

IN THE CIRCUIT COURT FOR COOK COUNTY, ILLINOIS  
CHANCERY DIVISION

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

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

COMPLAINT FOR INJUNCTIVE RELIEF AND CIVIL PENALTIES

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

COUNT I

AIR POLLUTION

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

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SETF EXHIBIT THREE

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

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

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

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

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

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

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

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

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

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

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

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

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

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

No person shall:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## COUNT II

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

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

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

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

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

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

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

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

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

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

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

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



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

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

As a minimum the operating program shall include the following:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

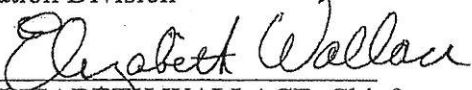
5. Ordering the Defendant, KCBX TERMINALS COMPANY, to pay all costs, pursuant to Section 42(f) of the Act, 415 ILCS 5/42(f) (2012), including any attorney, expert witness, and consultant fees expended by the State in its pursuit of this action; and

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

Respectfully submitted,

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

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

BY:   
ELIZABETH WALLACE, Chief  
Environmental Bureau

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

# EXHIBIT 1

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

FUGITIVE DUST PLAN

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

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

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

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

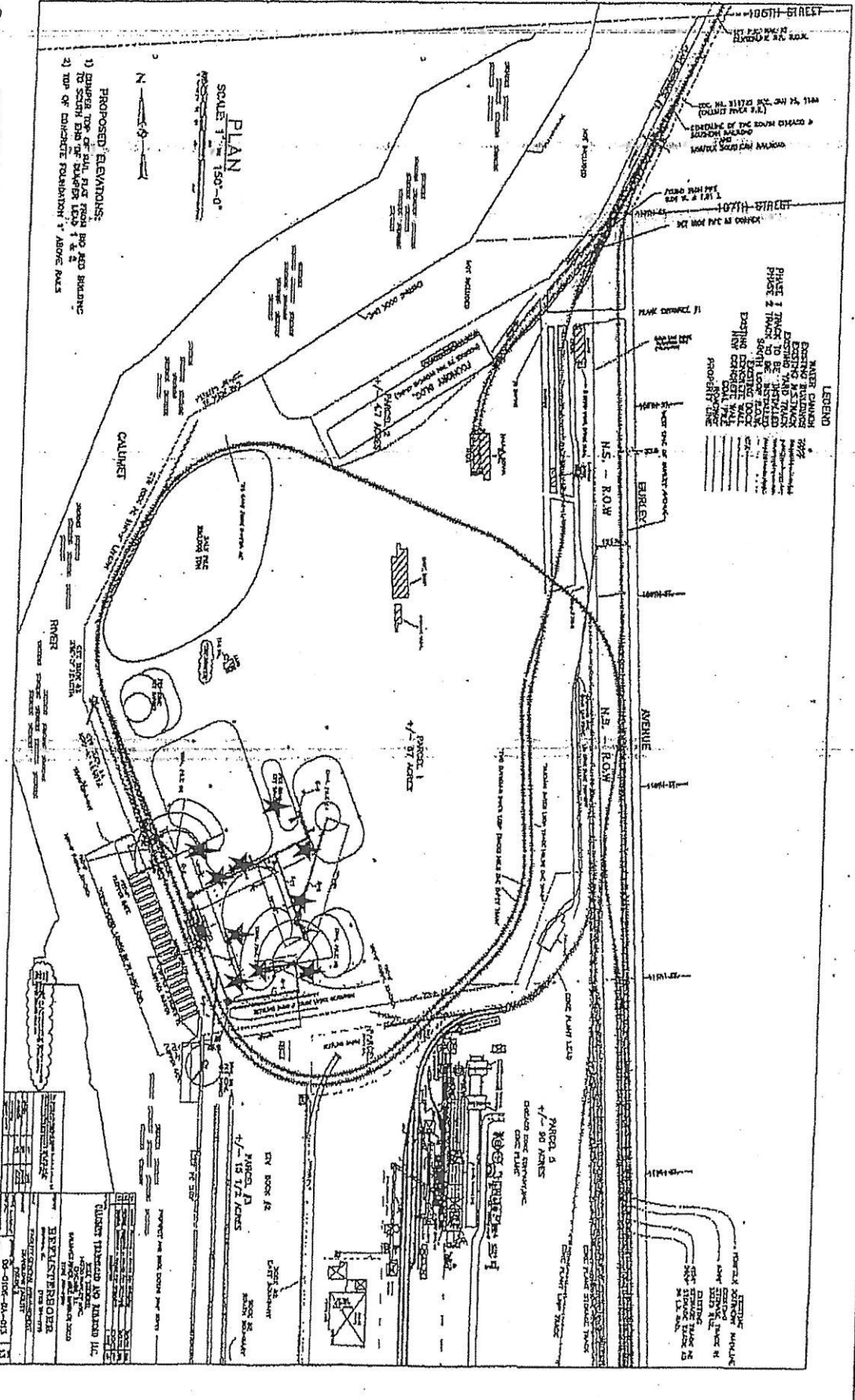
Conveyor Loading Operations – All conveyor loading operations to storage piles are controlled by telescoping chutes and the inherent moisture content of the coal product. The coal, when delivered, has an inherently high moisture content. The inherent high

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

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



Source: DTE Fuels Chicago Terminal, LLC



OPERATING PERMIT APPLICATION  
DTE Chicago Fuels Terminal, LLC

figure 1