

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

| | | |
|-------------------------|---|---------------------|
| KCBX TERMINALS COMPANY, |) | |
| |) | |
| Petitioner, |) | |
| |) | |
| v. |) | PCB 08-_____ |
| |) | (Air Permit Appeal) |
| ILLINOIS ENVIRONMENTAL |) | |
| PROTECTION AGENCY, |) | |
| |) | |
| Respondent. |) | |

NOTICE OF FILING

TO: Mr. John Therriault
Assistant Clerk of the Board
Illinois Pollution Control Board
100 West Randolph Street
Suite 11-500
Chicago, Illinois 60601
(VIA ELECTRONIC MAIL)

(SEE PERSONS ON ATTACHED SERVICE LIST)

PLEASE TAKE NOTICE that I have today filed with the Office of the Clerk of the Illinois Pollution Control Board an **ENTRY OF APPEARANCE OF KATHERINE D. HODGE, ENTRY OF APPEARANCE OF LAUREN C. LURKINS, PETITION FOR REVIEW and MOTION TO STAY THE EFFECTIVENESS OF CONTESTED PERMIT CONDITIONS**, copies of which are herewith served upon you.

Respectfully submitted,

KCBX TERMINALS COMPANY,

By: /s/ Katherine D. Hodge
Katherine D. Hodge

Dated: June 27, 2008

Katherine D. Hodge
Lauren C. Lurkins
HODGE DWYER ZEMAN
3150 Roland Avenue
Post Office Box 5776
Springfield, Illinois 62705-5776
(217) 523-4900

THIS FILING SUBMITTED ON RECYCLED PAPER

CERTIFICATE OF SERVICE

I, Katherine D. Hodge, the undersigned, hereby certify that I have served the attached ENTRY OF APPEARANCE OF KATHERINE D. HODGE, ENTRY OF APPEARANCE OF LAUREN C. LURKINS, PETITION FOR REVIEW and MOTION TO STAY THE EFFECTIVENESS OF CONTESTED PERMIT CONDITIONS upon:

Mr. John Therriault
Assistant Clerk of the Board
Illinois Pollution Control Board
100 West Randolph Street
Suite 11-500
Chicago, Illinois 60601

via electronic mail on June 27, 2008 and upon:

Division of Legal Counsel
Illinois Environmental Protection Agency
1021 North Grand Avenue East
Post Office Box 19276
Springfield, Illinois 62794-9276

by depositing said documents in the United States Mail, postage prepaid, in Springfield, Illinois on June 27, 2008.

/s/ Katherine D. Hodge
Katherine D. Hodge

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| Respondent. |) | |

ENTRY OF APPEARANCE OF KATHERINE D. HODGE

NOW COMES Katherine D Hodge, of the law firm of HODGE DWYER ZEMAN, and hereby enters her appearance on behalf of Petitioner, KCBX TERMINALS COMPANY.

Respectfully submitted,

KCBX TERMINALS COMPANY,
Petitioner,

By: /s/ Katherine D. Hodge
Katherine D. Hodge

Dated: June 27, 2008

Katherine D. Hodge
Lauren C. Lurkins
HODGE DWYER ZEMAN
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KCBX:002/Fil/EOA-KDH

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

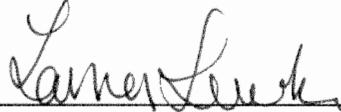
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| |) | |
| Respondent. |) | |

ENTRY OF APPEARANCE OF LAUREN C. LURKINS

NOW COMES Lauren C. Lurkins, of the law firm of HODGE DWYER ZEMAN,
and hereby enters her appearance on behalf of Petitioner, KCBX TERMINALS
COMPANY.

Respectfully submitted,

KCBX TERMINALS COMPANY,
Petitioner,

By: 
Lauren C. Lurkins

Dated: June 27, 2008

Katherine D. Hodge
Lauren C. Lurkins
HODGE DWYER ZEMAN
3150 Roland Avenue
Post Office Box 5776
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KCBX:002/Fil/EOA-LCL

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PETITION FOR REVIEW

NOW COMES Petitioner, KCBX TERMINALS COMPANY (“KCBX”), a North Dakota corporation, by and through its attorneys, HODGE DWYER ZEMAN, pursuant to Section 40(a)(1) of the Illinois Environmental Protection Act (“Act”) (415 ILCS 5/40(a)(1)), 35 Ill. Admin. Code § 105.204 and 35 Ill. Admin. Code § 105.Subpart C, and petitions the Illinois Pollution Control Board (“Board”) for review of the “Construction Permit Grant – Operating Permit Denial – NSPS Source” (“Final Air Permit”) issued to KCBX by the Illinois Environmental Protection Agency (“Illinois EPA”) on May 23, 2008.

In support of its petition, KCBX states as follows:

1. KCBX operates a bulk material terminal located at 3259 East 100th Street, Chicago, Illinois (Facility ID No. 031600AHI) (“Facility”).
2. On October 14, 2007, KCBX submitted an application to Illinois EPA seeking a joint construction and operating permit (“Joint Permit”) to install two, 125-foot portable conveyors to be operated at the Facility.
3. KCBX has supplemented the Joint Permit application with information provided in letters dated February 21, 2008, and March 28, 2008, and KCBX and Illinois

EPA took part in several meetings regarding the Joint Permit during the period of time from October 14, 2007, through the present.

4. The original deadline for Illinois EPA to issue or deny the Joint Permit was January 28, 2008. KCBX agreed to five extensions of the deadline to issue the Joint Permit, to allow additional time for Illinois EPA to prepare a draft. The fifth and final extension established a deadline of May 26, 2008, for Illinois EPA.

5. On May 23, 2008, Illinois EPA issued the Final Air Permit for the Facility. A copy of this Final Air Permit is attached as Exhibit A.

6. As set forth below, Illinois EPA included conditions in the Final Air Permit that are not required by the Act or regulations promulgated thereunder, and are not necessary to correct, detect, or prevent noncompliance with, or to otherwise accomplish the purposes of, the Act or regulations.

7. In light of this fact, on May 29, 2008, representatives of KCBX discussed the Final Air Permit conditions with Illinois EPA, and recommended the Final Air Permit be modified based on several points of clarification.

8. Thereafter, on June 4, 2008, KCBX through its consultant, Short Elliott Hendrickson Inc., sent a letter to Illinois EPA noting several modifications that should be made to the Final Air Permit, as set forth below. A copy of that letter is attached hereto as Exhibit B.

9. First, the portion of the Final Air Permit title stating "Operating Permit Denial" is confusing as it suggests that operation of the two new conveyors is not allowed. See Final Air Permit at p. 1. This contradicts language in Condition 1.b. that allows the operation of the conveyors until the Facility's Federally Enforceable State

Operating Permit (“FESOP”) is re-issued. See Condition 1.b. In addition, two paragraphs on page 16 of the Final Air Permit state that “[t]he OPERATING permit application is DENIED . . . ,” and that “an operating permit may not be issued until the equipment has been constructed or modified in accordance with applicable conditions in this construction permit.” See Final Air Permit at p. 16. Again, this language creates confusion as to whether operation of the conveyors is allowed.

10. As a result, the title of the Final Air Permit should be replaced with “Joint Construction and Operating Permit,” omitting the reference to “NSPS Source” as set forth below, and the two paragraphs on page 16 of the Final Air Permit noted above should be removed from the Final Air Permit. Condition 1.b. should remain to clearly establish that the Facility, including the two conveyors, can be operated under the conditions of the construction permit until the FESOP is re-issued.

11. Second, Condition 2.a. of the Final Air Permit incorrectly states that the two new conveyors are subject to the New Source Performance Standard (“NSPS”) for Coal Preparation Plants, 40 C.F.R. 60 Subpart Y (“Subpart Y”). See Condition 2.a. KCBX operates a coal screening plant subject to Subpart Y. However, the new conveyors are not subject to Subpart Y because the conveyors will be used for the purpose of storage and loading, are not connected to covered plant machinery, and are not part of an affected facility or source subject to NSPS subpart Y.

12. Because the conveyors are not subject to Subpart Y, the permit title must be revised as set forth above and several conditions in the Final Air Permit, all of which pertain to NSPS limitations and testing, must be removed, as follows: Condition 2 in its

entirety; Condition 8 in its entirety; Condition 11 in its entirety; Condition 13 in its entirety; and Condition 18 in its entirety.

13. Third, the Final Air Permit requires KCBX to maintain a surface moisture content of at least 1.5 percent by weight in the bulk materials handled at the Facility. See Condition 6.a. Compliance with this requirement can be demonstrated by recording the use of water sprays (see Condition 6.a.i. and 12.b.) or by measuring water content in a representative sample at least once per week (see Conditions 6.a.ii. and 12.a.). KCBX has the following concerns regarding these conditions: 1) use of water sprays is not practical and not required during freezing conditions, yet the weekly moisture monitoring apparently would be required throughout the year even though the piles likely would be snow-covered or have a frozen surface; 2) collecting a representative surface sample would disrupt the “crust” that forms on the exterior of the storage piles and is a desirable feature that minimizes wind-blown dust from the piles; and 3) a good measure of moisture content is that of received material, and KCBX receives a moisture analysis from the supplier with product receipts that is representative of the moisture content in the bulk material and typically ranges from 8 to 11 percent moisture by weight.

14. As a result, KCBX proposes to modify the Final Air Permit such that KCBX would be required to operate water sprays only during non-freezing conditions (see Condition 6.a.i.) and maintain records showing that monthly average incoming material moisture content is maintained at acceptable levels. With these proposed revisions, Conditions 6 and 12 should be revised to specify that water spray operation, stockpile moisture sampling, or moisture analysis from the supplier, alone or in combination, may be used to demonstrate compliance with the moisture content

requirement of 6.a. Finally, Condition 16 should be clarified to specify that reporting of water spray system winterization is a valid compliance demonstration when used in conjunction with bulk moisture content information provided by the bulk material suppliers.

15. Fourth, the Final Air Permit includes language from and citations to regulatory provisions that do not apply to the new conveyors. The inclusion of such language and citations is not necessary to ensure compliance with the Act, and creates confusion regarding KCBX's obligations under the Final Air Permit. Accordingly, such language and citations should be deleted, as follows:

a. In Condition 3.a., "subject to the requirements of 35 Ill. Adm. Code 212.122" should be revised to state "subject to the requirements of 35 Ill Adm. Code 212.301, 212.316(b) through 212.316(d) or 212.316(f)." The reference to 35 Ill. Adm. Code 212.122 should be removed because the Facility does not have combustion units that are covered by that section;

b. In Condition 3.d., "grinding mills," "bucket elevators," "bagging operations," and "storage bins" should be deleted because the Facility does not have these emission units;

c. In Condition 3.f., "or in 35 Ill. Adm. Code 212 Subparts R and S" should be deleted because the Facility is not subject to Subparts R and S;

d. Condition 10.c. should be deleted in its entirety because it involves particulate matter ("PM") emission testing. The only stacks at

the Facility are associated with engine exhaust; thus PM emission testing is not required;

e. Condition 10.d. should be deleted in its entirety because it involves PM flow measurement. The only stacks at the Facility are associated with engine exhaust; thus PM flow measurement is not required; and

f. Condition 14.b.iii. should be deleted in its entirety because it is inapplicable to the Facility.

16. As set forth above, Illinois EPA has included conditions in the Final Air Permit that are not required by the Act or regulations promulgated thereunder, and are not necessary to correct, detect, or prevent noncompliance with, or to otherwise accomplish the purposes of, the Act or regulations. Therefore, the Board should order that the permit be revised as detailed above, so as to result in a permit that is applicable to the operations at the Facility.

WHEREFORE, Petitioner KCBX TERMINALS COMPANY petitions the Illinois Pollution Control Board for a hearing on the Illinois Environmental Protection Agency's action to issue the Final Air Permit with these provisions.

Respectfully submitted,

KCBX TERMINALS COMPANY
Petitioner,

Dated: June 27, 2008

By: /s/ Katherine D. Hodge
Katherine D. Hodge

Katherine D. Hodge
Lauren C. Lurkins
HODGE DWYER ZEMAN
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available to the Illinois EPA or USEPA which may include, but is not limited to, monitoring results, opacity observations, review of operating and maintenance procedures, and inspection of the source.

- c. Pursuant to 40 CFR 60.252(c), on and after the date on which the performance test required to be conducted by 40 CFR 60.8 is completed, an owner or operator subject to the provisions of 40 CFR 60 Subpart Y shall not cause to be discharged into the atmosphere from any coal processing and conveying equipment, coal storage system, or coal transfer and loading system processing coal, gases which exhibit 20 percent opacity or greater.
- 3a. Pursuant to 35 Ill. Adm. Code 212.123(a), no person shall cause or allow the emission of smoke or other particulate matter, with an opacity greater than 30 percent, into the atmosphere from any emission unit other than those emission units subject to the requirements of 35 Ill. Adm. Code 212.122.
- b. Pursuant to 35 Ill. Adm. Code 212.123(b), the emission of smoke or other particulate matter from any such emission unit may have an opacity greater than 30 percent but not greater than 60 percent for a period or periods aggregating 8 minutes in any 60 minute period provided that such opaque emissions permitted during any 60 minute period shall occur from only one such emission unit located within a 305 m (1000 ft) radius from the center point of any other such emission unit owned or operated by such person, and provided further that such opaque emissions permitted from each such emission unit shall be limited to 3 times in any 24 hour period.
- c. Pursuant to 35 Ill. Adm. Code 212.301, no person shall cause or allow the emission of fugitive particulate matter from any process, including any material handling or storage activity, that is visible by an observer looking generally toward the zenith at a point beyond the property line of the emission source.
- d. Pursuant to 35 Ill. Adm. Code 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.
- e. Pursuant to 35 Ill. Adm. Code 212.316(b), no person shall cause or allow fugitive particulate matter emissions generated from crushing or screening, of slag, stone, coke or coal to exceed an opacity of 10 percent.
- f. Pursuant to 35 Ill. Adm. Code 212.316(f), unless an emission unit has been assigned a particulate matter, PM_{10} , or fugitive particulate matter emissions limitation elsewhere in 35 Ill. Adm. Code 212.316, or in 35 Ill. Adm. Code 212 Subparts R or S, no person shall cause or allow

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fugitive particulate matter emissions from any emission unit to exceed an opacity of 20 percent.

- g. Pursuant to 35 Ill. Adm. Code 212.321(a), no person shall cause or allow the emission of particulate matter into the atmosphere in any one hour period from any new process emission unit which, either alone or in combination with the emission of particulate matter from all other similar process emission units for which construction or modification commenced on or after April 14, 1972, at a source or premises, exceeds the allowable emission rates specified in 35 Ill. Adm. Code 212.321(c).
 - h. Pursuant to 35 Ill. Adm. Code 212.324(b), except as otherwise provided in 35 Ill. Adm. Code 212.324(d), no person shall cause or allow the emission into the atmosphere, of PM₁₀ from any process emission unit to exceed 68.7 mg/scm (0.03 gr/scf) during any one hour period.
 - i. Pursuant to 35 Ill. Adm. Code 212.700(a), 35 Ill. Adm. Code 212 Subpart U (Additional Control Measures) shall apply to those sources in the areas designated in and subject to 35 Ill. Adm. Code 212.324(a)(1) or 212.423(a) and that have actual annual source-wide emissions of PM₁₀ of at least fifteen (15) tons per year.
4. Pursuant to 35 Ill. Adm. Code 212.324(d), the mass emission limits contained in 35 Ill. Adm. Code 212.324(b) shall not apply to those emission units with no visible emissions other than fugitive particulate matter; however, if a stack test is performed, this subsection is not a defense finding of a violation of the mass emission limits contained in 35 Ill. Adm. Code 212.324(b).
- 5a. Pursuant to 35 Ill. Adm. Code 212.324(f), for any process emission unit subject to 35 Ill. Adm. Code 212.324(a), the owner or operator shall maintain and repair all air pollution control equipment in a manner that assures that the emission limits and standards in 35 Ill. Adm. Code 212.324 shall be met at all times. 35 Ill. Adm. Code 212.324 shall not affect the applicability of 35 Ill. Adm. Code 201.149. Proper maintenance shall include the following minimum requirements:
- i. Visual inspections of air pollution control equipment;
 - ii. Maintenance of an adequate inventory of spare parts; and
 - iii. Expeditious repairs, unless the emission unit is shutdown.
- b. Pursuant to 35 Ill. Adm. Code 212.701(a), those sources subject to 35 Ill. Adm. Code 212 Subpart U shall prepare contingency measure plans reflecting the PM₁₀ emission reductions set forth in 35 Ill. Adm. Code 212.703. ¶These plans shall become federally enforceable permit conditions. Such plans shall be submitted to the Illinois EPA by November 15, 1994. Notwithstanding the foregoing, sources that become subject to the provisions of 35 Ill. Adm. Code 212 Subpart U after July 1, 1994, shall submit a contingency measure plan to the Illinois EPA for review and approval within ninety (90) days after the date such

source or sources became subject to the provisions of 35 Ill. Adm. Code 212 Subpart U or by November 15, 1994, whichever is later. The Illinois EPA shall notify those sources requiring contingency measure plans, based on the Illinois EPA's current information; however, the Illinois EPA's failure to notify any source of its requirement to submit contingency measure plans shall not be a defense to a violation of 35 Ill. Adm. Code 212 Subpart U and shall not relieve the source of its obligation to timely submit a contingency measure plan.

- c. Pursuant to 35 Ill. Adm. Code 212.703(a), all sources subject to 35 Ill. Adm. Code 212 Subpart U shall submit a contingency measure plan. The contingency measure plan shall contain two levels of control measures:
 - i. Level I measures are measures that will reduce total actual annual source-wide fugitive emissions of PM_{10} subject to control under 35 Ill. Adm. Code 212.304, 212.305, 212.306, 212.308, 212.316(a) through (e), 212.424 or 212.464 by at least 15%.
 - ii. Level II measures are measures that will reduce total actual annual source-wide fugitive emissions of PM_{10} subject to control under 35 Ill. Adm. Code 212.304, 212.305, 212.306, 212.308, 212.316(a) through (e), 212.424 or 212.464 by at least 25%.
- d. Pursuant to 35 Ill. Adm. Code 212.703(b), a source may comply with 35 Ill. Adm. Code 212 Subpart U through an alternative compliance plan that provides for reductions in emissions equal to the level of reduction of fugitive emissions as required at 35 Ill. Adm. Code 212.703(a) and which has been approved by the Illinois EPA and USEPA as federally enforceable permit conditions. If a source elects to include controls on process emission units, fuel combustion emission units, or other fugitive emissions of PM_{10} not subject to 35 Ill. Adm. Code 212.304, 212.305, 212.306, 212.308, 212.316(a) through (e), 212.424 or 212.464 at the source in its alternative control plan, the plan must include a reasonable schedule for implementation of such controls, not to exceed two (2) years. This implementation schedule is subject to Illinois EPA review and approval.
- e. Pursuant to 35 Ill. Adm. Code 212.704(b), if there is a violation of the ambient air quality standard for PM_{10} as determined in accordance with 40 CFR Part 50, Appendix K, the Illinois EPA shall notify the source or sources the Illinois EPA has identified as likely to be causing or contributing to one or more of the exceedences leading to such violation, and such source or sources shall implement Level I or Level II measures, as determined pursuant to 35 Ill. Adm. Code 212.704(e). The source or sources so identified shall implement such measures corresponding to fugitive emissions within ninety (90) days after receipt of a notification and shall implement such measures corresponding to any nonfugitive emissions according to the approved schedule set forth in such source's alternative control plan. Any source identified as causing or contributing to a violation of the ambient air quality standard for PM_{10} may appeal any finding of

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culpability by the Illinois EPA to the Illinois Pollution Control Board pursuant to 35 Ill. Adm. Code 106 Subpart J.

- f. Pursuant to 35 Ill. Adm. Code 212.704(e), the Illinois EPA shall require that sources comply with the Level I or Level II measures of their contingency measure plans, pursuant 35 Ill. Adm. Code 212.704(b), as follows:
- i. Level I measures shall be required when the design value of a violation of the 24-hour ambient air quality standard, as computed pursuant to 40 CFR 50, Appendix K, is less than or equal to 170 ug/m³.
 - ii. Level II measures shall be required when the design value of a violation of the 24-hour ambient air quality standard, as computed pursuant to 40 CFR 50, Appendix K, exceeds 170 ug/m³.
- 6a. The surface moisture content of the bulk material handled by the source shall be at least 1.5% by weight. The Permittee shall show compliance with this requirement as follows:
- i. In lieu of natural moisture, water sprays shall be used on the emission units associated with the material handling operations (e.g., material transfer, screening and crushing) as necessary, except when weather conditions are below or expected to fall below freezing temperatures, to produce a moisture content of 1.5% by weight or higher to reduce particulate matter emissions and to maintain compliance with the applicable visible emissions standards for each piece of processing equipment used in the production process; or
 - ii. Demonstrate compliance with Condition 6(a) by following the testing requirements of Condition 12.
- 7a. The emissions from and the operation of the material handling operations (conveying, crushing and screening) shall not exceed the following limits:
- i. PM₁₀ emission shall not exceed 7.9 tons/month and 79 tons/year.
 - ii. PM emissions shall not exceed 16 tons/month and 160 tons/year.
 - iii. These limits are based on the maximum amount of material handled and standard emission factors (Table 11.19.2-2, AP-42, Volume I, Fifth Edition, Update 2004, August 2004 and Section 13.2.4, AP-42, Volume I, Fifth Edition, November 2006). PM₁₀ and PM emissions shall be calculated and recorded using the equation:

$$E = [(T \times F_m) + (S \times F_s) + (C \times F_c)]/2000$$

Where:

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E = Total PM₁₀ or PM emissions, (tons);
T = Amount of bulk material transferred, (tons);
E_m = (k * 0.0032 * N) * [((U/5)^{1.3}) / ((M/2)^{1.4})];

Where:

k = 0.35 for PM₁₀;
= 0.74 for PM;

U = mean wind speed, (miles/hour);

M = material moisture content, (%);

N = Number of material drop points;

S = Amount of bulk material Screened, (tons);

F_s = 0.0022 lb PM/ton;
= 0.00074 lb PM₁₀/ton;

C = tons of bulk material Crushed, (tons);

F_c = 0.0012 lb PM/ton; and
= 0.00054 lb PM₁₀/ton.

- b. Compliance with the annual limits of this permit shall be determined on a monthly basis from the sum of the data for the current month plus the preceding 11 months (running 12 month total).
- 8a. Pursuant to 40 CFR 60.8(a), within 60 days after achieving the maximum production rate at which the affected facility will be operated, but not later than 180 days after initial startup of such facility and at such other times as may be required by the Illinois EPA or USEPA under section 114 of the Clean Air Act, the owner or operator of such facility shall conduct performance (s) and furnish the Illinois EPA or USEPA a written report of the results of such performance test(s).
- b. Pursuant to 40 CFR 60.8(b), performance tests shall be conducted and data reduced in accordance with the test methods and procedures contained in each applicable subpart of 40 CFR Part 60 unless the Illinois EPA or USEPA:
- i. Specifies or approves, in specific cases, the use of a reference method with minor changes in methodology;
 - ii. Approves the use of an equivalent method;
 - iii. Approves the use of an alternative method the results of which he has determined to be adequate for indicating whether a specific source is in compliance;

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- iv. Waives the requirement for performance tests because the owner or operator of a source has demonstrated by other means to the Illinois EPA's or USEPA's satisfaction that the affected facility is in compliance with the standard; or
 - v. Approves shorter sampling times and smaller sample volumes when necessitated by process variables or other factors. Nothing in this paragraph shall be construed to abrogate the Illinois EPA's or USEPA's authority to require testing under section 114 of the Clean Air Act.
- c. Pursuant to 40 CFR 60.8(c), performance tests shall be conducted under such conditions as the Illinois EPA or USEPA shall specify to the plant operator based on representative performance of the affected facility. The owner or operator shall make available to the Illinois EPA or USEPA such records as may be necessary to determine the conditions of the performance tests. Operations during periods of startup, shutdown, and malfunction shall not constitute representative conditions for the purpose of a performance test nor shall emissions in excess of the level of the applicable emission limit during periods of startup, shutdown, and malfunction be considered a violation of the applicable emission limit unless otherwise specified in the applicable standard.
- d. Pursuant to 40 CFR 60.8(d), the owner or operator of an affected facility shall provide the Illinois EPA or USEPA at least 30 days prior notice of any performance test, except as specified under other subparts, to afford the Illinois EPA or USEPA the opportunity to have an observer present. If after 30 days notice for an initially scheduled performance test, there is a delay (due to operational problems, etc.) in conducting the scheduled performance test, the owner or operator of an affected facility shall notify the Illinois EPA or USEPA as soon as possible of any delay in the original test date, either by providing at least 7 days prior notice of the rescheduled date of the performance test, or by arranging a rescheduled date with the Illinois EPA or USEPA by mutual agreement.
- e. Pursuant to 40 CFR 60.8(e), the owner or operator of an affected facility shall provide, or cause to be provided, performance testing facilities as follows:
- i. Sampling ports adequate for test methods applicable to such facility. This includes:
 - A. Constructing the air pollution control system such that volumetric flow rates and pollutant emission rates can be accurately determined by applicable test 1 methods and procedures; and
 - B. Providing a stack or duct free of cyclonic flow during performance tests, as demonstrated by applicable test methods and procedures.

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- ii. Safe sampling platform(s).
 - iii. Safe access to sampling platform(s).
 - iv. Utilities for sampling and testing equipment.
- f. Pursuant to 40 CFR 60.8(f), unless otherwise specified in the applicable subpart of 40 CFR Part 60, each performance test shall consist of three separate runs using the applicable test method. Each run shall be conducted for the time and under the conditions specified in the applicable standard under 40 CFR Part 60. For the purpose of determining compliance with an applicable standard under 40 CFR Part 60, the arithmetic means of results of the three runs shall apply. In the event that a sample is accidentally lost or conditions occur in which one of the three runs must be discontinued because of forced shutdown, failure of an irreplaceable portion of the sample train, extreme meteorological conditions, or other circumstances, beyond the owner or operator's control, compliance may, upon the Illinois EPA's or USEPA's approval, be determined using the arithmetic mean of the results of the two other runs.
- g. Pursuant to 40 CFR 60.254(a), in conducting the performance tests required in 40 CFR 60.8, the owner or operator shall use as reference methods and procedures the test methods in appendix A of 40 CFR Part 60 or other methods and procedures as specified in 40 CFR 60.254, except as provided in 40 CFR 60.8(b).
- h. Pursuant to 40 CFR 60.254(b), the owner or operator shall determine compliance with the particular matter standards in 40 CFR 60.252 as follows:
- i. Method 5 shall be used to determine the particulate matter concentration. The sampling time and sample volume for each run shall be at least 60 minutes and 0.85 dscm (30 dscf). Sampling shall begin no less than 30 minutes after startup and shall terminate before shutdown procedures begin.
 - ii. Method 9 and the procedures in 40 CFR 60.11 shall be used to determine opacity.
- 9a. Pursuant to 35 Ill. Adm. Code 201.282, every emission source or air pollution control equipment shall be subject to the following testing requirements for the purpose of determining the nature and quantities of specified air contaminant emissions and for the purpose of determining ground level and ambient air concentrations of such air contaminants:
- i. Testing by Owner or Operator. The Illinois EPA may require the owner or operator of the emission source or air pollution control equipment to conduct such tests in accordance with procedures adopted by the Illinois EPA, at such reasonable times as may be

specified by the Illinois EPA and at the expense of the owner or operator of the emission source or air pollution control equipment. The Illinois EPA may adopt procedures detailing methods of testing and formats for reporting results of testing. Such procedures and revisions thereto, shall not become effective until filed with the Secretary of State, as required by the APA Act. All such tests shall be made by or under the direction of a person qualified by training and/or experience in the field of air pollution testing. The Illinois EPA shall have the right to observe all aspects of such tests.

- ii. Testing by the Illinois EPA. The Illinois EPA shall have the right to conduct such tests at any time at its own expense. Upon request of the Illinois EPA, the owner or operator of the emission source or air pollution control equipment shall provide, without charge to the Illinois EPA, necessary holes in stacks or ducts and other safe and proper testing facilities, including scaffolding, but excluding instruments and sensing devices, as may be necessary.
- b. Testing required by Condition 10 shall be performed upon a written request from the Illinois EPA by a qualified individual or independent testing service.
- 10a. Pursuant to 35 Ill. Adm. Code 212.107, for both fugitive and non-fugitive particulate matter emissions, a determination as to the presence or absence of visible emissions from emission units shall be conducted in accordance with Method 22, 40 CFR Part 60, Appendix A, except that the length of the observing period shall be at the discretion of the observer, but not less than one minute. 35 Ill. Adm. Code 212 Subpart A shall not apply to 35 Ill. Adm. Code 212.301.
- b. Pursuant to 35 Ill. Adm. Code 212.109, except as otherwise provided in 35 Ill. Adm. Code Part 212, and except for the methods of data reduction when applied to 35 Ill. Adm. Code 212.122 and 212.123, measurements of opacity shall be conducted in accordance with Method 9, 40 CFR Part 60, Appendix A, and the procedures in 40 CFR 60.675(c) and (d), if applicable, except that for roadways and parking areas the number of readings required for each vehicle pass will be three taken at 5-second intervals. The first reading shall be at the point of maximum opacity and second and third readings shall be made at the same point, the observer standing at right angles to the plume at least 15 feet away from the plume and observing 4 feet above the surface of the roadway or parking area. After four vehicles have passed, the 12 readings will be averaged, pursuant to 35 Ill. Adm. Code 212.109.
- c. Pursuant to 35 Ill. Adm. Code 212.110(a), measurement of particulate matter emissions from stationary emission units subject to 35 Ill. Adm. Code Part 212 shall be conducted in accordance with 40 CFR Part 60, Appendix A, Methods 5, 5A, 5D, or 5E, pursuant to 35 Ill. Adm. Code 212.110(a).

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- d. Pursuant to 35 Ill. Adm. Code 212.110(b), the volumetric flow rate and gas velocity shall be determined in accordance with 40 CFR Part 60, Appendix A, Methods 1, 1A, 2, 2A, 2C, 2D, 3, and 4, pursuant to 35 Ill. Adm. Code 212.110(b).
 - e. Pursuant to 35 Ill. Adm. Code 212.110(c), upon a written notification by the Illinois EPA, the owner or operator of a particulate matter emission unit subject to 35 Ill. Adm. Code Part 212 shall conduct the applicable testing for particulate matter emissions, opacity, or visible emissions at such person's own expense, to demonstrate compliance. Such test results shall be submitted to the Illinois EPA within thirty (30) days after conducting the test unless an alternative time for submittal is agreed to by the Illinois EPA, pursuant to 35 Ill. Adm. Code 212.110(c).
- 11a. At least 60 days prior to the actual date of testing, the Permittee shall submit a written test plan to the Illinois EPA for review and approval. This plan shall include as a minimum:
- i. The name (or other identification) of the emission unit(s) to be tested and the name and address of the facility at which they are located;
 - ii. The name and address of the independent testing service(s) performing the tests, with the names of the individuals who may be performing sampling and analysis and their experience with similar tests;
 - iii. The specific determinations of emissions and/or performance which are intended to be made, including the site(s) in the ductwork or stack at which sampling will occur;
 - iv. The specific conditions under which testing will be performed, including a discussion of why these conditions will be representative of maximum emissions and minimum control performance, the values of operating parameters for the emission unit, including associated control equipment, at or within which compliance is intended to be shown, and the means by which the operating parameters will be determined;
- b. i. The Permittee shall provide the Illinois EPA with written notification of testing at least thirty (30) days prior to testing to enable the Illinois EPA to have an observer present. This notification shall include the name of emission unit(s) to be tested, scheduled date and time, and contact person with telephone number.
- ii. If testing is delayed, the Permittee shall promptly notify the Illinois EPA by facsimile, at least 5 days prior to the scheduled date of testing or immediately, if the delay occurs in the 5 days prior to the scheduled date. This notification shall also

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include the new date and time for testing, if set, or a separate notification shall be sent with this information when it is set.

- c. The Permittee shall submit the Test Report for this testing, accompanied by a cover letter stating whether or not compliance was shown, to the Illinois EPA without delay, within 30 days after the results are compiled, but no later than sixty (60) days after the date of testing or sampling. The Test Report shall include as a minimum:
 - i. General information describing the test, including the name and identification of the emission source which was tested, date of test, names of personnel performing the tests, and Illinois EPA observers, if any;
 - ii. A summary of results;
 - iii. Description of test procedures, including description of sampling points, test equipment, and test schedule;
 - iv. Detailed description of test conditions, including:
 - A. Process information, i.e., process rate, aggregate type, fuel type, and firing rate.
 - B. Control equipment information, i.e., equipment condition and operating parameters during testing.
 - v. Data and calculations, including copies of all raw data sheets and records of laboratory analyses, sample calculations, and data on equipment calibration.
- 12a. The moisture content of a representative sample of the bulk material handled by the source shall be measured at least one per week, when water spray is not being utilized, using ASTM Procedures (C566-97) for total moisture content of material.
- b. If the Permittee relies on Condition 6(a)(i) to demonstrate compliance with Condition 6(a), the Permittee shall monitor for the water spray equipment as follows:
 - i. The water supply to the spray equipment shall be equipped with a metering device used to determine water usage for the control of particulate matter emissions.
 - ii. Inspections of water spray equipment and operation (such as leaking, maintaining adequate flow, clogging of flow lines, etc.) shall be performed at least once per week when the affected aggregate processing plant is in operation.
- 13a. Pursuant to 40 CFR 60.7(b), any owner or operator subject to the provisions of 40 CFR Part 60 shall maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation

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of an affected facility; any malfunction of the air pollution control equipment; or any periods during which a continuous monitoring system or monitoring device is inoperative.

- b. Pursuant to 40 CFR 60.7(f), any owner or operator subject to the provisions of 40 CFR Part 60 shall maintain a file of all measurements, including continuous monitoring system, monitoring device, and performance testing measurements; all continuous monitoring system performance evaluations; all continuous monitoring system or monitoring device calibration checks; adjustments and maintenance performed on these systems or devices; and all other information required by 40 CFR Part 60 recorded in a permanent form suitable for inspection. The file shall be retained for at least two years following the date of such measurements, maintenance, reports, and records.
- 14a. Pursuant to 35 Ill. Adm. Code 212.110(e), the owner or operator of an emission unit subject to 35 Ill. Adm. Code Part 212 shall retain records of all tests which are performed. These records shall be retained for at least three (3) years after the date a test is performed.
- b. i. Pursuant to 35 Ill. Adm. Code 212.316(g)(1), the owner or operator of any fugitive particulate matter emission unit subject to 35 Ill. Adm. Code 212.316 shall keep written records of the application of control measures as may be needed for compliance with the opacity limitations of 35 Ill. Adm. Code 212.316 and shall submit to the Illinois EPA an annual report containing a summary of such information.
 - ii. Pursuant to 35 Ill. Adm. Code 212.316(g)(2), the records required under 35 Ill. Adm. Code 212.316(g) shall include at least the following:
 - A. The name and address of the source;
 - B. The name and address of the owner and/or operator of the source;
 - C. A map or diagram showing the location of all emission units controlled, including the location, identification, length, and width of roadways;
 - D. For application of physical or chemical control agents: the name of the agent, application rate and frequency, and total quantity of agent and, if diluted, percent of concentration, used each day; and
 - E. A log recording incidents when control measures were not used and a statement of explanation.
 - iii. Pursuant to 35 Ill. Adm. Code 212.316(g)(3), the records required under 35 Ill. Adm. Code 212.316 shall be kept and maintained for

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at least three (3) years and shall be available for inspection and copying by Illinois EPA representatives during working hours.

- iv. Pursuant to 35 Ill. Adm. Code 212.316(g)(4), the records required under 35 Ill. Adm. Code 212.316(g) shall be kept and maintained for at least three (3) years and shall be available for inspection and copying by Illinois EPA representatives during working hours.
 - c. i. Pursuant to 35 Ill. Adm. Code 212.324(g)(1), written records of inventory and documentation of inspections, maintenance, and repairs of all air pollution control equipment shall be kept in accordance with 35 Ill. Adm. Code 212.324(f).
 - ii. Pursuant to 35 Ill. Adm. Code 212.324(g)(2), the owner or operator shall document any period during which any process emission unit was in operation when the air pollution control equipment was not in operation or was malfunctioning so as to cause an emissions level in excess of the emissions limitation. These records shall include documentation of causes for pollution control equipment not operating or such malfunction and shall state what corrective actions were taken and what repairs were made.
 - iii. Pursuant to 35 Ill. Adm. Code 212.324(g)(3), a written record of the inventory of all spare parts not readily available from local suppliers shall be kept and updated.
 - iv. Pursuant to 35 Ill. Adm. Code 212.324(g)(5), the records required under 35 Ill. Adm. Code 212.324 shall be kept and maintained for at least three (3) years and shall be available for inspection and copying by Illinois EPA representatives during working hours.
- 16a. The Permittee shall maintain records of the following items so as to demonstrate compliance with the conditions of this permit:
- i. Records addressing use of good operating practices for the material handling operations at this source:
 - A. If the Permittee is relying on the requirements of Conditions 6(a)(ii) and 12(a) to demonstrate compliance with Condition 6(a), the Permittee shall maintain records of all moisture content tests performed including date, time, individual performing test, and location of sample (e.g., prior to crushing, stockpiles, etc.);
 - B. If the Permittee is relying on Condition 6(a)(i) to demonstrate compliance with Condition 6(a), the Permittee shall maintain operating logs for the water spray equipment, including dates and times of usage, malfunctions (type, date, and measures taken to correct), water usage, and dates when there was at least 0.25" of rainfall during

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- the preceding 24 hours and the water spray equipment was not operated; and
- C. The Permittee shall maintain monthly records of water consumption in the spray equipment, as determined by the meter required by Condition 12(b) and the amount of precipitation specified in Condition 16(a)(i)(B).
- ii. Name and total amount of each bulk material processed (crushed, screened and transferred), tons/month and tons/year; and
- iii. Monthly and annual emissions of PM and PM₁₀ from the material handling operations at this source, with supporting calculations (tons/month and tons/year).
- b. All records and logs required by this permit shall be retained at a readily accessible location at the source for at least five (5) years from the date of entry and shall be made available for inspection and copying by the Illinois EPA or USEPA upon request. Any records retained in an electronic format (e.g., computer) shall be capable of being retrieved and printed on paper during normal source office hours so as to be able to respond to an Illinois EPA or USEPA request for records during the course of a source inspection.
17. If there is an exceedence of or a deviation from the requirements of this permit as determined by the records required by this permit, the Permittee shall submit a report to the Illinois EPA's Compliance Section in Springfield, Illinois within 30 days after the exceedence or deviation. The report shall include the emissions released in accordance with the recordkeeping requirements, a copy of the relevant records, and a description of the exceedences or deviation and efforts to reduce emissions and future occurrences.
- 18a. Pursuant to 40 CFR 60.7(a), any owner or operator subject to the provisions of 40 CFR Part 60 shall furnish the Illinois EPA or USEPA written notification or, if acceptable to both the Illinois EPA or USEPA and the owner or operator of a source, electronic notification, as follows:
- i. A notification of the date construction (or reconstruction as defined under 40 CFR 60.15) of an affected facility is commenced postmarked no later than 30 days after such date. This requirement shall not apply in the case of mass-produced facilities which are purchased in completed form.
- ii. A notification of the actual date of initial startup of an affected facility postmarked within 15 days after such date.
- iii. A notification of any physical or operational change to an existing facility which may increase the emission rate of any air pollutant to which a standard applies, unless that change is specifically exempted under an applicable subpart or in 40 CFR

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60.14(e). This notice shall be postmarked 60 days or as soon as practicable before the change is commenced and shall include information describing the precise nature of the change, present and proposed emission control systems, productive capacity of the facility before and after the change, and the expected completion date of the change. The Illinois EPA or USEPA may request additional relevant information subsequent to this notice.

- 19a. Pursuant to 35 Ill. Adm. Code 212.110(d), a person planning to conduct testing for particulate matter emissions to demonstrate compliance shall give written notice to the Illinois EPA of that intent. Such notification shall be given at least thirty (30) days prior to the initiation of the test unless a shorter period is agreed to by the Illinois EPA. Such notification shall state the specific test methods from 35 Ill. Adm. Code 212.110 that will be used.
- b. Pursuant to 35 Ill. Adm. Code 212.316(g)(5), a quarterly report shall be submitted to the Illinois EPA stating the following: the dates any necessary control measures were not implemented, a listing of those control measures, the reasons that the control measures were not implemented, and any corrective actions taken. This information includes, but is not limited to, those dates when controls were not applied based on a belief that application of such control measures would have been unreasonable given prevailing atmospheric conditions, which shall constitute a defense to the requirements of 35 Ill. Adm. Code 212.316. This report shall be submitted to the Illinois EPA thirty (30) calendar days from the end of a quarter. Quarters end March 31, June 30, September 30, and December 31.
- c. i. Pursuant to 35 Ill. Adm. Code 212.324(g)(4), copies of all records required by 35 Ill. Adm. Code 212.324 shall be submitted to the Illinois EPA within ten (10) working days after a written request by the Illinois EPA.
- ii. Pursuant to 35 Ill. Adm. Code 212.324(g)(6), upon written request by the Illinois EPA, a report shall be submitted to the Illinois EPA for any period specified in the request stating the following: the dates during which any process emission unit was in operation when the air pollution control equipment was not in operation or was not operating properly, documentation of causes for pollution control equipment not operating or not operating properly, and a statement of what corrective actions were taken and what repairs were made.
20. Two (2) copies of required reports and notifications shall be sent to:

Illinois Environmental Protection Agency
Division of Air Pollution Control
Compliance Section (#40)
P.O. Box 19276
Springfield, Illinois 62794-9276

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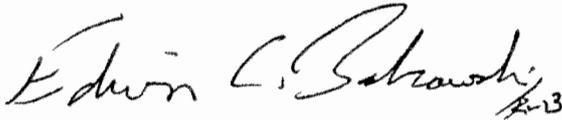
and one (1) copy shall be sent to the Illinois EPA's regional office at the following address unless otherwise indicated:

Illinois Environmental Protection Agency
Division of Air Pollution Control
9511 West Harrison
Des Plaines, Illinois 60016

The OPERATING permit application is DENIED because the Illinois Environmental Protection Act, Section 9, and 35 Ill. Adm. Code 201.160(b) might be violated.

Pursuant to Section 201.160(b), an operating permit may not be issued until the equipment has been constructed or modified in accordance with applicable conditions in this construction permit. The Illinois EPA suggests that you apply for the operating permit after the construction and testing are successfully completed in accordance with the construction permit. This information must be submitted in triplicate and should reference the application and I.D. numbers assigned above.

If you have any questions on this permit, please call John Blazis at 217/782-2113.



Edwin C. Bakowski, P.E.
Acting Manager, Permit Section
Division of Air Pollution Control

Date Signed:

5/23/2008

ECB:JPB:psj

cc: Region 1



June 4, 2008

John Blazis
Illinois Environmental Protection Agency
1021 North Grand Avenue
Springfield, IL 62702

Subject: Construction Permit for Two Electric Conveyors
Application No. 07100090
KCBX Terminals Company
ID No. 031600AHI

Dear Mr. Blazis:

On May 23, 2008 the Illinois Environmental Protection Agency (IEPA) issued an air permit to the KCBX Terminals Company (KCBX) located in Chicago, Illinois. The permit authorizes the construction of two electric conveyors at the bulk materials terminal and denies an operating permit for the same emission units. On May 29, 2009, Mr. Terry Steinert of KCBX and I had a conversation with Bob Bernoteit of the IEPA regarding these conditions. Per Mr. Bernoteit's instruction and on behalf of KCBX, Short Elliot Hendrickson (SEH) requests that the permit be modified based on the following points of clarification.

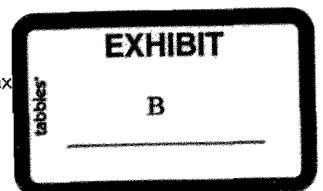
Operating Permit Denial

The title of the permit is "Construction Permit Grant - - Operating Permit Denial - - NSPS Source". The text "Operating Permit Denial" is confusing as it suggests that operation of the two new conveyors is not allowed. This contradicts language in Condition 1.b that allows the operation of the conveyors until the facility's Federally Enforceable State Operation Permit (FESOP) is re-issued. In addition, the two paragraphs on the last page of the permit state that "The OPERATING permit application is DENIED" and that "an operating permit may not be issued until the equipment has been constructed or modified in accordance with applicable conditions in this construction permit". Again, this language causes confusion on whether the operation of the conveyors is allowed.

We request that the title to the permit be replaced with "Joint Construction and Operating Permit" and that the two paragraphs on the last page of the permit which begin with "The OPERATING permit application is DENIED...." and "Pursuant to Section 201.160(b)...." be removed from the permit. Condition 1.b should remain to clearly establish that the source, including the two conveyors, can be operated under the conditions of the construction permit until the FESOP is re-issued.

NSPS Issues

Condition 2.a of the final permit incorrectly states that the two new electric conveyors are subject to the New Source Performance Standard (NSPS) for Coal Preparation Plants, 40 CFR 60 Subpart Y (NSPS Y). KCBX operates a coal screening plant subject to the NSPS Y. However, the new conveyors are not subject to NSPS Y unless they are directly connected to the screening plant. KCBX will accept a permit condition prohibiting the connection of the two new conveyors to the screening plant.



Mr. John Blazis
June 4, 2008
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Since the conveyors are not subject to NSPS Y, several conditions in the final permit must be removed: Condition 2 in its entirety, Condition 8 in its entirety, Condition 11 in its entirety, Condition 13 in its entirety, and Condition 18 in its entirety. These conditions pertain to NSPS limitations and testing.

Moisture Content

The final permit requires that KCBX maintain a surface moisture content of at least 1.5% by weight in the bulk materials handled at the site (see Condition 6.a). Compliance with this requirement can be demonstrated by recording the use of water sprays [Condition 6.a.i] or by measuring water content in a representative sample at least once per week (Conditions 6.a.ii and 12.a). Our concerns regarding these conditions follow:

- 1) Compliance demonstration requirements during the winter months are unclear. Use of water sprays is not practical and not required during freezing conditions yet the weekly moisture monitoring would apparently be required throughout the year, even though the piles would likely be snow-covered, or have a frozen surface.
- 2) Collecting a representative surface sample would disrupt the "crust" that forms on the exterior of the storage piles. This crust is a desirable feature that minimizes wind-blown dust from piles.
- 3) A primary reason for the 1.5% moisture requirement is to minimize emissions during material transfer operations. During material transfers, interior pile moisture content is a more critical parameter as the vast bulk of the stored material is interior. Since bulk materials are transferred to storage piles as they are received, a good measure of interior moisture content is the moisture content of received materials. KCBX receives a moisture analysis from the supplier with product receipts that is representative of the moisture content. This moisture content typically ranges between 8 and 11 percent by weight.

KCBX proposes to modify the permit such that KCBX would be required to operate water sprays during non-freezing conditions (Condition 6.a.i) AND maintain records showing monthly average incoming material moisture content exceeds 1.5% by weight. This approach would demonstrate that interior and exterior moisture content is maintained at acceptable levels. With this proposed revision, Condition 6.a.i should be revised to specify that this condition is a valid demonstration of compliance for the entire year, even when watering systems do not operate because of freezing conditions. Condition 12.b should be revised to reflect that this compliance demonstration is valid in combination with the moisture content of received materials, even when watering systems are shut down for winter. Finally, Condition 16 should be clarified to specify that reporting of the winterized water spray system is a valid compliance demonstration when used in conjunction with bulk material moisture contents provided by the bulk material suppliers.

KCBX requests that it be allowed to review any revised permit language prior to re-issuance so that any unclear permit language can be rectified. KCBX also requests that, with re-issuance, IEPA state the basis and authority under which the permit is reissued with the modified terms.

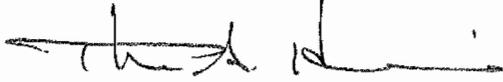
Notwithstanding the foregoing, KCBX reserves all rights to appeal any condition of the Construction Permit and/or IEPA's Operating Permit Denial issued May 23, 2008 in response to Application No. 07100090. This letter is not intended to be and should not be construed as a waiver of any rights or arguments that KCBX may have in the contest of IEPA's permit decision under applicable Illinois statutes and regulations governing such rights and procedures.

Mr. John Blazis
June 4, 2008
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Thank you for the opportunity to clarify the permit conditions surrounding this new equipment. Please contact Mr. David Bever at KCBX (773-978-8516) or me at 920-452-6603 if you have any questions regarding this revision request.

Sincerely,

SHORT ELLIOTT HENDRICKSON INC.



Thomas A. Henning, PE, CHMM
Senior Professional Engineer

cc: David Bever, KCBX Terminals Company
Terry Steinert, KCBX Terminals Company

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

| | | |
|-------------------------|---|---------------------|
| KCBX TERMINALS COMPANY, |) | |
| |) | |
| Petitioner, |) | |
| |) | |
| v. |) | PCB 08-____ |
| |) | (Air Permit Appeal) |
| ILLINOIS ENVIRONMENTAL |) | |
| PROTECTION AGENCY, |) | |
| |) | |
| Respondent. |) | |

**MOTION TO STAY THE EFFECTIVENESS
OF CONTESTED PERMIT CONDITIONS**

NOW COMES Petitioner, KCBX TERMINALS COMPANY (“KCBX”), a North Dakota corporation, by and through its attorneys, HODGE DWYER ZEMAN, pursuant to Section 10-65(b) of the Illinois Administrative Procedure Act (5 ILCS 100/10-65(b)) and pursuant to the Illinois Pollution Control Board’s (“Board”) authority to grant discretionary stays of permit conditions (*see, e.g., Community Landfill Co. and City of Morris v. Illinois EPA*, PCB Nos. 01-48 and 01-49 (Ill.Pol.Control.Bd. Oct. 19, 2000)), and hereby moves the Board to stay the effectiveness of the contested conditions of the “Construction Permit Grant – Operating Permit Denial – NSPS Source” (“Final Air Permit”) at issue in this matter.

In support of this Motion, KCBX states as follows:

1. On May 23, 2008, the Illinois Environmental Protection Agency (“Illinois EPA”) issued the Final Air Permit (Application No. 07100090) to KCBX, which included conditions that are not required by the Illinois Environmental Protection Act (“Act”) or regulations promulgated thereunder, and are not necessary to correct, detect, or prevent

noncompliance with, or to otherwise accomplish the purposes of, the Act or regulations promulgated thereunder.

2. Today, KCBX filed simultaneously with this Motion a timely Petition for Review of such permit conditions.

3. The Board may grant a stay of contested permit conditions where a petitioner has requested such a stay. *See, e.g., Midwest Generation, LLC Will County Generating Station v. Illinois EPA*, PCB No. 06-156 (Ill.Pol.Control.Bd. July 20, 2006) (granting a request for a partial stay of construction permit conditions), *North Shore Sanitary District v. Illinois EPA*, PCB No. 03-146 (Ill.Pol.Control.Bd. Mar. 20, 2003) (granting Petitioner's Motion to Stay Condition 1 pending the outcome of the appeal), *Hartford Working Group v. Illinois EPA*, PCB No. 05-74 (Ill.Pol.Control.Bd. Nov. 18, 2004) (granting Petitioner's Motion to Stay Effectiveness of Special Condition 2.0 until the Board takes final action in the appeal).

4. A stay of effectiveness of Conditions 2, 8, 11, 13, 18, 6.a.i., 12.b. and 16 of the Final Air Permit issued to KCBX on May 23, 2008, is needed to prevent irreparable harm to KCBX. Each of these Conditions would require KCBX to incur costs to comply with these Conditions, where the activities that the Conditions require either are unneeded or will not provide the Illinois EPA with the information necessary to review KCBX's compliance status. *See* Petition for Review. Further, a stay is necessary to protect KCBX's right to appeal permit conditions. That is, KCBX's appeal would be rendered meaningless if it must comply with these provisions while its appeal is pending. Finally, no adequate remedy exists at law, and KCBX has a probability of success on the merits. *See* Petition for Review.

5. The Illinois EPA, the public, and the environment will not be harmed if a stay is granted.

WHEREFORE, Petitioner, KCBX TERMINALS COMPANY, moves the Illinois Pollution Control Board to grant a Stay of Effectiveness of Conditions 2, 8, 11, 13, 18, 6.a.i., 12.b. and 16 of KCBX's May 23, 2008 Final Air Permit until the Board's final action in this matter.

Respectfully submitted,

KCBX TERMINALS COMPANY
Petitioner,

By: /s/ Katherine D. Hodge
Katherine D. Hodge

Dated: June 27, 2008

Katherine D. Hodge
Lauren C. Lurkins
HODGE DWYER ZEMAN
3150 Roland Avenue
Post Office Box 5776
Springfield, Illinois 62705-5776
(217) 523-4900

KCBX:002/Fil/Motion to Stay Effectiveness of Contested Permit Conditions