall be completely roofed and walled structures or buildings that entirely surround Coke or Coal Bulk Materials and shall be designed, permitted and constructed in accordance with applicable Building Code requirements.
- b) Structures used to store, handle, or transfer Coke or Coal Bulk Materials shall be properly maintained and equipped with and use a permitted air pollution control system and/or the ability to apply water to materials within a structure sufficient to control Fugitive Dust emissions at designed vents and at any other openings, including entrances and exits; and
- c) Any entrances or exits for material or Vehicles shall have overlapping flaps, sliding doors or other devices(s), which shall remain closed except to allow material or Vehicles to enter and leave or to allow people to enter and exit, provided that if devices other than overlapping flaps or sliding doors are used, then the performance for dust control at the openings must be shown in the Fugitive Dust Plan to be equivalent to or better than that of the overlapping flaps or sliding doors used in conjunction with the required air pollution controls as determined by the Commissioner.

(3) Interim Requirements. During implementation of the Enclosure Plan, Coke and Coal may be maintained in outdoor stockpiles subject to the following:

- a) The approved Interim Fugitive Dust Plan required in 4.0(1)(b);
- b) The requirements for all Bulk Storage Material Facilities set forth in Part B above; and
- c) The requirements for outdoor storage of bulk solid materials set forth in Part D below.

PART D: OUTDOOR STORAGE OF BULK SOLID MATERIALS OTHER THAN COKE OR COAL

5.0 Outdoor Bulk Solid Material Storage. The Facility Owner or Operator may maintain outdoor Bulk Solid Material storage if the Facility meets all of the following requirements.

- (1) Setbacks. Bulk material storage piles shall be located in accordance with setback requirements established in the Chicago Zoning Ordinance.
- (2) Height Limit. The vertical distance from grade immediately adjacent to a pile to the highest point of that pile shall be no greater than 30 feet. The Facility Owner or

Operator shall install and maintain a post or other visible measurement marker to demonstrate the height of each pile.

- (3) Protection of Waterways. Outdoor storage piles shall be set back at least 50 feet from any waterway, except that material in the process of being unloaded from or loaded to a barge may be located within 50 feet of a waterway for a period of time not to exceed 24 hours so long as no materials will fall, erode, be thrown, discharged, dumped, disposed of, or deposited in the waterway at any time.
- (4) High Wind Events. Disturbance of outdoor Bulk Solid Material piles, including but not limited to outdoor loading, unloading, and any other Processing, shall be suspended during High Wind Conditions, as detected by the wind monitor required under 3.0(5), unless alternate measures are implemented to effectively control dust in accordance with the approved Fugitive Dust Control Plan.
- (5) Dust Suppressant System. The Facility Owner or Operator must apply Chemical Stabilizers and/or maintain and operate water spray bars, a misting system, water spray systems and/or water trucks to prevent Fugitive Dust emissions in violation of 3.0(2), in accordance with the following requirements:
 - a) Except pursuant to 5.0(5)(c) below, the dust suppressant system shall be operable and able to dispense water, water-based solutions, and/or Chemical Stabilizers at all times unless all bulk storage material piles are covered.
 - b) When the temperature falls below 32 degrees Fahrenheit, the Facility must use Chemical Stabilizers and/or water heating systems to ensure that dust suppression continues.
 - c) If any part of the dust suppressant system is undergoing maintenance or otherwise becomes inoperable, the Facility Owner or Operator must suspend disturbance of Bulk Material piles that would be controlled by the inoperable portion of the dust suppressant system until such time as the system becomes operable again.
- (6) Runoff Management. The Facility Owner or Operator shall install and maintain stormwater management, erosion and sediment controls sufficient to:
 - a) Prevent runoff from the pile onto neighboring parcels, public ways, or any water bodies;
 - b) Prevent runoff from entering into public sewers or any entry points into the stormwater collection system, unless such discharges are in compliance with all applicable discharge permits;
 - c) Address timely and effective ways to respond to spills and/or visible migration of pollutants that could occur onsite or offsite;

- d) Demonstrate that the site is graded in such a way as to ensure proper drainage and to prevent pooling of water; and
- e) Ensure compliance with an approved Stormwater Management Plan pursuant to Chapter 11-18 of the Municipal Code, as applicable.

PART E: COMPLIANCE

6.0 Implementation Schedule. These Rules and Regulations shall take effect in five phases as follows:

- (1) The following paragraphs shall take effect immediately upon issuance of these Rules and Regulations:

1.0	Scope and Purpose
2.0	Definitions
3.0(1)	Certificate of Operation - Required
3.0(2)(a), (b), (c)	Fugitive Dust Prohibited
3.0(10)	Vehicle Leaking
3.0(15)	Roadway Cleaning
3.0(16)	Spilled Material
3.0(17)(a)	Recordkeeping -- Daily cleaning
3.0(17)(g)	Recordkeeping -- Maintain Schedule for Routine Inspection
3.0(17)(h)	Recordkeeping -- Timeframe for Maintenance of Required Records
6.0	Implementation Schedule
6.0(7)	Enclosure Reporting
7.0	Penalties
8.0	Variance from Operating and Maintenance Practices
9.0	Other Laws
10.0	Severability

- (2) The following paragraphs shall take effect ninety days from the issuance of these Rules and Regulations:

3.0(2)(d)	Testing of Visual Emissions and Opacity Limits
3.0(3)	Fugitive Dust Plan Required
3.0(4)	Fugitive Dust Monitoring
3.0(5)	Wind Monitoring
3.0(7)	Transfer Points
3.0(8)	Transport
3.0(9)	Vehicle Covering or other Dust Control
3.0(11)	Truck Loading and Unloading
3.0(12)	Railcar Loading and Unloading
3.0(13)	Barge and Boat Loading and Unloading
3.0(17)(b)	Recordkeeping – Weather Conditions

- 3.0(17)(c) Recordkeeping - Application of Water or Chemical Stabilizer
- 3.0(17)(d) Recordkeeping – Suspension of Work due to High Winds
- 3.0(17)(e) Recordkeeping – Dust Monitoring Results
- 3.0(17)(f) Recordkeeping – Record Quarterly Tests of Visual Fugitive Dust
- 4.0(1) Enclosure of Coke and Coal - Enclosure Plan
- 5.0(1) Outdoor Bulk Solid Material Storage - Setbacks
- 5.0(2) Outdoor Bulk Solid Material Storage - Height Limit
- 5.0(3) Outdoor Bulk Solid Material Storage - Protection of Waterways
- 5.0(4) High Wind Events
- 5.0(5) Outdoor Bulk Solid Material Storage - Dust Suppressant System
- 5.0(6) Outdoor Bulk Solid Material Storage - Runoff Management

(3) The following paragraph shall take effect six months from the issuance of these Rules and Regulations:

- 3.0(6) Covered Conveyors

(4) The following paragraph shall take effect one year from the issuance of these Rules and Regulations:

- 3.0(14) Paving

(5) The following paragraph shall take effect two years from the issuance of these Rules and Regulations:

- 4.0(2) Enclosure of Coke and Coal - Enclosure Requirements

(6) Enclosure Deadline. Within two (2) years from the submission of the Enclosure Plan, as required by 4.0(1) and 6.0(2), all Coke and Coal Bulk Materials must be either fully enclosed or removed from the Facility and any associated Coke or Coal Bulk Material Facility, as required by 4.0 above.

(7) Enclosure Reporting. During the two-year period provided in 6.0(5) above, the Facility Owner or Operator shall submit to the Commissioner monthly reports describing the work completed within the previous month, and the work planned in the upcoming month, towards compliance with these sections. The first report shall be due on the first business day of the month following the first thirty-day period after issuance of these Rules and Regulations, with subsequent reports due on the first business day of each following month. The address to submit the monthly reports is 333 South State Street, 2nd Floor, Chicago, Illinois, 60604, ATTN: Environmental Inspections.

The Commissioner may, at the Commissioner's sole discretion, grant extensions of the timeframes provided, in accordance with the Variance provisions set forth in 8.0 below, upon request and only for good cause shown by the Facility Owner or Operator.

7.0 Penalties. In accordance with Section 11-4-810 of the Code, any person who violates any provision of these regulations shall be fined not less than \$1,000 nor more than \$5,000. Each day of any violation of these regulations shall constitute a separate and distinct offense, and for each such violation the fines imposed shall be assessed per day.

8.0 Variance from Regulations.

(1) Applications for a Variance. The Facility Owner or Operator may apply to the Commissioner for a variance from any Regulation set forth in Parts B, D, or E above in accordance with the provisions set forth in 8.0(2) below.

(2) Requirements of the Variance Application. The request for a variance must be in writing and must set forth, in detail, all of the following:

- a) A statement identifying the regulation or requirement from which the variance is requested;
- b) A description of the process or activity for which the variance is requested, including pertinent data on location, size, and the population and geographic area affected by, or potentially affected by, the process or activity;
- c) The quantity and types of materials used in the process or activity in connection with which the variance is requested, as appropriate;
- d) A demonstration that issuance of the variance will not create a public nuisance or adversely impact the surrounding area, surrounding environment, or surrounding property uses;
- e) A statement explaining:
 - i. Why compliance with the regulations imposes an arbitrary or unreasonable hardship;
 - ii. Why compliance cannot be accomplished during the required timeframe due to events beyond the Facility Owner or Operator's control such as permitting delays or natural disasters; or
 - iii. Why the proposed alternative measure is preferable.
- f) A description of the proposed methods to achieve compliance with the regulations and a timetable for achieving that compliance, if applicable;

- g) A discussion of alternate methods of compliance and of the factors influencing the choice of applying for a variance;
- h) A statement regarding the person's current status as related to the subject matter of the variance request;
- i) For any request for a variance from the enclosure deadline set forth in 6.0(5), the applicant must submit all of the information required in sections 8.0(2)(a) through (h) above and shall also submit 1) fugitive dust monitoring reports for the four months prior to the date of the variance application and 2) in the event that the variance is granted, monthly fugitive dust monitoring reports for the duration of the variance which shall be due fourteen (14) days following the end of the month which the report covers. The monthly fugitive dust monitoring reports required by this section shall be submitted in an electronic format as specified in the Variance.

(3) Criteria for Reviewing Applications.

- a) In determining whether to grant a variance, the Commissioner will consider public comments received pursuant to 8.0(4) and will evaluate the information provided in the application to meet the requirements of 8.0(2). Particular consideration will be given to the following information:
 - i. Inclusion of a definite compliance program;
 - ii. Evaluation of all reasonable alternatives for compliance;
 - iii. Demonstration that any adverse impacts will be minimal.
- b) The Commissioner may deny the variance if the application for the variance is incomplete or if the application is outside the scope of relief provided by variances.
- c) The Commissioner may grant a variance in whole or in part, and may attach reasonable conditions to the variance to ensure minimization of any adverse impacts.
- d) Issuance of a variance is at the sole discretion of the Commissioner. A variance may be revoked at any time if the Commissioner finds that operation of the Facility is creating a public nuisance or otherwise adversely impacting the surrounding area, surrounding environment, or surrounding property uses.

- (4) Change in Facility Operations. If any part of the Facility's operation that is the subject of the variance expands or changes, then, at least thirty (30) days prior to the expansion or change in operation, the Facility Owner or Operator shall notify the Commissioner

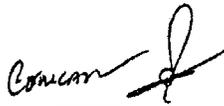
and either a) apply for a new variance or b) notify the Commissioner of the Owner or Operator's intent to comply with the regulation(s) that were the subject of the variance, in which case the variance will automatically terminate.

- (5) **Notice of Variance Applications.** The Commissioner will not grant any variance under this section until members of the public have had an opportunity to submit written comments on the variance application. Public notice of all variance applications will be provided by publication in a newspaper of general circulation published within the city and by publication on the city's website. The Commissioner will accept written comments for a period of not less than thirty (30) days from the date of the notice.

9.0 Other Laws. These regulations in no way affect the responsibilities of the Facility owner and operator to comply with all other applicable federal, state or City laws, ordinances, or regulations, including but not limited to those regarding the construction, operation, maintenance, and closure of the Facility.

10.0 Severability. If any clause, sentence, paragraph, subsection, Section, or Part of these Regulations is adjudged by any court of competent jurisdiction to be invalid, that judgment shall not affect, impair or invalidate the remainder of these Regulations, but shall be confined in its operation to the clause, sentence, paragraph, subsection, Section or Part to which the judgment is rendered.

I, Bechara Choucair, hereby promulgate the foregoing Bulk Material Storage Rules and Regulations on this 13th day of March 2014.



Bechara Choucair, M.D.
Commissioner of Health
City of Chicago

Exhibit C

AMENDED EMERGENCY CEASE AND DESIST ORDER
FOR UNPERMITTED ACTIVITY
UNDER SECTION 11-4-025 OF THE MUNICIPAL CODE OF CHICAGO

Issued To: **CALUMET TRANSLOAD LLC**
Site Address: **10730 S BURLEY AVE, CHICAGO, IL 60617**

PLEASE BE ADVISED that the Commissioner of Public Health has found that you are operating a facility or conducting an activity without a required permit or other written authorization issued by the Commissioner, in that you are storing and handling coke, including but not limited to metallurgical coke ("met coke") or petroleum coke ("petcoke"), other solid carbonaceous petroleum-based material, or coal without an Air Pollution Control Permit at the above-referenced location (the "Site").

AS OF THIS DATE, AUGUST 07, 2014, YOU ARE HEREBY ORDERED TO CEASE AND DESIST from storing and handling coke, including but not limited to met coke or petcoke, other solid carbonaceous petroleum-based material, or coal without a permit by immediately removing and properly disposing of all coke, including but not limited to met coke or petcoke, other solid carbonaceous petroleum-based material, or coal from the Site and ceasing to accept any further loads of such material.

PLEASE BE FURTHER ADVISED that you are in violation of Section 11-4-620(a)(1) of the Municipal Code of Chicago (the "Code"), in that you installed or operated regulated equipment or area without a valid Air Pollution Control Permit; and Section 11-4-620(a)(3), in that you modified regulated equipment or areas in such manner as to increase the quantity or change the nature of air contaminants emitted from such equipment or area without receiving a new Air Pollution Control Permit from the Commissioner.

IMPORTANT INFORMATION

You shall have 14 calendar days from the service date of this Order to notify the Commissioner, on the form attached hereto, of your demand for a hearing. At the hearing you may contest any of the allegations specified in this Order or you may present evidence as to why you are not liable for all or any of the violations specified in this Order, and/or why the Order should be vacated. Failure to notify the Commissioner of a demand for a hearing in the time and manner described above shall constitute a waiver of the opportunity for a hearing. Submittal of a demand for hearing shall not relieve you of the duty to comply with this Order.

Failure to comply with this Order is a violation of section 11-4-025 of the Code and will subject you to a penalty of \$5,000 per day, in addition to any other applicable penalties or costs. Call Jennifer Hesse at (312)745-8222, if you have any questions concerning this order.

Commissioner

Department of Public Health

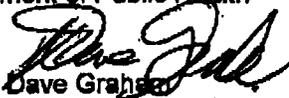
By: 
Dave Graham
Assistant Commissioner

EXHIBIT D



IN THE CITY OF CHICAGO, ILLINOIS
DEPARTMENT OF ADMINISTRATIVE HEARINGS

CITY OF CHICAGO, a Municipal Corporation, Petitioner,)
v.)
Address of Violation: 10730 S Burley Avenue
Calumet Transload Railroad, L.L.C.)
Docket #: 14DE00027A
10730 S. BURLEY AVENUE)
Issuing City
CHICAGO, IL 60617)
, Respondent.) Department: Environment

FINDINGS, DECISIONS & ORDER

This matter coming for Hearing, notice given and the Administrative Body advised in the premises, having considered the motions, evidence and arguments presented, IT IS ORDERED: As to the count(s), this tribunal finds by a preponderance of the evidence and rules as follows:

Table with 5 columns: Finding, NOV#, Count(s), Municipal Code Violated, Penalties. Row 1: Liable - By contested finding, E1000001, 1, 11-4-025 Public Nuisance Unpermitted Activity: Cease and Desist, \$50,000.00

Sanction(s):

Admin Costs: \$40.00

JUDGMENT TOTAL: \$50,040.00

Balance Due: \$50,040.00

Respondent is ordered to come into immediate compliance with any/all outstanding Code violations.

ENTERED: [Signature] Administrative Law Judge 46 ALO# Sep 18, 2014 Date

This Order may be appealed to the Circuit Court of Cook Co. (Daley Center 6th Fl.) within 35 days by filing a civil law suit and by paying the appropriate State mandated filing fees.

Pursuant to Municipal Code Chapter 1-19, the city's collection costs and attorney's fees shall be added to the balance due if the debt is not paid prior to being referred for collection.