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Chicago Fuel Firms Cough Up \$950K To Settle Dust Suit

By **Natalie Olivo**

Law360, New York (March 8, 2016, 6:02 PM EST) -- An Illinois federal judge granted preliminary approval to a \$950,000 deal to end a proposed class action accusing Koch Industries and a fuel company of blowing petroleum coke dust into Chicago homes, according to a Tuesday court filing.

Two Koch companies will fork over \$475,000 and DTE Chicago Fuels Terminal LLC will pay the same amount to resolve allegations they stored the oil refining byproduct in uncovered piles near neighborhoods in Chicago's South Side, according to a motion for preliminary approval filed Monday.

"We are pleased to resolve this matter," Koch-owned KCBX Terminals Co. said in a statement issued Tuesday. "We have the utmost respect for our neighbors and we are committed to earning their trust and confidence in our operations."

In her 2013 suit, resident Lilly Martin targeted, among others, Koch Carbon LLC, KCBX Terminals Company and DTE Chicago Fuels, which operated storage and transfer terminals along the Calumet River. She accused the companies of storing petcoke and coal in uncovered piles up to five stories high. The city's high winds blew clouds of dust from the piles into nearby communities and contaminated the air, homes and property, the suit said.

The \$950,000 settlement fund will go to people who owned the thousands of South Side properties between October 2008 and the date the settlement is executed, the filing said.

In the same Tuesday statement, KCBX said that by June of this year, all piles of coal and petcoke will be eliminated. It also said that all product from its terminal will go directly to barges and vessels via a conveyer system.

U.S. District Judge Manish S. Shah's brief Tuesday filing did not expand on the preliminary approval order.

The residents first mentioned the deal just over a month ago, when they fought the defendants' bid to deny them class certification. In a November 2015 filing, the Koch-owned facilities and related companies said that class couldn't be certified because it set class boundary lines based on geography, rather than the alleged impact from contamination.

In their reply brief, which slipped the tentative settlement into a footnote, the proposed class said "nothing more is required" than showing the affected neighborhoods surround the storage facilities, where hundreds of millions of pounds of petcoke and coal dust were being stored "in huge piles out in the open."

In November 2014, Judge Shah dismissed Koch-unit KM Railways, which owns the land under one of the storage and transfer terminals, from the suit. Judge Shah said that under Illinois law, a landlord is generally not liable to third parties for a tenant's negligence.

Defendants Calmut Transload Railroad LLC, George J. Beemsterboer Inc., Beemsterboer Slag and Ballast Corp. and were not listed as settling defendants in Monday's filing.

In September 2015, the Illinois attorney general's office announced that the state had shut down KCBX's other Chicago terminal to settle a lawsuit alleging the company had failed to properly maintain a barrier to separate mounds of petcoke and coal from the Calumet River. KCBX was also assessed a \$35,000 civil penalty.

Kevin Rogers, an attorney representing the class, declined to comment Tuesday.

The proposed class is represented by Ben Barnow, Erich Schork of Barnow and Associates PC, Thomas Zimmerman of Zimmerman Law Offices PC, and Kevin Rogers of the Law Offices of Kevin Rogers.

The Koch companies are represented by Stephen A. Swedlow and Michelle R. Schmit of Quinn Emanuel Urquhart & Sullivan LLP. Other defendants are represented by attorneys from Bryan Cave LLP and Swanson Martin & Bell LLP.

The suit is Martin et al. v. KCBX Terminals Company et al., case number 1:13-cv-08376, in the U.S. District Court for the Northern District of Illinois.

--Editing by Jill Coffey.