

Law360 Chicago 7-29-2016 (Petcoke Contamination)

Koch, Others Get \$1.4M Chicago Petcoke Settlement Finalized

July 29, 2016

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Law360 (<https://www.law360.com/>)

Law360, Chicago (July 29, 2016, 10:29 PM ET) -- An Illinois federal judge on Friday approved a \$1.4 million class settlement to be paid by Koch Industries and others storing oil refinery byproducts on Chicago's South Side, over objections by some homeowners that the money doesn't come close to compensating them for cleaning and upgrading their properties due to petcoke contamination.

In 2013, Chicago homeowners who lived near facilities that store petroleum coke and coal dust, both byproducts of burning fuel, sued Koch and Beemsterboer Corp. affiliates for polluting their homes with heavy layers of the substances, saying they were forced to spend time and money keeping their properties clean.

The lawsuit settled in two stages beginning in March, but a handful of homeowners remained unhappy, arguing that the facility owners could end up paying as little as \$60 per class member, though the defendant's calculations is higher than that.

Following a hearing Friday in which one objecting homeowner testified, U.S. District Judge Manish S. Shah approved the settlement and said the 20 objectors had "no appreciation" of how difficult it would be to win their cases at trial.

"The strength of this case is not great," Shah said after hearing hours of argument over the settlement. "There is a very good chance that the class would receive nothing if litigated on the merits."

Shah said the estimated damage to each homeowner was subjective and required thousands of individuals to estimate how much money and time they expended cleaning their homes over the seven-year period covered by the settlement.

He also pointed out that Koch's KCBX Terminals, Koch Carbon LLC, DTE Chicago Fuels Terminal LLC, George J. Beemsterboer Inc. and the other accused companies had presented strong evidence that the dust collecting on homeowners properties couldn't necessarily be attributed to the petroleum coke or coal dust piles lying nearby.

The area where the petcoke piles lie is an industrial zone and is near a major highway, and Koch and Beemsterboer say it's difficult to determine where the dust that's coating local homeowners' houses is coming from.

Peggy Salazar, who has lived in a house three blocks from one of the petcoke piles since 1982, told the court Friday that she has lived in many other parts of the city and knows common urban dust when she sees it.

She said the oily, jet black substance coating her home was different and required her and her husband to hose down the house siding every week during the summer and to spend a good part of their free time cleaning the inside and outside of their house.

Salazar said she noticed the petcoke dust within months of moving into her new place and that the pollution it has caused depletes her property value. She estimated that she spent \$50 once or twice a month on cleaning supplies until the petcoke piles were recently removed, possibly as part of a 2015 settlement with the Illinois Attorney General's office.

"Even though [the cleaning] became routine, that aggravation still didn't go away," Salazar said from the witness stand.

Her loss calculations were questioned by defense attorneys and the lead counsel for the plaintiffs, however, who pointed out that she has submitted different estimates to the court.

The defense also questioned her about her knowledge of emissions from other nearby facilities, like the Morton Salt Inc. factory, and asked why she hadn't submitted her air conditioning filter for testing when the U.S. Environmental Protection Agency was testing some of her neighbors' filters for petcoke pollution.

Salazar said she was never approached by the EPA. She said her ultimate aim, as the director of a neighborhood group called the Southeast Environmental Task Force, was to ban all petcoke from the South Side of Chicago.

In finalizing the settlement, Shah noted that the case before him "was not a likely vehicle for the recovery [the objectors] seek."

According to the EPA, there are no longer any open air petcoke pits at the three facilities that residents in 2013 complained were blowing debris onto their properties.

A Koch spokesman said in a statement that the past two years of air quality monitoring at its Chicago facilities, combined with soil and surface sample tests in the surrounding neighborhoods, have dug up no evidence of petcoke contamination in the area.

"We are pleased to have final resolution on this matter. We have the utmost respect for our neighbors, and we are committed to earning their trust and confidence in our operations," KCBX's Jake Reint said.

Although he approved the bulk of the settlement as it was submitted to him, Shah did curtail the awards granted to the 10 lead plaintiffs in the case, saying \$7,500 was too large a figure when compared to the benefit achieved for the rest of the class members, who will likely take home less than \$200 a piece. The judge set the lead plaintiffs awards to \$4,500 a piece, instead.

The process of settling the suit, filed in 2013, was two-fold, with the Koch defendants and DTE settling for \$950,000 in March, while Beemsterboer and a few others settled for an additional \$505,000 in April, according to court documents.

The objectors couldn't be immediately reached late Friday to say whether they planned to appeal.

The objectors are represented by Kenneth S. Ulrich and Meredith S. Kirshenbaum of Goldberg Kohn Ltd.

The settling plaintiffs are represented by Ben Barnow and Eric Schork of Barnow and Associates PC and Thomas Zimmerman of Zimmerman Law Offices PC. Kevin Rogers, James Brusslan of Levenfeld Pearlstein LLC, Jeffrey Leon of Quantum Legal LLC, Robert James Pavich and John Pavich of Pavich Law Group PC, and Aron Robinson of the Law Office of Aron Robinson represented the plaintiffs.

Beemsterboer Slag & Ballast Corporation, George J. Beemsterboer Inc. and Calumet Transload Railroad LLC are represented by Michael J. Maher, Christopher T. Sheean, Elizabeth S. Harvey and Steven L. Vanderporten of Swanson Martin & Bell LLP.

DTE Chicago Fuels Terminal, LLC, KCBX Terminals Company and Koch Carbon LLC are represented by Stephen A. Swedlow and Michelle R. Schmit of Quinn Emanuel Urquhart & Sullivan LLP and S. Patrick McKey, Thor W. Ketzback, Donald A. Cole and Lauren J. Caisman, of Bryan Cave 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.

--Additional reporting by Diana Novak Jones and Vidya Kauri. Editing by Philip Shea.