

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

**KCBX TERMINALS COMPANY,** )  
)  
**Petitioner,** )  
)  
**v.** )  
)  
**ILLINOIS ENVIRONMENTAL** )  
**PROTECTION AGENCY,** )  
)  
**Respondent.** )

**PCB No. 14-110**  
**(Air Permit Appeal)**

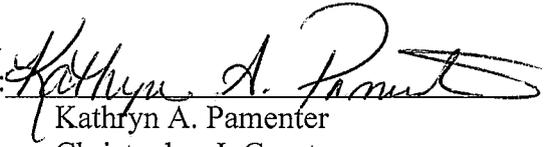
**NOTICE OF ELECTRONIC FILING**

To: *Via Facsimile*  
Katherine D. Hodge  
Edward W. Dwyer  
Matthew C. Read  
Hodge Dwyer & Driver  
3150 Roland Avenue  
Springfield, IL 62705

*Via Email*  
Bradley P. Halloran  
Hearing Officer  
Illinois Pollution Control Board  
James R. Thompson Center, Suite 11-500  
100 W. Randolph Street  
Chicago, Illinois 60601

PLEASE TAKE NOTICE that on the 21st day of April, 2014, the Respondent's Motion for Reconsideration of Order Dated April 17, 2014 was filed with the Illinois Pollution Control Board, a true and correct copy of which is attached hereto and is hereby served upon you.

ILLINOIS ENVIRONMENTAL PROTECTION  
AGENCY

By:   
Kathryn A. Pamerter  
Christopher J. Grant  
Robert Petti  
Assistant Attorneys General  
Environmental Bureau  
69 W. Washington St., 18<sup>th</sup> Floor  
Chicago, IL 60602  
(312) 814-0608  
(312) 814-5388  
(312) 814-2069

DATE: April 21, 2014

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

<b>KCBX TERMINALS COMPANY,</b>	)	
	)	
<b>Petitioner,</b>	)	
	)	
<b>v.</b>	)	<b>PCB No. 14-110</b>
	)	<b>(Air Permit Appeal)</b>
<b>ILLINOIS ENVIRONMENTAL</b>	)	
<b>PROTECTION AGENCY,</b>	)	
	)	
<b>Respondent.</b>	)	

**RESPONDENT’S MOTION FOR RECONSIDERATION OF  
ORDER DATED APRIL 17, 2014**

Respondent, Illinois Environmental Protection Agency (“Illinois EPA”), pursuant to 35 Ill. Adm. Code 101.520, respectfully requests that the Illinois Pollution Control Board (“Board”) reconsider its Order entered on April 17, 2014 (“April 17, 2014 Order”) only as it relates to the requirement that the Illinois EPA include in the Administrative Record certain of the documents listed in the Illinois EPA’s Privilege Log. In support thereof, Respondent states as follows:

**INTRODUCTION**

1. On February 21, 2014, KCBX Terminals Company (“Petitioner”) filed its Petition for Review of the Illinois EPA’s Permit Denial dated January 17, 2014 to the Request for Revision to Revised Construction Permit that Petitioner submitted to the Illinois EPA on July 23, 2013.<sup>1</sup>

2. On March 24, 2014, Respondent timely filed the Administrative Record in the above-captioned Permit Appeal and provided Petitioner with a Privilege Log with respect to documents labeled P000001-P000052.

<sup>1</sup> KCBX has advised that it does not intend to waive the 120-day deadline for the Illinois Pollution Control Board to issue its decision in this Permit Appeal. 415 ILCS 5/40 (2012). Accordingly, on March 25, 2014, a Hearing Officer Order was entered scheduling the hearing in this matter on April 29, 2014.

3. On April 2, 2014, Respondent filed its Motion for Protective Order regarding the deposition riders that Petitioner attached to its Notices of Deposition to Michael Dragovich, Robert Bernoteit, Raymond Pilapil and Joseph Kotas. In the motion, Respondent argued the applicability of the deliberative process privilege. Respondent also included a footnote regarding the attorney-client privilege so as to not waive such privilege. On April 4, 2014, Petitioner filed its response.

4. On April 7, 2014, Petitioner filed a Motion to Supplement the Administrative Record ("Motion to Supplement"), in which Petitioner sought, among other things, that the documents listed in the Privilege Log be included in the Administrative Record.

5. On April 8, 2014, the Hearing Officer denied Respondent's Motion for Protective Order, finding (a) the deliberative process privilege not applicable to the production that the Petitioner requested through the deposition riders and (b) that the Illinois EPA had not established that the attorney-client privilege applied to the requested production. In ruling on the attorney-client privilege issue, the Hearing Officer relied upon *Lake County Forest Preserve Dist. v. Neil Ostro et al.*, PCB No. 92-80, 1993 WL 151785 (April 22, 1993) and *Illinois Env'tl Protection Agency v. Celotex Corp.*, PCB No. 79-145, 1984 WL 37590 (Dec. 6, 1984).

6. On April 9 and 10, 2014, Petitioner took the depositions of Michael Dragovich, Robert Bernoteit and Raymond Pilapil in Springfield, Illinois. On April 11, 2014, Petitioner took the deposition of Joseph Kotas in Chicago, Illinois. On April 14 and 15, 2014, Respondent took the depositions of Michael Estadt and Terry Steinert in Chicago, Illinois.

7. On April 11, 2014, Petitioner filed its Motion for Leave to File Amendment to Motion to Supplement the Record, seeking to have the actual Privilege Log included in the Administrative Record.

8. On April 14, 2014, Respondent filed its Interlocutory Appeal from Hearing Officer's April 8, 2014 Order, to which Petitioner responded on April 15, 2014.

9. On April 14, 2014, Respondent filed its response to the Motion to Supplement, to which Petitioner filed a motion for leave to file a reply on April 15, 2014. On April 15, 2014, Respondent filed its response to Petitioner's Motion for Leave to File Amendment to Motion to Supplement the Record.

10. On April 17, 2014, the Board issued its Order regarding, among other things, the Interlocutory Appeal and the Motion to Supplement. As it relates to the documents listed in the Privilege Log, the Board stated that it "agrees with the hearing officer's finding 'that the Agency has failed to establish that any privilege, including the attorney-client privilege, applies to the requested production.'" (April 17, 2014 Order at pp. 5, 25-27 (quoting April 8, 2014 Order)). Without further discussion, the Board directed the Illinois EPA to include in the Administrative Record all of the documents listed in the Privilege Log labeled P000001-P000052.

11. Respondent seeks reconsideration of the Board's April 17, 2014 Order only with respect to the emails attached hereto as Exhibit A. A description of such emails follows:<sup>2</sup>

- \* Michael Dragovich's request for legal advice regarding a draft permit, and the legal advice of Chris Pressnall, Assistant Counsel in the Illinois EPA's Division of Legal Counsel (P000023-P000024).
- \* Bob Bernoteit's request for legal advice regarding the permit application, and Chris Pressnall's legal advice in response (P000025).
- \* Brad Frost's request for legal advice regarding a fact sheet, and Chris Pressnall's legal advice in response (P000026).

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<sup>2</sup> Michael Dragovich, Bob Bernoteit and Julie Armitage are employees within the Illinois EPA's Bureau of Air, and Brad Frost works on community relations matters for the Illinois EPA.

- \* Bob Bernoteit's and Julie Armitage's requests for legal advice regarding a draft "Wells letter" and draft permit denial letter, and the responsive legal advice of James Morgan, Deputy General Counsel for Air Enforcement in the Illinois EPA's Division of Legal Counsel (P000030-P000033).<sup>3</sup>
- \* James Morgan's legal advice regarding Petitioner's January 13, 2014 letter and the draft permit denial letter (P000040-P000044).

## ARGUMENT

### **A. Standard for Motions for Reconsideration.**

Section 101.520 of the Board's procedural rules provides for motions for reconsideration or modification of a final Board order. 35 Ill. Adm. Code 101.520. A motion to reconsider "may be brought 'to bring to the [Board's] attention newly discovered evidence which was not available at the time of the hearing, changes in the law or errors in the [Board's] previous application of existing law.'" *T-Town Drive Thru, Inc. v. Illinois Environmental Protection Agency*, PCB No. 07-85, 2008 WL 2568513 at \*1 (June 19, 2008) (quoting *Citizens Against Regional Landfill v. County Board of Whiteside County*, PCB No. 92-156, slip op. at 2 (Mar. 11, 1993) (citing *Korogluyan v. Chicago Title & Trust Co.*, 213 Ill. App. 3d 622, 627 (1st Dist. 1991))); *see also* 35 Ill. Adm. Code 101.902.

### **B. An In Camera Review of the Attorney-Client Privileged Emails Included in Exhibit A is Necessary.**

Under the attorney-client privilege, when "legal advice of any kind is sought from a professional legal advisor in his capacity as such, the communications relating to that purpose, made in confidence by the client, are protected from disclosure. . . ." *Fischel & Kahn, Ltd. v. van Straaten Gallery, Inc.*, 189 Ill.2d 579, 584 (2000). The "purpose of the attorney-client privilege is to encourage and promote full and frank consultation between a client and legal advisor by removing the fear of compelled disclosure of information." *Id.* at 584-85 (quoting *Waste*

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<sup>3</sup> Included in P000030-P000033 is a "Page 2" of the email chain, which was inadvertently not included in the Privilege Log.

*Management, Inc. v. Int'l Surplus Lines Ins. Co.*, 144 Ill.2d 178, 190 (1991) (quoting *Consolidation Coal Co. v. Bucyrus-Erie Co.*, 89 Ill.2d 103, 117-18 (1982))). *In camera* inspections are “an appropriate mechanism for evaluating whether a communication between an attorney and his client is protected by the attorney-client privilege.” *In re Marriage of Granger*, 197 Ill. App. 3d 363, 374 (5<sup>th</sup> Dist. 1990).

In its April 17, 2014 Order, the Board upheld the Hearing Officer’s determination regarding the applicability of the attorney-client privilege, including the Hearing Officer’s reliance upon *Lake County Forest Preserve*, 1993 WL 151785, and *Celotex Corp.*, 1984 WL 37590. However, in doing so, the Board did not provide for an *in camera* inspection of the documents listed in the Privilege Log, as set forth in such decisions. In *Lake County Forest Preserve Dist.*, the Board directed the respondent to produce all documents to the hearing officer for an *in camera* inspection to determine whether such documents were privileged as the respondent asserted. 1993 WL 151785 at \*2 (citing *Anderson v. St. Mary’s Hosp.*, 101 Ill. App. 3d 596, 599 (5th Dist. 1981) (“[i]n the absence of other sufficient proof of the claimed privilege (attorney-client), the *in camera* inspection of the disputed documents ordered by the trial court appears to us to be a reasonable effort by it to find a basis to protect the privilege if it existed, and to prevent its application where it might not exist”). Similarly, in *Celotex*, the Board specifically enumerated the hearing officer’s authority to conduct “*in camera* inspections and issue protective orders to prevent public disclosure of discovery material secured by parties.” *Celotex*, 1984 WL 37590 at \*1.

The authority relied on by the Board in its April 17, 2014 Order establishes that an *in camera* inspection of the emails included in Exhibit A must be conducted before requiring Respondent to produce them. The April 17, 2014 Order, though, does not provide for such

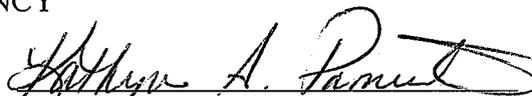
review. To preserve the Illinois EPA's attorney-client privilege with respect to requests for legal advice from attorneys in the Division of Legal Counsel and the responses thereto, Respondent requests that the Board reconsider its ruling and allow for an *in camera* review of the emails in Exhibit A. Directing the Illinois EPA to produce the emails in Exhibit A without such an inspection is prejudicial to the Illinois EPA.

**CONCLUSION**

Based on the foregoing, Respondent respectfully requests that the Board grant this Motion for Reconsideration and order the Hearing Officer to conduct an *in camera* review of the emails included in Exhibit A.

ILLINOIS ENVIRONMENTAL PROTECTION  
AGENCY

By:



KATHRYN A. PAMENTER  
CHRISTOPHER J. GRANT  
ROBERT PETTI  
Assistant Attorneys General  
Environmental Bureau  
69 W. Washington, 18<sup>th</sup> Floor  
Chicago, Illinois 60602  
(312) 814-0608  
(312) 814-5388  
(312) 814-2069

**EXHIBIT A**

031600GSF  
cat:03m

**Dragovich, Michael**

---

**From:** Pressnall, Chris  
**Sent:** Thursday, October 10, 2013 11:18 AM  
**To:** Dragovich, Michael  
**Cc:** Bernoteit, Bob; Layman, Robb; Armitage, Julie  
**Subject:** RE: KCBX I.D. No. 031600GSF

Mike -

*Redacted*

Christopher Pressnall  
Assistant Counsel  
Illinois EPA  
(217) 782-5544  
[chris.pressnall@illinois.gov](mailto:chris.pressnall@illinois.gov)

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---

**From:** Dragovich, Michael  
**Sent:** Thursday, October 10, 2013 11:12 AM  
**To:** Pressnall, Chris  
**Cc:** Bernoteit, Bob; Layman, Robb  
**Subject:** KCBX I.D. No. 031600GSF

Chris;

*Redacted*

See attachment above for draft

permit. My changes are highlighted in yellow since the last revised construction permit was issued April 18, 2013. The 90<sup>th</sup> day due date to issue the permit is Monday, October 21, 2013. My last day to issue the permit is Thursday, October 17, 2013.

Thanks,  
Mike Dragovich

IEPA - DIVISION OF RECORDS MANAGEMENT  
EXEMPT

NOV 07 2013

REVIEWER EAV

Document 6

031600GSF  
Cat: 03M

**Dragovich, Michael**

---

**From:** Pressnall, Chris  
**Sent:** Wednesday, October 16, 2013 1:36 PM  
**To:** Dragovich, Michael  
**Cc:** Bernoteit, Bob; Layman, Robb  
**Subject:** RE: KCBX I.D. No. 031600GSF

Mike -

*Redacted*

Christopher Pressnall  
Assistant Counsel  
Illinois EPA  
(217) 782-5544  
[chris.pressnall@illinois.gov](mailto:chris.pressnall@illinois.gov)

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---

**From:** Dragovich, Michael  
**Sent:** Thursday, October 10, 2013 11:12 AM  
**To:** Pressnall, Chris  
**Cc:** Bernoteit, Bob; Layman, Robb  
**Subject:** KCBX I.D. No. 031600GSF

Chris,

*Redacted*

See attachment above for draft

permit. My changes are highlighted in yellow since the last revised construction permit was issued April 18, 2013. The 90<sup>th</sup> day due date to issue the permit is Monday, October 21, 2013. My last day to issue the permit is Thursday, October 17, 2013.

Thanks,  
Mike Dragovich

EPA - DIVISION OF RECORDS MANAGEMENT  
EXEMPT

NOV 07 2013

REVIEWER EAV

Document 5

031600GSF  
JM

**Dragovich, Michael**

**From:** Pressnall, Chris  
**Sent:** Friday, October 18, 2013 10:04 AM  
**To:** Bernoteit, Bob  
**Cc:** Armitage, Julie; Ross, Jim; Brodsky, Valeriy; Dragovich, Michael  
**Subject:** RE: KCBX (031600GSF, 07050082)

EPA-DIVISION OF RECORDS MANAGEMENT  
EXEMPT

JAN 30 2013

ment 19

REVIEWER RDH

Bob -

*Redacted*

Christopher Pressnall  
Assistant Counsel  
Illinois EPA  
(217) 782-5544  
[chris.pressnall@illinois.gov](mailto:chris.pressnall@illinois.gov)

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**From:** Bernoteit, Bob  
**Sent:** Friday, October 18, 2013 8:19 AM  
**To:** Pressnall, Chris  
**Cc:** Armitage, Julie; Ross, Jim; Brodsky, Valeriy; Dragovich, Michael  
**Subject:** KCBX (031600GSF, 07050082)

Chris,

*Redacted*

As we discussed yesterday, the 90<sup>th</sup> day for this application will be on Monday (10/21). Mike, Valeriy, and I will all be out of the office on Monday.

*Redacted*

Bob Bernoteit  
Acting Permit Section Manager,  
Illinois EPA, Division of Air Pollution Control

03/16/00G5F  
03M

EXEMPT

JAN 30 2013

Document 18

**Dragovich, Michael**

REVIEWER RDH

**From:** Pressnall, Chris  
**Sent:** Wednesday, November 06, 2013 10:30 AM  
**To:** Frost, Brad; Page, Ken  
**Cc:** Neibergall, Kurt; Brodsky, Valeriy; Dragovich, Michael; Williams, Sharonda; Armitage, Julie  
**Subject:** RE: KCBX factsheet  
**Attachments:** kcbxFACTSHEET110613cp.docx

Brad -

Attached are my comments on the draft KCBX factsheet. :

*Redacted*

Christopher Pressnall  
 Assistant Counsel  
 Illinois EPA  
 (217) 782-5544  
[chris.pressnall@illinois.gov](mailto:chris.pressnall@illinois.gov)

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**From:** Frost, Brad  
**Sent:** Tuesday, November 05, 2013 4:17 PM  
**To:** Pressnall, Chris; Page, Ken  
**Cc:** Neibergall, Kurt; Brodsky, Valeriy; Dragovich, Michael; Williams, Sharonda  
**Subject:** KCBX factsheet

*Redacted*

Brad

Brad Frost  
 Office of Community Relations  
 Illinois EPA  
 1021 North Grand Avenue, East  
 PO Box 19506  
 Springfield, IL 62794-9506  
 217/782-7027  
 217/524-5023 fax  
[brad.frost@illinois.gov](mailto:brad.frost@illinois.gov)

**Morgan, James**

---

**From:** Armitage, Julie  
**Sent:** Tuesday, December 10, 2013 12:30 PM  
**To:** Bernoteit, Bob; Morgan, James  
**Subject:** RE: Draft KBCX Well's letter and permit denial letter

Too quick on the keybd. I mean wells letter.

---

**From:** Bernoteit, Bob  
**Sent:** Tuesday, December 10, 2013 12:16 PM  
**To:** Armitage, Julie; Morgan, James  
**Subject:** RE: Draft KBCX Well's letter and permit denial letter

Julie,

It is too late to send a NOI. Did you mean "Wells" letter? Also, should I wait for Pressnall's comments on the "Wells" letter or move forward with what we have?

Bob Bernoteit  
FESOP Unit Manager,  
Illinois EPA, Division of Air Pollution Control - Permit Section

---

**From:** Armitage, Julie  
**Sent:** Tuesday, December 10, 2013 12:03 PM  
**To:** Morgan, James  
**Cc:** Bernoteit, Bob  
**Subject:** RE: Draft KBCX Well's letter and permit denial letter

*Redacted*

---

**From:** Morgan, James  
**Sent:** Tuesday, December 10, 2013 11:50 AM  
**To:** Armitage, Julie  
**Subject:** RE: Draft KBCX Well's letter and permit denial letter

*Redacted*

Jim Morgan  
Division of Legal Counsel  
Air Enforcement  
Illinois EPA  
217-524-1376

Division of Legal Counsel  
Air Enforcement  
Illinois EPA  
217-524-1376

---

**From:** Armitage, Julie  
**Sent:** Tuesday, December 10, 2013 11:44 AM  
**To:** Morgan, James  
**Subject:** RE: Draft KBCX Well's letter and permit denial letter

*Redacted*

---

**From:** Morgan, James  
**Sent:** Tuesday, December 10, 2013 11:41 AM  
**To:** Armitage, Julie  
**Subject:** FW: Draft KBCX Well's letter and permit denial letter

*Redacted*

Jim Morgan  
Division of Legal Counsel  
Air Enforcement  
Illinois EPA  
217-524-1376

---

**From:** Bernoteit, Bob  
**Sent:** Tuesday, December 10, 2013 9:04 AM  
**To:** Morgan, James; Pressnall, Chris  
**Cc:** Dragovich, Michael  
**Subject:** RE: Draft KBCX Well's letter and permit denial letter

Jim,

*Redacted*

Bob Bernoteit  
FESOP Unit Manager,  
Illinois EPA, Division of Air Pollution Control - Permit Section

---

**From:** Morgan, James  
**Sent:** Monday, December 09, 2013 11:27 AM  
**To:** Bernoteit, Bob; Pressnall, Chris  
**Cc:** Dragovich, Michael  
**Subject:** RE: Draft KBCX Well's letter and permit denial letter

*Redacted*

Jim Morgan  
Division of Legal Counsel  
Air Enforcement  
Illinois EPA  
217-524-1376

---

**From:** Bernoteit, Bob  
**Sent:** Friday, December 06, 2013 4:16 PM  
**To:** Morgan, James; Pressnall, Chris  
**Cc:** Dragovich, Michael  
**Subject:** Draft KBCX Well's letter and permit denial letter

*Redacted*

Bob Bernoteit  
FESOP Unit Manager,  
Illinois EPA, Division of Air Pollution Control - Permit Section

**Morgan, James**

---

**From:** Bernoteit, Bob  
**Sent:** Tuesday, December 10, 2013 9:04 AM  
**To:** Morgan, James; Pressnall, Chris  
**Cc:** Dragovich, Michael  
**Subject:** RE: Draft KBCX Well's letter and permit denial letter

Jim,

*Redacted*

Bob Bernoteit  
FESOP Unit Manager,  
Illinois EPA, Division of Air Pollution Control - Permit Section

---

**From:** Morgan, James  
**Sent:** Monday, December 09, 2013 11:27 AM  
**To:** Bernoteit, Bob; Pressnall, Chris  
**Cc:** Dragovich, Michael  
**Subject:** RE: Draft KBCX Well's letter and permit denial letter

*Redacted*

Jim Morgan  
Division of Legal Counsel  
Air Enforcement  
Illinois EPA  
217-524-1376

---

**From:** Bernoteit, Bob  
**Sent:** Friday, December 06, 2013 4:16 PM  
**To:** Morgan, James; Pressnall, Chris  
**Cc:** Dragovich, Michael  
**Subject:** Draft KBCX Well's letter and permit denial letter

*Redacted*

Bob Bernoteit  
FESOP Unit Manager,  
Illinois EPA, Division of Air Pollution Control - Permit Section

**Morgan, James**

---

**From:** Bernoteit, Bob  
**Sent:** Friday, December 06, 2013 4:16 PM  
**To:** Morgan, James; Pressnall, Chris  
**Cc:** Dragovich, Michael  
**Subject:** Draft KBCX Well's letter and permit denial letter  
**Attachments:** 07050082 - KCBX Terminals Company (Permit Denial).docx; 07050082 - KCBX Terminals Company (Well's Letter).docx

*Redacted*

Bob Bernoteit  
FESOP Unit Manager,  
Illinois EPA, Division of Air Pollution Control - Permit Section

**Morgan, James**

---

**From:** Morgan, James  
**Sent:** Thursday, January 16, 2014 3:49 PM  
**To:** Bernoteit, Bob; Pilapil, Ray; Armitage, Julie  
**Cc:** Pressnall, Chris; Ross, Jim; Dragovich, Michael  
**Subject:** RE: Pilapil Letter - Response to 12/10/13 Letter

*Redacted*

Jim Morgan  
Division of Legal Counsel  
Air Enforcement  
Illinois EPA  
217-524-1376

---

**From:** Bernoteit, Bob  
**Sent:** Thursday, January 16, 2014 7:58 AM  
**To:** Pilapil, Ray; Morgan, James; Armitage, Julie  
**Cc:** Pressnall, Chris; Ross, Jim; Dragovich, Michael  
**Subject:** RE: Pilapil Letter - Response to 12/10/13 Letter

Ray,

*Redacted*

In my humble opinion, the response we received to the Well's letter doesn't change anything for us. Attached is a draft of the denial that I prepared over a month ago.

Bob Bernoteit  
FESOP Unit Manager,  
Illinois EPA, Division of Air Pollution Control - Permit Section

---

**From:** Pilapil, Ray  
**Sent:** Wednesday, January 15, 2014 4:54 PM  
**To:** Morgan, James; Armitage, Julie; Bernoteit, Bob  
**Cc:** Pressnall, Chris; Ross, Jim; Dragovich, Michael  
**Subject:** RE: Pilapil Letter - Response to 12/10/13 Letter

We have to issue the denial to KCBX tomorrow (Thurs.) unless we get a waiver, Mike is out Friday and Monday's (due date) a holiday.

Bob, please provide your assessment if the response to the Well's letter changes the outcome of denying the permit in your/Mike's opinion. Additionally, has a denial letter already been drafted/ready to go?

Julie, if we don't get a waiver tomorrow, do you want us to issue the denial letter?

Please advise. Thanks.

Ray

---

**From:** Morgan, James  
**Sent:** Wednesday, January 15, 2014 9:25 AM  
**To:** Pilapil, Ray; Pressnall, Chris  
**Cc:** Armitage, Julie; Bernoteit, Bob  
**Subject:** FW: Pilapil Letter - Response to 12/10/13 Letter

*Redacted*

Jim Morgan  
Division of Legal Counsel  
Air Enforcement  
Illinois EPA  
217-524-1376

---

**From:** Angie M. Buhl [<mailto:abuhl@hddattorneys.com>]  
**Sent:** Monday, January 13, 2014 5:38 PM  
**To:** Pilapil, Ray  
**Cc:** Pressnall, Chris; Morgan, James; Katherine D. Hodge  
**Subject:** Pilapil Letter - Response to 12/10/13 Letter

Mr. Pilapil:

Please see the attached letter for your review.

Thanks,

**Angela M. Buhl**  
Paralegal  
HODGE DWYER & DRIVER  
3150 Roland Avenue  
Post Office Box 5776  
Springfield, Illinois 62705-5776  
(217) 523-4900  
(217) 523-4948 Fax  
[abuhl@hddattorneys.com](mailto:abuhl@hddattorneys.com)

**Morgan, James**

---

**From:** Morgan, James  
**Sent:** Friday, January 17, 2014 9:45 AM  
**To:** Bernoteit, Bob  
**Cc:** Pressnall, Chris  
**Subject:** RE: Pilapil Letter - Response to 12/10/13 Letter

*Redacted*

Jim Morgan  
Division of Legal Counsel  
Air Enforcement  
Illinois EPA  
217-524-1376

---

**From:** Bernoteit, Bob  
**Sent:** Friday, January 17, 2014 8:35 AM  
**To:** Armitage, Julie; Pressnall, Chris; Pilapil, Ray; Morgan, James  
**Cc:** Ross, Jim; Dragovich, Michael  
**Subject:** RE: Pilapil Letter - Response to 12/10/13 Letter

Julie,

I received, reviewed, and will be accepting the comment I received from Pressnall. I'm preparing the final letter.

Bob Bernoteit  
FESOP Unit Manager,  
Illinois EPA, Division of Air Pollution Control - Permit Section

---

**From:** Armitage, Julie  
**Sent:** Thursday, January 16, 2014 6:56 PM  
**To:** Pressnall, Chris; Bernoteit, Bob; Pilapil, Ray; Morgan, James  
**Cc:** Ross, Jim; Dragovich, Michael  
**Subject:** RE: Pilapil Letter - Response to 12/10/13 Letter

Indeed we will be moving to deny tomorrow. Last call on letter.

---

**From:** Pressnall, Chris  
**Sent:** Thursday, January 16, 2014 5:26 PM  
**To:** Bernoteit, Bob; Pilapil, Ray; Morgan, James; Armitage, Julie  
**Cc:** Ross, Jim; Dragovich, Michael  
**Subject:** RE: Pilapil Letter - Response to 12/10/13 Letter

*Redacted*

Christopher Pressnall  
Assistant Counsel

Illinois EPA  
(217) 782-5544  
[chris.pressnall@illinois.gov](mailto:chris.pressnall@illinois.gov)

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---

**From:** Bernoteit, Bob  
**Sent:** Thursday, January 16, 2014 7:58 AM  
**To:** Pilapil, Ray; Morgan, James; Armitage, Julie  
**Cc:** Pressnall, Chris; Ross, Jim; Dragovich, Michael  
**Subject:** RE: Pilapil Letter - Response to 12/10/13 Letter

Ray,

In my humble opinion *Redacted*, the response we received to the Well's letter doesn't change anything for us. Attached is a draft of the denial that I prepared over a month ago.

Bob Bernoteit  
FESOP Unit Manager,  
Illinois EPA, Division of Air Pollution Control - Permit Section

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**From:** Pilapil, Ray  
**Sent:** Wednesday, January 15, 2014 4:54 PM  
**To:** Morgan, James; Armitage, Julie; Bernoteit, Bob  
**Cc:** Pressnall, Chris; Ross, Jim; Dragovich, Michael  
**Subject:** RE: Pilapil Letter - Response to 12/10/13 Letter

We have to issue the denial to KCBX tomorrow (Thurs.) unless we get a waiver, Mike is out Friday and Monday's (due date) a holiday.

Bob, please provide your assessment if the response to the Well's letter changes the outcome of denying the permit in your/Mike's opinion. Additionally, has a denial letter already been drafted/ready to go?

Julie, if we don't get a waiver tomorrow, do you want us to issue the denial letter?

Please advise. Thanks.

Ray

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**From:** Morgan, James  
**Sent:** Wednesday, January 15, 2014 9:25 AM  
**To:** Pilapil, Ray; Pressnall, Chris  
**Cc:** Armitage, Julie; Bernoteit, Bob  
**Subject:** FW: Pilapil Letter - Response to 12/10/13 Letter

*Redacted*

*Redacted*

Jim Morgan  
Division of Legal Counsel  
Air Enforcement  
Illinois EPA  
217-524-1376

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**From:** Angie M. Buhl [<mailto:abuhl@hddattorneys.com>]  
**Sent:** Monday, January 13, 2014 5:38 PM  
**To:** Pilapil, Ray  
**Cc:** Pressnall, Chris; Morgan, James; Katherine D. Hodge  
**Subject:** Pilapil Letter - Response to 12/10/13 Letter

Mr. Pilapil:

Please see the attached letter for your review.

Thanks,

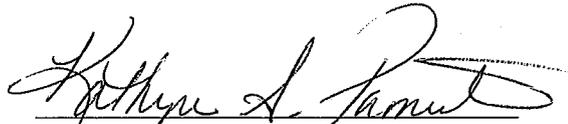
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**CERTIFICATE OF SERVICE**

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I, KATHRYN A. PAMENTER, an Assistant Attorney General, do certify that I caused to be served this 21st day of April, 2014, the attached Notice of Electronic Filing and Respondent's Motion for Reconsideration of Order Dated April 17, 2014 upon (a) Edward W. Dwyer, Katherine D. Hodge and Matthew C. Read *via facsimile* and (b) Bradley P. Halloran *via email*.

  
KATHRYN A. PAMENTER