

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

KCBX TERMINALS COMPANY,)	
)	
Petitioner,)	
)	
v.)	PCB 14-110
)	(Air Permit Appeal)
ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Respondent.)	

NOTICE OF FILING

TO: Mr. John Therriault	Mr. Bradley P. Halloran
Assistant Clerk of the Board	Hearing Officer
Illinois Pollution Control Board	Illinois Pollution Control Board
100 West Randolph Street	100 West Randolph Street
Suite 11-500	Suite 11-500
Chicago, Illinois 60601	Chicago, Illinois 60601
(VIA ELECTRONIC MAIL)	(VIA FIRST CLASS 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 **PETITIONER'S SECOND MOTION IN LIMINE REGARDING FUGITIVE DUST PLANS, A/K/A "FUGITIVE PARTICULATE OPERATING PROGRAMS"**, a copy of which is herewith served upon you.

Respectfully submitted,

KCBX TERMINALS COMPANY,
Petitioner,

Dated: April 22, 2014

By: /s/ Edward W. Dwyer
Edward W. Dwyer

Katherine D. Hodge
Edward W. Dwyer
Matthew C. Read
HODGE DWYER & DRIVER
3150 Roland Avenue
Post Office Box 5776
Springfield, Illinois 62705-5776
(217) 523-4900

CERTIFICATE OF SERVICE

I, Edward W. Dwyer, the undersigned, hereby certify that I have served the attached PETITIONER'S SECOND MOTION IN LIMINE REGARDING FUGITIVE DUST PLANS, A/K/A "FUGITIVE PARTICULATE OPERATING PROGRAMS" 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 April 22, 2014 and upon:

Mr. Bradley P. Halloran
Hearing Officer
Illinois Pollution Control Board
100 West Randolph Street
Suite 11-500
Chicago, Illinois 60601

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

by depositing said documents in the United States Mail, postage prepaid, in Springfield, Illinois on April 22, 2014 and upon:

Kathryn A. Pamenter, Esq.
Christopher J. Grant, Esq.
Robert R. Petti, Esq.
Assistant Attorney General
Office of the Attorney General
69 West Washington Street, Suite 1800
Chicago, Illinois 60602

via facsimile and by depositing said document in the United States Mail, postage prepaid, in Springfield, Illinois on April 22, 2014.

/s/ Edward W. Dwyer
Edward W. Dwyer

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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)	(Air Permit Appeal)
ILLINOIS ENVIRONMENTAL)	
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PETITIONER'S SECOND MOTION IN LIMINE REGARDING FUGITIVE DUST PLANS, A/K/A "FUGITIVE PARTICULATE OPERATING PROGRAMS"

NOW COMES Petitioner, KCBX TERMINALS COMPANY ("KCBX"), a North Dakota corporation, by and through its attorneys, HODGE DWYER & DRIVER, and hereby files its Second Motion in Limine for an order allowing evidence, testimony or argument relating to the fugitive dust plans, a/k/a Fugitive Particulate Operating Programs ("FPOPs") contained in the Record and documents related to same that the Illinois EPA considered and either relied upon or should have relied upon in reviewing KCBX's Request for Revision of Construction Permit Application. This motion is made under the provisions of the Hearing Officer Order dated March 25, 2014, the Rules of the Illinois Pollution Control Board ("Board") at 35 Ill. Adm. Code §§ 101.610 and 101.626, Illinois Rules of Evidence and case law cited herein.

I. INTRODUCTION

1. KCBX operates bulk material terminals located at 10730 South Burley Avenue, Chicago, Illinois 60617 ("South Facility") and at 3259 East 100th Street, Chicago, Illinois 60617 ("North Facility"). The Petition for Review in this matter concerns the South Facility. The business of these facilities is to transfer bulk products –

currently coal and petroleum coke ("pet coke") – from one mode of transportation such as train or barge to another form of transportation such as lake vessel, staging the materials for a period of time to match up the incoming and outgoing modes of transportation.

2. On July 23, 2013 KCBX applied for a Request for Revision of its existing Construction Permit ("Request for Revision"). On January 17, 2014, Illinois EPA denied KCBX's Request for Revision. Denial Reason 3 stated that in part: "Based upon ... citizen complaint forms, emissions from the source may violate 35 Ill. Adm. Code 212.301."

3. Illinois Environmental Protection Agency ("Illinois EPA") filed its Record of Decision ("Record") with the Board on March 24, 2014.

II. ARGUMENT

A. The Hearing Officer May Admit all Relevant Evidence And Should Allow All References to Evidence, Testimony or Argument Relating to the fugitive dust plans, a/k/a Fugitive Particulate Operating Program ("FPOP") Contained in the Record.

4. Effective January 1, 2011, Illinois codified Ill. Evidence Rules 401 and 402 of which provide that:

"Relevant evidence" means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.

All relevant evidence is admissible, except as otherwise provided by law. Evidence which is not relevant is not admissible.

Ill. Evidence Rules 401, 402.

5. The Hearing Officer has authority to determine and rule upon the admissibility of evidence in a permit hearing pursuant to 35 Ill. Adm. Code 101.610. A

motion in limine may be used to admit evidence. *People v. Drum*, 748 N.e.2d 344 (4th Dist. 2005).

6. Discovery depositions of the following employees of the Illinois Environmental Protection Agency (“Illinois EPA”) took place on the dates noted in parentheses:

Michael Dragovich (April 9th);
Robert Bernoteit (April 9th);
Raymond Pilapil (April 10th); and
Julie Armitage (April 17th).

7. During the discovery depositions, counsel for Illinois EPA, on multiple occasions, objected to questions related to the fugitive dust plans or “FPOPs” in the Record, including questions regarding the “adequacy” of same, on the basis that this was at issue in a separate proceeding. However, during the deposition of Julie Armitage, it became clear that the Illinois EPA had reviewed the adequacy of the FPOPs in the Record in making its decision to deny KCBX’s Request for Revision Denial, in particular Denial Reason 3. Further, Ms. Armitage testified at length that her opinion that the Facility was not in compliance with 35 Ill. Adm. Code. Section 212.301 was based in part upon the review of the FPOPs in the Record, and what they did not contain. See *Armitage Deposition* at 29-30, 41-42, 49, 58-63, 77. Attached in support of this Motion as Group Exhibit A are the depositions of Mr. Dragovich, Mr. Bernoteit, and Ms. Armitage.

8. Ms. Armitage also noted that other fugitive dust plans from other facilities and California regulations were used as “points of reference” during the review of the July 23, 2013 Request for Revision. *Armitage Deposition* at 42. Ms. Armitage described

these documents as “[t]hings that would potentially give us insight into measures that could be taken to address fugitive dust.” Id. at 43. She explained that she specifically looked at fugitive dust plans for the following facilities: Vulcan McCook, Chemetco, Beelman, Illinois refineries, and the BP Whiting [Refinery]. Id. at 69-70. She also explained that these other fugitive dust plans were used by Illinois EPA inspector Joseph Kotas for purposes of compliance and enforcement when conducting his inspection of the South Terminal. Id. at 72. Illinois EPA relied on these other fugitive dust plans and California regulations during the course of its review of the Request for Revision.

9. In light of the testimony by Illinois EPA witnesses, in particular Ms. Armitage, it is clear that the Illinois EPA considered the KCBX and other facilities’ FPOPs in making its decision to deny KCBX’s Request for Revision. Further, it is clear that Ms. Armitage relied on those documents in support of her opinion that KCBX did not present sufficient information to the Illinois EPA that granting KCBX’s July 23, 2013 Construction Permit Application for the Facility located at 10730 S. Burley Avenue Chicago, Illinois would not cause a violation of the Illinois Environmental Protection Act 415 ILCC 5/9 and inter alia, 35 Ill. Adm. Code Section 212.301. Evidence, testimony or argument relating to these FPOPs contained in the Record, and documents related to same, constitute relevant evidence having a tendency to make the existence of facts that are of of consequence to the permit decision that is being appealed here more or less probable than if the evidence is not allowed., and will enable the trier of fact to make determinations as to the actions at issue.

WHEREFORE Petitioner, KCBX TERMINALS COMPANY, for the above-stated reasons, respectfully prays that the Hearing Officer issue an Order allowing

evidence, testimony or argument relating to the fugitive dust plans, a/k/a FPOPs contained in the Record and documents related to same that the Illinois EPA considered and either relied upon or should have relied upon in reviewing KCBX's Request for Revision of Construction Permit Application.

Respectfully submitted,

KCBX TERMINALS COMPANY
Petitioner,

Dated: April 22, 2014

By: /s/ Edward W. Dwyer
Edward W. Dwyer

Katherine D. Hodge
Edward W. Dwyer
Matthew C. Read
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KCBX:004/Filings Permit Appeal PCB 2014-110/Motion in Limine re FPOP Testimony

GROUP EXHIBIT A

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

KCBX TERMINALS COMPANY,)
)
 Petitioner,)
)
 vs.) PCB 14-110
) (Permit Appeal-Air)
 ILLINOIS ENVIRONMENTAL)
 PROTECTION AGENCY,)
)
 Respondent.)

Discovery Deposition of MICHAEL DRAGOVICH,
 taken at the instance of the Petitioner, on April
 5, 2014, scheduled for the hour of 9:00 a.m., at
 3150 Roland Avenue, Springfield, Illinois, before
 Donna M. Dodd, Certified Shorthand Reporter and
 Notary Public, pursuant to the attached
 stipulation.

DONNA M. DODD, CSR
 donnadoddcsr@att.net
 (217) 652-2474
 (217) 487-7715

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2		
3	Direct Examination by Mr. Dwyer	4
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9		
10	<u>EXHIBITS</u>	<u>MARKED</u>
11	Deposition Exhibit Nos. 1-13	4
12		
13		
14		
15		
16	(Exhibits retained by Mr. Dwyer.)	
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18		
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21		
22		
23		
24		

1 APPEARANCES:

2 EDWARD W. DWYER
 3 KATHERINE D. HODGE
 4 MATTHEW C. READ
 Hodge, Dwyer & Driver
 Attorneys at Law
 3150 Roland Avenue
 Springfield, Illinois 62701
 edwyer@hddattorneys.com

7 Appeared on behalf of the Petitioner,

9 KATHRYN A. PAMENTER
 10 CHRISTOPHER J. GRANT
 Assistant Attorney Generals
 Attorney General's Office
 68 West Washington Street, 18th Floor
 Chicago, Illinois 60602
 (312) 814-0608
 kpamenter@atg.state.il.us

14 Appeared on behalf of the Respondent.

16 ALSO PRESENT:

17 Mr. James Lee Morgan, IEPA
 18 Mr. Jeff Culver, Koch Companies

1 (Deposition Exhibit Nos.
 2 1-13 were marked for
 3 identification prior to the
 4 start of the deposition.)

5 IT IS HEREBY STIPULATED AND AGREED by and
 6 between Counsel for the Petitioner and Counsel for
 7 the Respondent that this deposition may be taken in
 8 shorthand by DONNA M. DODD, an Illinois Certified
 9 Shorthand Reporter and Notary Public, and
 10 afterwards transcribed into typewriting, and the
 11 signature of the Witness is waived by agreement.

12 (The witness was sworn by the Reporter.)

13 MICHAEL DRAGOVICH,

14 called as a witness herein, at the instance of the
 15 Petitioner, having been duly sworn upon his oath,
 16 testified as follows:

17 DIRECT EXAMINATION

18 BY MR. DWYER:

19 Q. Mike, my name is Ed Dwyer. I'm an
 20 attorney representing KCBX Terminals. I want to
 21 let the record reflect that this is the discovery
 22 deposition of Mr. Mike Dragovich taken pursuant to
 23 notice to all parties and in accordance with the
 24 Rules of the Pollution Control Board, the Code of

5

1 Civil Procedure, and the Illinois Supreme Court
2 Rules.

3 What we're going to do today is, Mike,
4 I'm going to talk with you about the permit
5 application that was filed by KCBX and the process
6 reviewing that and the ultimate decision to deny
7 that permit. That's the generality of it.

8 A couple of things I want to talk with
9 you about. The court reporter will take down
10 everything that you say. So try to avoid nodding
11 your head as an answer or uh-huh, huh-uh. She
12 needs audible responses. So just try to remember
13 that.

14 The other thing is, if at any time you
15 need to take a break, just say so, and if there's a
16 question that I ask that you do not understand,
17 please ask me to repeat it or rephrase it. If
18 those rules are okay with you, I think we're ready
19 to go.

20 **A. Okay.**

21 **Q.** Okay. Do you have any questions?

22 **A. Not right now.**

23 **Q.** Okay.

24 MS. PAMENTER: And Kathryn Pamento on

7

1 in particular are the pages that begin with Notice
2 of Deposition, Discovery Deposition directed to Mr.
3 Michael Dragovich.

4 It's a double-sided exhibit, and it's
5 one, two, three, four, five, six, seven, eight.
6 It's the ninth page of the exhibit.

7 **A. That is numbered?**

8 **Q.** They're not numbered. You'll have to
9 count them.

10 MR. GRANT: He's got a single page copy,
11 Ed.

12 MR. DWYER: Oh, he does. Okay.

13 MS. PAMENTER: The numbering will still be
14 the same.

15 MR. DWYER: It'd still be the ninth page.

16 MR. GRANT: Okay.

17 BY MR. DWYER:

18 **Q.** In particular, Mike, if you would look at
19 those pages, the page you're looking, the page
20 after it, and then the third page, which is titled
21 Deposition Rider to Michael Dragovich. And I
22 apologize, I didn't realize. I forgot we put all
23 of the notices in there.

24 **A. Okay.**

6

1 behalf of the Illinois Environmental Protection
2 Agency. I'd like to note for the record our start
3 time is, it's a little bit before nine, but we'll
4 say 9 a.m. as our start time for this deposition.

5 MR. DWYER: Okay.

6 Mike, is it all right if I call you
7 Mike during the deposition?

8 THE DEPONENT: Yes.

9 **Q.** Okay. Have you ever given a deposition
10 before?

11 **A. No.**

12 **Q.** Okay. Have you ever testified in a
13 hearing before in court or before the Pollution
14 Control Board?

15 **A. No.**

16 **Q.** Okay. What I'd like to go through briefly
17 first is, I'm going to show you a document that's
18 marked Deposition Exhibit 1. If you would take a
19 look at that document, Mike, and just tell me, once
20 you've had a chance to look at it, let me know, and
21 I just want to talk to you briefly about it.

22 Mike, I apologize, but in particular
23 I'd like you to look at that, and it's a multi-page
24 exhibit. What I wanted to direct your attention to

8

1 **Q.** There's one more page after that.

2 **A. Okay.**

3 **Q.** Okay. A couple of questions about that.

4 The three pages you just reviewed, Mike, have you
5 seen that document before today?

6 **A. Not that I recall, no.**

7 **Q.** Okay. The third page of the three pages I
8 asked you to review in that Group Exhibit 1
9 contains a request for you to provide three
10 categories of information, is that correct?

11 **A. Yes.**

12 **Q.** Okay. Did you bring any of the
13 information requested with you today?

14 **A. No.**

15 **Q.** Okay. And -- but you never reviewed this
16 document before today?

17 **A. No.**

18 **Q.** Okay. So did you not know that those
19 categories of documents were requested from you
20 when you came today?

21 MS. PAMENTER: Objection. It calls for
22 attorney/client privilege information.

23 MR. DWYER: Are you instructing him not to
24 answer?

9

1 MS. PAMENTER: Well, we're getting into an
2 area with respect to this deposition rather than,
3 as you know, we've indicated that we're filing a
4 Notice of Appeal of Mr. Halloran's decision of
5 August 8th, 2012 -- excuse me, 2014 with respect to
6 our Motion for Protective Order.

7 We advised you at the status hearing
8 yesterday that we would not be producing any
9 documents with respect to that until there is a
10 final order that's been issued by the Illinois
11 Pollution Control Board with respect to the issue.
12 So Mr. Dragovich will not be answering questions
13 with respect to the documents at issue.

14 MR. DWYER: Okay. Just so I'm clear, is
15 counsel instructing him not to answer the question?

16 MS. PAMENTER: Can you repeat the
17 question?

18 (Whereupon, the requested portion
19 of the record was read back.)

20 MS. PAMENTER: I'm instructing the witness
21 not to answer, that's correct.

22 MR. DWYER: Okay. Would you certify that
23 question for the record?
24

10

1 (Whereupon the question will be
2 certified.)

3 BY MR. DWYER:

4 Q. Ail right. Let's talk a little bit about
5 your background. Can you tell me, starting with
6 your highest level of education, what your
7 educational background is?

8 A. From high school on or --

9 Q. Well, if you have college or advanced
10 work, let's start there.

11 A. College, I went to Parks College at St.
12 Louis University. It was in Cahokia, Illinois.

13 Q. And, Mike, when did you graduate from
14 there?

15 A. April 1986.

16 Q. And what was your degree, Mike?

17 A. Bachelor of Science in Aeronautics and
18 Aircraft Maintenance Engineering.

19 Q. Any advanced course work?

20 A. I mean, I had an A & P license.

21 Q. What is an A & P license?

22 A. Airframe and power plant.

23 Q. And prior to college I assume you
24 graduated from high school. Can you just tell me

11

1 when and where?

2 A. Graduated from Mt. Olive Community High
3 School in 1982.

4 Q. And then your employment background, Mike,
5 did you work anywhere before you went to work at
6 the IEPA?

7 A. I guess -- I guess I'm not finished on the
8 question.

9 Q. Oh, okay. I'm sorry.

10 A. I also had a degree in electrical
11 engineering.

12 Q. And when did you receive that degree?

13 A. December of 1991.

14 Q. And was that from Parks or somewhere else?

15 A. Somewhere else.

16 Q. And what school was it?

17 A. Southern Illinois University Edwardsville.

18 Q. Okay. Any other advanced education?

19 A. I mean, I took a class or two at a
20 community college regarding computers.

21 Q. Okay. Any other training classes or
22 courses related to your current position at IEPA?

23 A. No.

24 Q. Okay. Can you tell me what kind of

12

1 employment you had before you went to work at
2 Illinois EPA after graduation from college?

3 A. Which time?

4 Q. You can start with the earliest, Parks or
5 the later.

6 A. After Parks in '86 I worked for a company
7 called Katy-Seghers. They were a waste to energy
8 company and I did some estimating work on
9 construction projects regarding material, takeoff
10 of plants, and then I did that during the summer in
11 between college, and then they built one of these
12 waste to energy plants.

13 And one of my final projects was with
14 them, they did a -- they tested a facility before
15 they signed off on it in Salt Lake City, Utah, and
16 they did an air stack test, a performance test, and
17 an efficiency test, and my deal on the last part
18 was collecting the data.

19 Q. And after that position did you work for
20 somebody else?

21 A. Worked for Geotechnical Construction.

22 Q. Okay. And what was your position there?

23 A. Construction Coordinator.

24 Q. And then after that?

13

15

1 **A. I took the position with the Illinois EPA.**
 2 **Q.** And what year was that?
 3 **A. January, I want to say 16th of 2002.**
 4 **Q.** Okay. And so now, Mike, just tell me from
 5 your commencement of employment at the agency, tell
 6 me what your position, initial position was, and if
 7 you would take me up to your current position.
 8 **A. I was a payroll, classified as an**
 9 **Environmental Protection Engineer I.**
 10 **Q.** You know, Mike, I should have asked this
 11 earlier. Are you a registered professional
 12 engineer in Illinois or any other state?
 13 **A. No.**
 14 **Q.** Okay. And, I'm sorry, go ahead with your
 15 employment experience at IEPA.
 16 **A. My duties?**
 17 **Q.** Well, no. You indicated your first
 18 position was?
 19 **A. An Environmental Protection Engineer I.**
 20 **Q.** And were you promoted or transferred from
 21 that position?
 22 **A. Became an Environmental Protection**
 23 **Engineer II.**
 24 **Q.** Okay. And how long were you an Engineer

1 **A. Jim Morgan. I can't come up with the name**
 2 **of it.**
 3 **Q.** Was it a single document?
 4 **A. It was multiple pages.**
 5 **MS. PAMENTER:** Ed, to assist, it was a
 6 copy of the Administrative Record that's on file
 7 with the Illinois Pollution Control Board.
 8 **BY MR. DWYER:**
 9 **Q.** Well, let's -- maybe it would be helpful
 10 to do that then, Mike.
 11 **A. Okay.**
 12 **Q.** I'm going to ask you to take a look at a
 13 document that's marked Exhibit 3, and see if you've
 14 seen that.
 15 **A. That's fine.**
 16 **Q.** Okay. Just briefly, Mike, would you open
 17 that and tell me whether that looks like the
 18 document that you were provided by Mr. Morgan to
 19 review in advance of your deposition today?
 20 **MS. PAMENTER:** And just to be clear, have
 21 we skipped over Exhibit 2? Are we --
 22 **MR. DWYER:** We'll be coming back to it.
 23 **MS. PAMENTER:** Okay. I just want to make
 24 sure the record is clear.

14

16

1 I?
 2 **A. Approximately one year.**
 3 **Q.** And how long were you an Engineer II?
 4 **A. A year and three months, two months.**
 5 **Q.** Okay. And after that what was your next
 6 position?
 7 **A. Environmental Engineer III.**
 8 **Q.** Okay. How long were you in that position?
 9 **A. I'm still in that position.**
 10 **Q.** Okay. So then if we can go back. Tell me
 11 this, Mike, where within the Illinois EPA did you
 12 work during each of those job classifications?
 13 **A. Bureau of Air.**
 14 **Q.** Okay. So during your time at the agency
 15 you've only worked in the Bureau of Air, no other
 16 bureaus?
 17 **A. Correct.**
 18 **Q.** In preparation for your deposition today,
 19 Mike, did you review any documents?
 20 **A. I did.**
 21 **Q.** Okay. Can you tell me what documents you
 22 reviewed?
 23 **A. It was prepared for me.**
 24 **Q.** By whom?

1 **MR. DWYER:** We will come back to it, only
 2 because I want to make sure I understand what
 3 documents he reviewed.
 4 **MS. PAMENTER:** Thank you for the
 5 clarification.
 6 **THE DEPONENT:** You want me to look through
 7 this whole thing?
 8 **BY MR. DWYER:**
 9 **Q.** Well, you know, I would like you to tell
 10 me if that's the document. That is the
 11 administrative record that has been filed by the
 12 agency in this matter, and you indicated that the
 13 document you reviewed was provided to you by Mr.
 14 Morgan. I'm just seeking to determine whether or
 15 not that is in fact the document that you were
 16 describing or referring to.
 17 **MS. PAMENTER:** If I can, for purposes of
 18 the record, Exhibit 3 includes several beginning
 19 pages, including a privilege log that is not filed
 20 with the Illinois Pollution Control Board as part
 21 of the Administrative Record, and there's also a
 22 copy of the Notice of Filing which is. So just to
 23 clarify, the privilege log is not part of the
 24 Administrative Record.

17

19

1 MR. DWYER: That's fine. So, Mike, you
2 know, let's just fix that now.
3 We'll just remove the pages that your
4 counsel referred to from that document, and I'll
5 represent to you that what is there now is the
6 record that was filed by the agency.
7 And so my question to you is, is that
8 the document that Mr. Morgan provided you to review
9 in preparing for your deposition?
10 THE DEPONENT: It looks familiar, yes.
11 Q. Okay. So tell me, when did you review
12 that document in preparation for your deposition?
13 A. **I don't think I got it until a couple of**
14 **days ago.**
15 Q. Okay. And did you review this document by
16 yourself?
17 A. **Yes.**
18 Q. Okay. Did you discuss the document with
19 anyone else?
20 A. **Just what Jim brought by.**
21 Q. Well, I just want to -- just what Jim
22 brought by. I assume you're referring to Mr.
23 Morgan?
24 A. **Correct.**

1 in this proceeding, to your knowledge?
2 A. **Correct.**
3 Q. Okay. Now, I just sort of want to get
4 some things clear here. Are you familiar with the
5 fact that KCBX has two separate facilities in the
6 Chicago area and that they, at least in documents
7 that we'll talk about, are referred to as the North
8 facility and the South facility? Are you familiar
9 with that?
10 A. **Yes.**
11 Q. Okay. And just to be clear, the permit
12 application that was filed that resulted in the
13 permit denial in this case, what is your
14 understanding of which facility that was for?
15 A. **KCBX South.**
16 Q. Okay. Other than the request for revision
17 that is the subject of our discussion today, Mike,
18 have you worked on any other permit applications
19 for KCBX?
20 A. **Other than -- repeat the question.**
21 Q. Have you worked on any permit applications
22 other than the one that we're talking about today
23 for KCBX Terminals Company?
24 A. **Okay. Which one are you talking about?**

18

20

1 Q. And did he bring something by other than
2 that record or did you just talk about the record
3 when he brought it by?
4 A. **Well, I was -- he told me this was the**
5 **record, take a look at it.**
6 Q. Okay. Did you discuss your review of the
7 record with anyone other than Mr. Morgan in advance
8 of the deposition today?
9 A. **I don't know. I might have talked to --**
10 **this was in the room. I might have talked to Chris**
11 **Grant and Katie.**
12 Q. Okay. Other than them, you can't recall
13 anyone else that you discussed the record with in
14 advance of your deposition?
15 A. **No.**
16 Q. Okay. Mike, let me ask you, are you
17 familiar with a company that filed the petition
18 here called KCBX Terminals Company?
19 A. **Yes.**
20 Q. Okay. And tell me how -- how are you
21 familiar with the company?
22 A. **I received a permit application from KCBX.**
23 Q. And is that the request for revision of
24 the construction permit application that's at issue

1 Q. Well, we filed -- as we just discussed,
2 KCBX filed a request for revision of the existing
3 construction permit for the South facility, and
4 that's the permit that was denied by the agency, is
5 that your understanding?
6 A. **I guess could you give me a date?**
7 Q. Well, if you look in the record, Mike,
8 let's just refer to the record, and if you look
9 at -- yes, if you look at --
10 A. **There are a number of pages.**
11 Q. Yeah. There are a number of pages, Mike.
12 If you would look at the record at page 186.
13 A. **Okay.**
14 Q. If you'd look at that, is that the cover
15 letter for a request for revision to a construction
16 application?
17 A. **Yes.**
18 Q. Okay. And, to your knowledge, did the
19 agency on January 17th, 2014 issue a permit denial
20 in response to that permit application?
21 A. **Repeat the question.**
22 Q. Do you know whether or not the agency
23 issued a letter on January 17th, 2014 denying that
24 permit application?

21

23

1 **A. I know there's one out there. I wasn't**
2 **there on the 17th, January 17th.**

3 **Q.** But you did review the record, right?

4 **A. Yes.**

5 **Q.** Okay. Mike, if you would take a look at
6 the record, page 1.

7 **A. Page 1?**

8 **Q.** Page 1.

9 **A. Sorry. Okay.**

10 **Q.** Is that -- what's the date of that letter,
11 Mike?

12 **A. January 17th, 2014.**

13 **Q.** Okay. And is that -- is it your
14 understanding that letter is a letter denying the
15 permit application that we're talking about
16 earlier?

17 **A. Yes.**

18 **Q.** Okay. And, in fact, Mike, let me direct
19 your attention to the bottom of page 3. There are
20 a series of initials after the signature and the
21 signature block, and in the middle there the
22 initials MJD. Are those your initials?

23 **A. Yes.**

24 **Q.** Okay. And tell me, what does that mean

1 **Q.** And is it your understanding that as such
2 it's subject to certain regulations promulgated by
3 the Pollution Control Board?

4 **A. Yes.**

5 **Q.** Okay. Let's get this out of the way here.

6 Okay. Mike, I'd like you to look at another
7 document. We spoke about it a little bit earlier.

8 If you want to move that record out of the way,
9 we'll talk about what's marked as Exhibit 2.

10 Mike, have you seen that document
11 before?

12 **A. Is it part of this?**

13 **Q.** No. It's -- it's not part of the record.

14 **A. Then I don't remember seeing it.**

15 **Q.** Well, I'm asking you if you've seen that
16 document before today?

17 **A. I don't remember.**

18 **Q.** Okay. Well, tell me what that document
19 appears to be to you, turning to the second page of
20 it, beginning with the second page of Exhibit 2.

21 **A. It's -- I am just reading what it says, a**
22 **privilege log of Illinois EPA.**

23 **Q.** And what is contained below that title?

24 **A. Name of author, name of recipients, date**

22

24

1 that your initials are included on that letter?

2 **A. That this permit could have went by me,**
3 **reviewed by me.**

4 **Q.** And, in fact, did you review this permit
5 in the process of making that determination?

6 MS. PAMENTER: And just for clarification,
7 are we talking about the permit application or the
8 permit denial letter?

9 MR. DWYER: Well, we're talking about
10 both.

11 MS. PAMENTER: Okay. Well --

12 MR. DWYER: He's already indicated that he
13 reviewed the permit. I'm asking him if he was
14 involved in the permit denial letter.

15 THE DEPONENT: Repeat the question.

16 **Q.** What -- what does your initials on page 3
17 of the letter indicate, Mike?

18 **A. That I was involved in review of this.**

19 **Q.** And this being the permit denial letter?

20 **A. Correct.**

21 **Q.** Okay. Mike, do you know, with respect to
22 what we'll refer to as the KCBX South facility, is
23 that a materials handling facility?

24 **A. Yes.**

1 **of document, description of document, bates number**
2 **range.**

3 **Q.** Okay. And below that is there a series of
4 what appear to be a list of e-mails, including the
5 descriptions and information that you just listed
6 in the columns at the top?

7 **A. E-mails?**

8 **Q.** Well, let me ask you this.

9 **A. Yeah, the first one says e-mail.**

10 **Q.** Does the first column list the author of
11 the e-mail?

12 **A. Yes.**

13 **Q.** Okay. And then does the next column
14 indicate who received it?

15 **A. Yes.**

16 **Q.** And does the third column indicate the
17 date of the document?

18 **A. Yes.**

19 **Q.** And does the fourth column contain a brief
20 description?

21 **A. Yes.**

22 **Q.** Okay. Well, directing your attention to
23 that first e-mail, are you listed as a recipient of
24 that e-mail?

25

1 **A. The first one?**
 2 **Q.** Yes.
 3 **A. Yes.**
 4 **Q.** Okay. And does it describe that e-mail to
 5 be regarding a FESOP application?
 6 **A. Yes.**
 7 **Q.** Okay. And is FESOP an acronym for
 8 Federally Enforceable State Operating Permit?
 9 **A. Yes.**
 10 **Q.** Okay. Do you recall this e-mail?
 11 MS. PAMENTER: I'm going to object with
 12 respect to the privilege log. We provided you a
 13 privilege log. We set forth the basis with respect
 14 to all of these. There's a pending -- there's a
 15 pending motion. There's a pending Notice of Appeal
 16 with respect to certain of the documents that are
 17 set forth on the privilege log. For those that you
 18 have not filed a motion yet, that's available to
 19 you. I'm going to instruct the witness not to
 20 answer questions with respect to the privilege log.
 21 **MR. DWYER:** Okay. So, if you would,
 22 certify that question.
 23 (Whereupon the question will be
 24 certified.)

26

1 **BY MR. DWYER:**
 2 **Q.** The next question, Mike, is regarding the
 3 third e-mail listed. Does that indicate that the
 4 third e-mail on the list was authored by you?
 5 **MS. PAMENTER:** Objection. The document
 6 speaks for itself in terms of who is set forth with
 7 respect to every single e-mail or document that is
 8 set forth on this privilege log. I'm instructing
 9 the witness not to answer questions with respect to
 10 the privilege log given the pending motion and
 11 Notice of Appeal and the availability for KCBX
 12 Terminals Company to file additional motions with
 13 respect to the privilege log document.
 14 **MR. DWYER:** And I will -- please certify
 15 that question, and I will continue with these
 16 questions, and I'm fine, we can certify each one.
 17 (Whereupon the question will be
 18 certified.)
 19 **BY MR. DWYER:**
 20 **Q.** With respect to the third e-mail on the
 21 list, Mike, on the far right column does it
 22 indicate that that e-mail is approximately 20 pages
 23 in length?
 24 **MS. PAMENTER:** Objection. The document

27

1 speaks for itself. I'm instructing the witness not
 2 to answer the question.
 3 **MR. DWYER:** Please certify that question.
 4 (Whereupon the question will be
 5 certified.)
 6 **BY MR. DWYER:**
 7 **Q.** Mike, directing your attention down
 8 further on that page. There's an e-mail dated
 9 November 14th, 2013 according to the document, upon
 10 which you're a recipient and the description is
 11 regarding the DTE permit application. Are you
 12 familiar with that e-mail?
 13 **MS. PAMENTER:** Objection. The document
 14 speaks for itself. As I've stated, this is a
 15 continuing objection with respect to the privilege
 16 log. There are pending -- there's a pending
 17 motion. There's a pending Notice of Appeal with
 18 respect to certain aspects of the privilege log, no
 19 additional motions have been filed to date with
 20 respect to it. I'm instructing the witness not to
 21 answer.
 22 **BY MR. DWYER:**
 23 **Q.** Okay. Mike, let me ask you this. In
 24 reviewing this document, Exhibit 2, to your

28

1 knowledge, does it contain all e-mail
 2 communications that you were involved with
 3 regarding this permit?
 4 **A. Go ahead, repeat the question.**
 5 **MR. DWYER:** I'm sorry. Could you read
 6 that back for me?
 7 (Whereupon, the requested
 8 portion of the record was
 9 read back.)
 10 **THE DEPONENT:** I don't know.
 11 **BY MR. DWYER:**
 12 **Q.** So it may or may not, you're not sure?
 13 **A. Um, I'm not sure.**
 14 **Q.** Okay. Looking at the very last entry on
 15 the last page of that exhibit, it indicates an
 16 e-mail from you dated September 5th, 2013, and it's
 17 described as a draft permit calculation sheet. Do
 18 you see that entry?
 19 **A. Yes.**
 20 **Q.** Okay. Is that a reference to a draft
 21 permit calculation sheet you prepared regarding the
 22 permit in this proceeding?
 23 **MS. PAMENTER:** Objection. The privilege
 24 log, Exhibit 2 I believe that we're on, speaks for

29

31

1 itself. This is part of a pending motion with
2 respect to the pre-deliberative process privilege
3 that is both part of a motion for protective order
4 currently before the court -- excuse me, a Motion
5 to Supplement currently before the Court and a
6 Notice of Appeal with respect to a Motion for
7 Protective Order. As such, I'm instructing the
8 witness not to answer.

9 MR. DWYER: And the objection is based
10 upon the predecisional privilege just to be clear?

11 MS. PAMENTER: Yes.

12 MR. DWYER: All right. And let's certify
13 that question as well.

14 (Whereupon the question will be
15 certified.)

16 BY MR. DWYER:

17 Q. Mike, if you stay with Exhibit 2 and look
18 at it, again, there is a list of e-mails and there
19 is a gap in the list of e-mails between October
20 18th and November 5th.

21 Are you aware of any e-mail
22 communications you had with anyone at the agency
23 regarding the permit during that period?

24 A. Repeat the question.

1 denial that are the subject of the proceeding we're
2 here on today?

3 A. I don't remember.

4 Q. So you may have received or originated an
5 e-mail, but you don't recall?

6 A. I don't recall seeing any e-mails. I
7 mean, this is the first time I've looked at this
8 list.

9 Q. All right. Now, let's go back, Mike. I
10 think we're done with Exhibit 2 for right now.

11 Let's go back to the record, which is Exhibit 3.

12 You indicated earlier that you had
13 reviewed this record in advance of the deposition,
14 is that correct?

15 A. This file right here.

16 Q. Right.

17 Okay. Did you review any particular
18 parts of it in any greater detail than others?

19 A. Yes.

20 Q. Okay. Tell me which documents, if any, in
21 there that you reviewed in greater detail.

22 A. The permit application.

23 Q. Okay.

24 A. You want a page number?

30

32

1 Q. Well, if you look at Exhibit 2, and if
2 you'd look, the documents are listed in
3 chronological order, and it shows -- it doesn't
4 show any e-mails between October 18th and November
5 5th, 2013, is that correct?

6 A. Yes.

7 Q. Okay. And so my question to you is, were
8 you involved in any e-mail communication, did you
9 originate or receive any e-mails regarding this
10 permit application during that period?

11 A. I don't remember.

12 Q. So it's possible that you may have
13 received some or originated some, you just don't
14 recall?

15 A. I don't recall.

16 Q. Okay. And then if you look further down
17 that list, staying with Exhibit 2, there is, again,
18 on the list, there's an e-mail dated 11/14/2013 and
19 then there are no further e-mails listed until
20 December 6th, 2013.

21 So my question to you is the same, for
22 that period from November 14th to December 6th, do
23 you recall either sending or receiving any e-mails
24 relating to the request for revision and permit

1 Q. Yeah. And where is, if you can tell me,
2 where is the permit application in the record?

3 Mike, let me suggest maybe you take a
4 look at the record at page 186. Do you have the
5 record, page 186 in front of you?

6 A. Yes.

7 Q. And what is that document, Mike?

8 A. It's a letter submitted on behalf of the
9 KCBX Terminals.

10 Q. And what does the letter request from the
11 agency?

12 A. Requests that the Illinois Environmental
13 Protection Agency revise the above-referenced --
14 revise construction permit, revise construction
15 permit issued to KCBX for the purpose of
16 authorizing the proposed installation of certain
17 additional conveyance and handling equipment as
18 part of the Conveyor Addition Project at its
19 facility located at 10730 South Burley Avenue,
20 Chicago, Illinois, 60617, Facility ID Number
21 031600GSF, South facility.

22 Q. Okay. And does a permit application
23 accompany that correspondence?

24 A. There's a fee determined for a

33

35

1 construction permit application.

2 Q. And following that document, would you
3 look at the record on page 191? Have you seen that
4 document before?

5 A. Yes.

6 Q. Okay. And what do you understand that
7 document to be?

8 A. A Construction Permit Application. It's a
9 Fee Form.

10 Q. And, to your knowledge, were those
11 documents filed with the agency on July 23rd, 2013?

12 A. Yes. It's stamped July 23rd, 2013.

13 Q. Okay. Now, Mike, were you assigned to
14 review this permit?

15 A. Yes.

16 Q. Okay. If you would tell me, please, just
17 generally, describe the process in the Bureau of
18 Air when a permit application like the permit we're
19 talking about right now arrives at the agency, and
20 tell me what happens from there to the final
21 decision.

22 A. The permit in this case looks like it was
23 hand-delivered to the agency. Somebody stamped in
24 the permit for July 23rd. From there, what I know

1 Mike?

2 A. She's basically going to give it to a Unit
3 Manager.

4 Q. All right. And what happens with it once
5 it gets to the Unit Manager?

6 A. The Unit Manager, we have a database
7 system. He would look at this application and he
8 would assign it to a Permit Engineer, and there's a
9 database system that tracks who he's assigning it
10 to.

11 Q. Okay. And what happens once it's assigned
12 to a Permit Engineer?

13 A. It's dropped off in -- we have an in-house
14 basket assigned to me.

15 MR. DWYER: And then, you know, let me
16 take a break. I apologize. We'll take five
17 minutes.

18 (Whereupon there was a recess
19 taken.)

20 BY MR. DWYER:

21 Q. Mike, before we took a short break I was
22 asking you about the process of what happens when a
23 permit comes in, and you had indicated that the
24 application is received, a record person gathers

34

36

1 about, it would go to a, probably like a file room
2 clerk, and she might have possibly stamped this
3 thing in. I don't know.

4 The application is probably read and
5 decided to figure out what they're kind of asking
6 about. In this case they asked for a revised
7 construction permit. And on there is a permit
8 number, so they're asking for revise construction
9 permit 07050082, and it has an ID Number 031600GSF.

10 Q. Okay. What I asked you was to tell me
11 what happens in that process.

12 You've described that it came in and
13 what the application was requesting. What happens
14 with the application after that?

15 A. The file clerk tries to put together a
16 file she requests from the file room, and there is
17 an existing file for this place because it's a
18 revision, so it comes together in a big file.

19 She would take it to a Unit Manager
20 within a certain period of time. I don't recall
21 how long. Once we got the file, it could be that
22 day, it could be a couple of days. I don't know.
23 Depending on --

24 Q. Go ahead. And what happens after that,

1 the file, and then that's brought to your inbox.

2 Is that --

3 A. The -- usually a Unit Manager will.

4 Q. And so your Unit Manager is the person who
5 assigns the permit application to you?

6 A. Yes.

7 Q. Okay. And at the time that you received
8 this permit, who was your Unit Manager, if you
9 recall?

10 A. Baleriy Brodsky was Acting.

11 Q. And do you recall, was it Baleriy who
12 assign the permit to you, the permit application?
13 I'm sorry.

14 A. He could have assigned it. I'm sure he
15 was Acting.

16 Q. Do recall?

17 A. Either Baleriy or Bob. I don't really
18 recall.

19 Q. Okay. Do you recall when you received the
20 permit application and was assigned it?

21 A. Not the exact date, I mean.

22 Q. Roughly, your best guess?

23 A. It wasn't -- it wasn't on the 23rd of
24 July. It was in July.

37

39

1 Q. Okay. That's fine. And once you get it,
2 what do you do with the permit application?
3 A. **It can sit in my basket until I get to it.**
4 **I mean, I work on other projects throughout the**
5 **day, throughout the week.**

6 Q. Okay. But once you -- once you pick that
7 permit up and start working on it?

8 A. **Within a few days of when I get time, I'll**
9 **pick the permit up and take a look at what**
10 **information is in the permit file.**

11 Q. Do you do any kind of initial review of
12 the file?

13 A. **Yes.**

14 Q. Okay. And what is the purpose of that?

15 A. **To look at, to see if there's some minimal**
16 **information.**

17 Q. Is that referred to as a completeness
18 determination?

19 A. **There's a term of that. I don't know if**
20 **that's exactly it.**

21 Q. Okay. Is there such a term as a
22 completeness determination that you use in the
23 course of reviewing the permit application?

24 A. **Would I be able to look in here?**

38

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1 Q. If there's something in that that you
2 think would refresh your recollection, absolutely.
3 And, just for the record, you're referring to
4 Exhibit 3.

5 Let me suggest, Mike, maybe you want
6 to take a look at page 025. Excuse me. I
7 misspoke, page 024.

8 A. **Okay.**

9 Q. You know what I had asked you was, is
10 there such a term as a completeness review or
11 determination in the course of reviewing a permit,
12 and you wanted to look at the record.

13 Does this document refresh your
14 recollection? Strike that question.

15 Mike, looking at page 024 of the
16 record, what is your understanding of what that
17 document is?

18 A. **It's a Completeness Screening Checklist.**

19 Q. Okay. And looking at that document, is
20 that a document you prepared?

21 A. **Yes.**

22 Q. Okay. And what is the title of that
23 document?

24 A. **Air Permit Application Completeness**

1 **Screening Checklist.**

2 Q. Okay. And then directing your attention
3 to the next page, 025 of the record. Is that
4 document entitled Completeness Review Worksheet?

5 A. **Yes.**

6 Q. Okay. And are those -- are those part of
7 the same form or are those separate forms that you
8 use?

9 A. **Separate forms.**

10 Q. Okay. And so when -- when do you use
11 those forms in the process of reviewing a permit
12 application?

13 A. **It could be used throughout the whole**
14 **process.**

15 Q. Okay. So after you do that review, what
16 happens next?

17 A. **With this application or throughout the**
18 **process?**

19 Q. Just generally we'll talk about this
20 application. But, generally, you do this review.
21 Do you determine, I assume whether it's complete,
22 the application? If it's complete, what do you do
23 next?

24 A. **I would look at the application some more**

1 **and start reviewing the permit application more**
2 **in-depth for basic.**

3 Q. And so let's talk about the other possible
4 situation. You reviewed it and you make a
5 determination that it's not complete, what do you
6 do then?

7 A. **If it's not complete, I guess if it was --**
8 **if the fee wasn't correct, I could either call the**
9 **source up to ask him for some more money. I'd talk**
10 **to my supervisor about it.**

11 Q. Okay. If the fee was correct but there --
12 you needed other information, what would you do?

13 A. **Talk to my supervisor about it.**

14 Q. Okay. And after that what would you do?

15 A. **See what his recommendation would be.**

16 Q. Okay. And if his recommendation -- could
17 his recommendation be to proceed with reviewing the
18 permit?

19 A. **Go ahead and ask it again.**

20 MR. DWYER: Can you read it back?

21 (Whereupon, the requested portion
22 of the record was read back.)

23 THE DEONENT: Yes.

24

41

43

1 BY MR. DWYER:

2 **Q.** Okay. And could his recommendation also
3 be that you need to request additional information
4 from the permit applicant?

5 **A.** Yes.

6 **Q.** Okay. So after that phase of your review,
7 let's assume you have enough information, you don't
8 need anymore information from the permit applicant,
9 what would you do with the permit application at
10 that point?

11 **A.** **I would -- I would do a more in-depth
12 review of the permit application.**

13 **Q.** Okay. And once you've done that in-depth
14 review, what would the next step be?

15 **A.** **After I'd done an in-depth review? Go
16 ahead, repeat the question.**

17 **Q.** What -- after you've done your in-depth
18 review, what would the next step be?

19 **A.** **Would review it and see if they're in
20 compliance with applicable rules.**

21 **Q.** Okay. And once you've made that
22 determination, what's the next step?

23 **A.** **Whether I have enough information or not
24 to start a permit.**

1 **Q.** Internal.

2 Okay. And so, assume you proceed to
3 that process, it goes to your supervisor, the draft
4 permit goes to your supervisor, what does he do, or
5 she?

6 **A.** **Review my draft permit. He would review
7 the file. He would look over it, the complete
8 file.**

9 **Q.** Okay. And then once he's done that, what
10 is the next step?

11 **A.** **He would return the draft and the file
12 back to me. It could be hand given to me. It
13 could be e-mailed to me with his corrections.**

14 **Q.** Okay.

15 **A.** **And then next step, I would review what he
16 had to say as far as corrections, or if there was
17 any, and then electronically I would make the
18 corrections and send it through our Word Processing
19 Unit.**

20 **Q.** And would they prepare the final permit?

21 **A.** **They would -- they would prepare the
22 permit. It's logged in on the database or
23 whatever, too. Hard copies are given back to me.
24 I would review the hard copies. Just talking the**

42

44

1 **Q.** Okay. And assuming that you have enough
2 information, would you then draft a permit?

3 **A.** **I could start.**

4 **Q.** Okay. Once you've started and completed a
5 draft permit, what happens then?

6 **A.** **I have a certain time period to get a
7 draft to my unit supervisor, a time deadline.**

8 **You're saying after I would draft
9 something up?**

10 **Q.** Right. And is that an internal deadline
11 or is that --

12 **A.** **That's --**

13 **Q.** -- by Statute?

14 **A.** **Statute deadline.**

15 **Q.** Okay. And so do you recall what that time
16 frame is once you've drafted a permit to get it to
17 your supervisor?

18 **A.** **Well, I have -- well, when the permit is
19 received, I have 90 days to make a determination.**

20 **Q.** And so once -- go ahead.

21 **A.** **And then my supervisor would want a draft
22 two weeks in advance before the deadline date --**

23 **Q.** Okay.

24 **A.** **-- but internal.**

1 **permit.**

2 **Q.** Okay. Now, what if -- what if you provide
3 the draft permit to your supervisor, you indicated
4 that he may give you back comments, what if, you
5 know, what if the comments are, you don't have
6 enough information here? What would you do then?

7 **A.** **Try to see if I could find information.**

8 **Q.** And by find, do you mean look in the file?

9 **A.** **Look at the application, yeah.**

10 **Q.** Well, would you look in just the
11 application or would you look in the entire file
12 that you have for the site?

13 **A.** **I guess it depended on the question that
14 he was looking for.**

15 **Q.** Okay. And what if the information that
16 your supervisor requested you to try and find or
17 see if it existed, what if it wasn't in the file or
18 in the application? What would you do then?

19 **A.** **Request to get information.**

20 **Q.** And would you make that request to the
21 permit applicant?

22 **A.** **I could.**

23 **Q.** Okay. Have you done that?

24 **A.** **For what?**

45

47

1 **Q.** On any other permit application, have you
2 requested information from the permit applicant
3 after receiving the application?

4 **A. Yes.**

5 **Q.** Okay. Mike, now if we can go back to the
6 record that's in front of you, Exhibit 3, and in
7 particular, let's first look, Mike, at pages 004.
8 We'll start there. That document in the record,
9 Mike, is titled Permit Calculation Sheet. Are you
10 familiar with that document?

11 **A. Yes.**

12 **Q.** Okay. And did you prepare that document?

13 **A. Yes.**

14 **Q.** Okay. And I want you to -- I want you to
15 explain some of the information in there. There
16 are a number of boxes and sections in it. So
17 starting at the top it indicates the name of the
18 facility and that you're the, what does Anal.
19 Engineer mean? Is that Analyst Engineer?

20 **A. Where are you at on here?**

21 **Q.** In the first -- at the very top in the
22 first square box of information.

23 **A. Oh, okay.**

24 **Q.** Does that mean that you're the person

1 it's titled Section 1, and it references a Traveler
2 Sheet and an ICEMAN source information. Can you
3 tell me what -- what is a Traveler sheet?

4 **A. A Traveler sheet goes along with the file.**

5 **The application file is included in this file, and**
6 **it basically marks from the time that the**
7 **application was received, when I was talking to you**
8 **earlier the clerk puts that together, and basically**
9 **from location to location that this file went**
10 **through during the permit process.**

11 **Q.** Okay. You mentioned something I want to
12 ask you about, Mike. How does the clerk decide
13 what the file that they're going to deliver to you
14 contains, if you know?

15 **A. Repeat the question.**

16 **Q.** How -- you mentioned that the clerk
17 assembles a file and brings it to you?

18 **A. Correct.**

19 **Q.** And just my question was, how does the
20 clerk determine what they're going to bring to you
21 in that file?

22 **A. They look at the cover letter.**

23 **Q.** So their decision about what they'll bring
24 to you to review is based upon the cover letter

46

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1 reviewing the permit at the agency?

2 **A. Yes.**

3 **Q.** Okay. And in that box it says that that
4 document is dated January 17th, 2014. Was the
5 entire document completed on that day?

6 **A. Repeat the question.**

7 **Q.** At the top of it in that first block it
8 says that the date is January 17th, 2014, is that
9 correct?

10 **A. You said 14 the first time. That's why**
11 **I --**

12 **Q.** Oh, I apologize.

13 **A. I thought maybe you was reading something**
14 **different than what I had. Okay.**

15 **Q.** So it says that the date of the document
16 is January 17th, 2014. And my question is, was
17 this entire document prepared on that day, and by
18 entire document, I mean pages 4 through 9?

19 **A. No.**

20 **Q.** Okay. Is it fair to say that portions of
21 it were prepared on dates -- on dates prior to
22 January 17th, 2014?

23 **A. Yes.**

24 **Q.** So, Mike, looking at that next section

1 with the permit application?

2 **A. She requests information from the file**
3 **room to get the file.**

4 **Q.** Okay. And who is -- you referred to she
5 several times. Is this a specific person? Who is
6 she?

7 **A. There was two people.**

8 **Q.** And who were they?

9 **A. I don't know which one did it. I mean,**
10 **Beth Davenport or Karen. I don't know if she was**
11 **working at that time or not.**

12 **Q.** But it would have been one of them that
13 would have delivered the file to you?

14 **A. No, they don't deliver the file to me.**

15 **Q.** Okay. Who do they deliver it to?

16 **A. They get information from the file room.**
17 **The file is brought to them, and they would**
18 **assemble this traveler sheet inside that little --**
19 **latest open file that we have.**

20 **Q.** Okay. Would you ever have occasion to ask
21 them to bring you any other information besides
22 what they brought you originally?

23 **A. No.**

24 **Q.** Okay. So going back to the document in

49

1 the record we're talking about, if we go back to
2 page 4 of the record, tell me what ICEMAN is.
3 **A. ICEMAN is our database in the Air Permit**
4 **Section. It's basically in Air.**
5 **Q.** And so that's -- that's something you can
6 access from your desk by computer?
7 **A. Correct, yes.**
8 **Q.** Okay. And what all does ICEMAN contain
9 about a given permit application?
10 **A. It is our database about an application.**
11 **Your ID number would be from that application.**
12 **Permit numbers are in that from that application in**
13 **ICEMAN. There's -- ICEMAN contains the last permit**
14 **that was issued to this facility. There's a flag**
15 **file in ICEMAN.**
16 **Q.** And what does -- tell me, what is a flag
17 file?
18 **A. A notice that there's something particular**
19 **at this facility.**
20 **Q.** Well, and is that -- well, let's go back
21 to page 4 and in particular in Section 1. There's
22 language in Section 1 that says that a review of
23 ICEMAN database was done on December 18th, which
24 shows no flags for violations. And I think what

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1 I'm reading says for 9(a) violations, is that
2 correct?
3 **A. Yes.**
4 **Q.** Okay. And did you type or draft that
5 sentence on this document?
6 **A. Yes.**
7 **Q.** Okay. So I would assume that that's a
8 review or some kind of check that you did on
9 December 18th of 2013?
10 **A. Correct.**
11 **Q.** Okay. And then below that there's a box
12 with four categories. Can you tell me what -- what
13 each of those -- what does that mean? And next to
14 it there's, you know, sort of a response that it
15 looks like you fill in, is that correct?
16 **A. Yes.**
17 **Q.** And the first one is Legal, and it says
18 none. What does that mean?
19 **A. If I looked on the ICEMAN database, then**
20 **if there was a flag for any legal issues.**
21 **Q.** And then the next one says FOS flag. Is
22 that Field Operations Section? Is that an
23 abbreviation for that?
24 **A. Yes.**

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1 **Q.** And what does that mean when you indicate
2 none next to that?
3 **A. That when I looked at the ICEMAN database**
4 **at that time, there was no flag showing up on my**
5 **screen.**
6 **Q.** Okay. And then the next one, Mike, what
7 does CROPA mean, C-R-O-P-A mean?
8 **A. That's a coordinated effort between Air,**
9 **Land, and Water.**
10 **Q.** And is that something you review on ICEMAN
11 to see if there's a CROPA issue?
12 **A. I don't know if ICEMAN would tell me if**
13 **there's a CROPA.**
14 **Q.** Okay. And then the last category is
15 other, and it references Brad Frost and information
16 about where the source is located. Tell me what --
17 why is that listed on there?
18 **A. Why is that listed on there?**
19 **Q.** Well, let me ask you first. Who is Brad
20 Frost?
21 **A. Brad Frost works close to my section at**
22 **that time, and he's more in the Public Relations.**
23 **He does like public hearings.**
24 **Q.** Okay. And what is the significance of

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1 that information you have there in the other
2 category?
3 **A. It was flagged on ICEMAN.**
4 **Q.** And it says that the source is located in
5 an area with greater than 30 percent minority
6 population and less than 20 percent poverty. Tell
7 me, what does that have to do with your permit
8 review?
9 MS. PAMENTER: Just to clarify the record.
10 I'm sorry to interrupt, but I think it's greater
11 than or equal to 20 percentage. Just to make sure
12 the record is clear.
13 BY MR. DWYER:
14 **Q.** Yeah. I apologize. I misspoke. It
15 indicates that the minority population is greater
16 than 20 percent poverty. And so what I was trying
17 to understand is, what does that -- how does that
18 relate to your permit review, Mike?
19 **A. It's relating to an EJ area, environmental**
20 **justice.**
21 **Q.** And how does that relate to your decision
22 on reviewing the permit? I mean, is there some
23 specific criteria that you have to look at, or look
24 in the permit for? I'm just trying to understand.

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1 **A. The permit -- go ahead and repeat the**
 2 **question.**
 3 **Q.** I'm just trying to understand how that
 4 information relates to your review and ultimate
 5 decision of the permit --
 6 **A. In my decision?**
 7 **Q.** -- for the permit application.
 8 **A. Well, when -- back to the EJ area.**
 9 **Q.** And by EJ you're referring to
 10 environmental justice?
 11 **A. Environmental justice. And it's something**
 12 **that came up in May 2014, that normally there's a**
 13 **flag on our ICEMAN data system. It has to do with**
 14 **certain areas where permits are located, and the ID**
 15 **number has something to do with where permits are**
 16 **located.**
 17 **Q.** And if they're located in an area like
 18 what is described here in the record, page 4, does
 19 it require some additional review by you?
 20 **A. Yes.**
 21 **Q.** Okay. And so what is that additional
 22 review? What do you do with it that you wouldn't
 23 do with a permit that was not located in this type
 24 of area, I'm sorry, permit application?

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1 **A. A closer review.**
 2 **Q.** And what things would you look at more
 3 closely?
 4 **A. That -- I would look at it as this would**
 5 **be going out to the public and possibly public**
 6 **hearing.**
 7 **Q.** When you say this, what do you mean this
 8 might be going out to the public?
 9 **A. The information in the permit application.**
 10 **Q.** Okay. Would it go out in the form you
 11 have it here in this document in the record or some
 12 other form?
 13 **A. I wouldn't prepare the information that**
 14 **goes out to the --**
 15 **Q.** Would Mr. Frost do that?
 16 **A. Yes, that's his job.**
 17 **Q.** If we go to the next section, Section 2,
 18 tell me, what is the purpose of that section on
 19 this form?
 20 **A. The purpose of that is to describe what**
 21 **the application is asking, in this case as a**
 22 **source, asking for a revised construction permit.**
 23 **Q.** And was that for the purpose of permitting
 24 certain equipment at the South facility?

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1 **A. Yes.**
 2 **Q.** All right.
 3 And it says that it was for ten
 4 conveyors, one stacking conveyor, one portable
 5 hopper, is that right?
 6 **A. Yes.**
 7 **Q.** And then below that, in this Section 3,
 8 did you draft that information that's set forth in
 9 that section?
 10 **A. Yes.**
 11 **Q.** And in that section, is the equipment that
 12 the permit application was requesting be permitted
 13 for the South facility, is it listed in this
 14 section of your notes?
 15 **MR. GRANT:** Are you on Section 2 or 3?
 16 I'm sorry.
 17 **MR. DWYER:** I'm sorry. We're on Section
 18 3.
 19 **MR. GRANT:** Three.
 20 **THE DEPONENT:** Go ahead and repeat the
 21 question.
 22 **BY MR. DWYER:**
 23 **Q.** Well, is the equipment that was listed in
 24 the application and being requested to get to be

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1 permitted, is that equipment listed in this Section
 2 3 on page 4?
 3 **A. No.**
 4 **Q.** Are you sure?
 5 **A. In Section 3?**
 6 **Q.** Yeah. If we go into Section 3, and if you
 7 move down there's a subsection that's titled list
 8 of emission units to be listed on the revised
 9 construction permit.
 10 **A. I might be in the wrong section. Hold on.**
 11 **Q.** We're on page 4 of the record.
 12 **A. Yeah.**
 13 **Q.** Page 4 of this document in the record, and
 14 we're in Section 3.
 15 **A. Okay.**
 16 **Q.** And if you -- there is a paragraph
 17 describing, it's a bulk material handling facility.
 18 There's a note that the facility is in a
 19 non-attainment area, and then below that it says,
 20 list of emission units to be listed on the revised
 21 construction permit.
 22 And my question is, are the pieces of
 23 equipment that were listed in the request for
 24 revision of the existing application, I mean, the

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1 existing permit, were those pieces of equipment --
2 are they listed in this section of your notes?

3 **A. Of the conveyors?**

4 **Q.** Well, if we go back up to Section 2, Mike,
5 you've typed there that the source is applying for
6 a revised permit to add ten conveyors, one stacking
7 conveyor, and one portable hopper.

8 **A. Okay.**

9 **Q.** And so my question is, are those ten
10 conveyors, the stacking conveyor, and the portable
11 hopper, are they listed below in Section 3 in your
12 list of emission units to be listed on the revised
13 permit?

14 **A. It says 20 conveyors with ID numbers.**

15 **Q.** Right. And is there a sequence there PC
16 13 through PC 22?

17 **A. Yes.**

18 **Q.** And, to your knowledge, are those the ten
19 conveyors requesting to be permitted, portable
20 conveyors that are requesting to be permitted?

21 **A. Yes.**

22 **Q.** Okay. And do you know where that
23 information came from?

24 **A. The PC numbers or --**

1 of calculations here. Did you obtain information
2 from the permit application in order to do these
3 calculations?

4 **A. This information was in the previous
5 permit.**

6 **Q.** So all the information in this section
7 came from the previous permit?

8 **A. Came from a previous calc sheet.**

9 **Q.** That was part of a previous permit
10 application or not?

11 **A. It was a previous calc sheet.**

12 **Q.** Okay. But, Mike, what I'm trying to
13 understand, Mike, was that calculation sheet
14 associated with a prior permit application or the
15 permit application that you were reviewing here?

16 **A. The information was from a prior permit
17 application.**

18 **Q.** And so looking in this section again,
19 there's a section in a different font, Mike. It
20 begins, well, there's a statement, based on the
21 throughput of coal of 11 million tons and 250 tons
22 for salt material storage pile emissions were
23 calculated. Did that information come from a prior
24 permit or application or did it come from the

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1 **Q.** Yeah. Yeah, the equipment numbers.

2 **A. Terry Steinert.**

3 **Q.** And did he also provide you with the
4 number for stacking conveyors five that's listed in
5 Section 3?

6 And if it would be helpful, Mike,
7 maybe take a look at the record at page, I think
8 it's page 183 or page 182. It's page 182.

9 **A. Yes.**

10 **Q.** And, Mike, where did the other information
11 that's in Section 3 come from?

12 **A. Previously issued permit.**

13 **Q.** Okay. So then if we go to Section 4,
14 which begins at the bottom of page 4 of the record,
15 the information in there, is that information and
16 calculations that you prepared in -- for a draft
17 permit for this facility?

18 **A. Go ahead and repeat the question.**

19 **Q.** The information in Section 4 that begins
20 at the bottom of page record 04 and continues on
21 page 05 of the record, is that information that you
22 prepared and put in this document?

23 **A. Yes.**

24 **Q.** Okay. And do you know -- there's a number

1 permit application you were reviewing in this case?

2 **A. Did that statement?**

3 **Q.** Yes.

4 **A. I don't remember.**

5 **Q.** Okay. Now, below that, Mike, there's
6 again a section in a little different font than the
7 rest of the document. It starts with the paragraph
8 14(a) and it continues with a series of, you know,
9 calculations for material throughput and PM
10 emissions. Did you prepare this?

11 **A. 14(a) through?**

12 **Q.** Yeah. It's -- I think it continues on to
13 page, actually pages 6, I think, and 7, and 8 of
14 the document.

15 **A. I copied it.**

16 **Q.** And do you know where you copied it from?
17 Is it possible it's -- it was from the existing
18 permit, construction permit for the facility?

19 **A. Yes.**

20 **Q.** Do you recall specifically doing that,
21 copying it from the existing permit?

22 **A. I don't know when.**

23 **Q.** I'm sorry?

24 **A. I don't know when I copied it.**

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1 Q. You don't know when you copied it.
2 But it was, I mean, obviously sometime
3 before January 17th?

4 A. Yes.

5 Q. Okay. Was it prior to December 18th?

6 A. **After December 18th?**

7 Q. No. Was it prior to December 18th?

8 A. **Prior being?**

9 Q. Before December 18th?

10 A. **It could have been.**

11 Q. But you're not sure as you sit here today?

12 A. **No.**

13 Q. Would you have any notes or anything that
14 would refresh your recollection as to when you
15 prepared that portion of this document in the
16 record?

17 A. **I mean, we revised this permit several
18 times, so I've used the calc sheet from 2007.**

19 Q. Okay. Let me ask you this. In that
20 section, you know, it's Section 14(a) through I
21 believe (i) that we're talking about, or (a)
22 through (h). The information in there, Mike, did
23 you change any of that information from the prior
24 permit? Let me strike that.

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1 You said you copied this from a prior
2 permit. Did you use any information from the
3 request for revision application in preparing that
4 Section 14 that's in this document?

5 A. **Say that again. I was looking at 14.**

6 Q. Did you use any information from the
7 application, the request for revision application
8 that you were reviewing, did you use any
9 information from that in preparing paragraph 14
10 that's in the document?

11 A. **Did I use any information?**

12 Q. You said that, earlier I think you
13 testified that you copied this paragraph 14 that is
14 in this document --

15 A. **Yeah.**

16 Q. -- from a prior permit for the facility,
17 is that correct?

18 A. **Yes.**

19 Q. Okay. And you think it may have been from
20 a 2007 permit?

21 A. **I think it could have been from a 2013.**

22 Q. And so my question is --

23 A. **'13.**

24 Q. Did you use -- did you use any information

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1 from the request for revision that you were
2 reviewing? Did you change anything in this
3 paragraph 14 based upon information you received in
4 the request for revision?

5 A. **Not that I'm aware of.**

6 Q. So it's possible you may have but you
7 don't recall right now?

8 A. **It's from a prior permit.**

9 Q. If we look at -- Mike, if we go to Section
10 5, that section asks you to identify the proposed
11 types, quantities, and rates of maximum actual
12 operating emissions for the source to be included
13 in the permit, including the units and controls
14 proposed, and it asks you to identify the source of
15 the emissions factors used. And you say, see
16 Section 4, which is the prior section. And so you
17 believe the information up in the prior section
18 also responded to the information required in
19 Section 5, is that correct?

20 A. **The information in 5, see Section 4.**

21 Q. I'm sorry?

22 A. **I'm reading. You say look at Section 5
23 and it says see Section 4, so I'm saying that the
24 information is in Section 4.**

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1 Q. Okay. That's what I was trying to
2 determine.

3 And then the next section, Section 6,
4 it says to identify the source's potential-to-emit,
5 including any proposed additions or revisions, and
6 to show calculations or reference where in the
7 application or file PTE is satisfactorily
8 presented. Emissions from 35 IAC 201.146 exempt
9 units must be included in the PTE calculations, and
10 you've written in the facility's application used
11 emission factors from AP-42 13.2.

12 A. **Correct.**

13 Q. Okay. And so your determination was that
14 was all that was needed to address Section 6?

15 A. **I don't know. You want to repeat the
16 question?**

17 MR. DWYER: Can you read it back?
18 (Whereupon, the requested portion
19 of the record was read back.)

20 THE DEPONENT: I don't know.

21 BY MR. DWYER:

22 Q. Do you just not recall, Mike? I mean,
23 would anything refresh your recollection as to, you
24 know, the determination?

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1 **A. About the PTE?**

2 **Q.** Yes. Yes.

3 **A. What determined the PTE?**

4 **Q.** Yeah. You know, what I want to confirm
5 is, you know, what you said is the facility's
6 application used emission factors from AP 42 13.2.

7 **A. Yes.**

8 **Q.** By that did you mean that was -- that was
9 satisfactory? Was that acceptable for your review
10 of that permit application regarding the PTE?

11 **A. It was a reference where emission factors**
12 **came from.**

13 **Q.** Okay. Did you need any more information
14 from them about that?

15 **A. As far as the PTE?**

16 **Q.** Yes.

17 **A. I didn't, because of the -- in the**
18 **meeting.**

19 **Q.** You didn't because of in which meeting?

20 **A. The August 27th meeting.**

21 **Q.** Okay. And tell me why you didn't need
22 anything. Tell me what you learned or were told at
23 that meeting that relates to this issue.

24 **A. Okay. In the August 27th meeting, I'm**

1 **A. Yeah. The potential to emit wasn't going**

2 **to be a -- that they were still going to remain a**
3 **minor source. That KCBX South was going to be its**
4 **own individual source, and KCBX North had its own**
5 **ID number. They have a FESOP, and at that time**
6 **they were going to be their own. They had their**
7 **own FESOP.**

8 **Q.** And you mentioned earlier that there was a
9 discussion about single source. What did you mean
10 by that?

11 **A. At one time during their so-called buying**
12 **the facility, I didn't know if they had any**
13 **intentions of moving, combining both sources.**

14 **Q.** Did they make any indication -- do you
15 recall any indication at the meeting that that was
16 KCBX intent, to treat the facilities as a single
17 source?

18 **A. Yes, they were -- as single, yeah, the ID**
19 **number. That each one was going to have their own**
20 **FESOP right now. That's the way it was going to**
21 **continue on.**

22 **Q.** And just so I understand, Mike, how did
23 that relate to your discussion in Section 6 of this
24 document we've been talking about in the record? I

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1 referring to the fact that we had a KCBX North and
2 a KCBX South. There's two facilities. They're
3 separated. They have two different ID numbers, and
4 in that meeting there were -- could remain as a
5 FESOP source. We talked about them still being a
6 single source and not a major source.

7 **Q.** Okay.

8 **A. So, and that KCBX South already applied**
9 **for a FESOP. And in my initial review of the fees**
10 **they submitted money for a synthetic minor source**
11 **yet, so they weren't trying to say they wanted to**
12 **be a lifetime source. So potential to emit**
13 **basically is one thing that we use in our unit to**
14 **either determine if you want to be a lifetime**
15 **permit, can accept reductions to become a FESOP, to**
16 **be under the major source threshold, or if they**
17 **want to be a major.**

18 **Q.** Okay. And what did you understand the
19 result of that meeting was? What -- I mean, what I
20 want to understand is, what of that information,
21 how did that relate to the information in your
22 reference to the emission factors at AP 42? Was
23 the information they provided to you at the meeting
24 satisfactory on that issue?

1 mean, you note that in here, that the Applicant has
2 requested a FESOP.

3 **A. And that they're -- okay. What's the**
4 **question?**

5 **Q.** I just, I was pointing out that you noted
6 in this Section 6 that the application requested a
7 FESOP, indicating NOx and PM-10 emissions for PTE
8 makes the source major.

9 **A. Yes.**

10 **Q.** Okay. How did that relate to your review
11 and decision whether to grant or deny the permit?

12 **A. All I know is FESOP sources would go to**
13 **public notice.**

14 **Q.** If we look at the next, Mike, Section 7,
15 again, did you identify and list these potential
16 applicable regulations?

17 **A. Yes.**

18 **Q.** And do you recall when you prepared this
19 information in Section 7?

20 **A. Exact date, no.**

21 **Q.** Do you recall whether it was prior to
22 December 18th or after that?

23 **A. This information was previous calc sheet.**

24 **Q.** Right.

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1 But my question is, do you recall
2 whether or not you typed this information into
3 Section 7, this part of the document, before or
4 after December 18th?

5 **A. I don't know. I'd say before.**

6 **Q.** Okay. And if we then look to Section 8,
7 Mike, which is the last section referred to as
8 conclusions and recommendation, it says that,
9 indicate your final recommendation (e.g., NOI,
10 which means Notice of Incompleteness, is that
11 correct?

12 **A. Yes.**

13 **Q.** Okay. And then it says, or denial or
14 issue permit with conditions, etc., and indicate
15 the reason or reasons for that action.

16 So if we go to the last page, page 9,
17 the first paragraph there it says that, it's
18 recommended that the revised permit be granted and
19 it goes on to describe the equipment, is that
20 correct?

21 **A. That's what it reads.**

22 **Q.** Okay. And then after that paragraph, the
23 last paragraph on this page says, it begins, it is
24 recommended that this permit denial be issued. And

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1 so what I want to talk to you about right now,
2 Mike, is the initial recommendation in the document
3 is to grant the revised construction permit. And
4 my question to you first on that is, when did you
5 prepare that portion of this document?

6 **A. When? I could have prepared it in
7 September.**

8 **Q.** Is there any way -- do you have any notes
9 or documents from which you could refresh your
10 recollection as to when you prepared that first
11 paragraph on page 9?

12 **A. I don't remember.**

13 **Q.** But you think it may have been in
14 September?

15 **A. Yes.**

16 **Q.** Okay. And did you prepare a draft permit
17 at or near the time that you drafted the first
18 paragraph on page 9?

19 **A. I prepare a lot of things.**

20 **Q.** Well, it's -- I think it's a
21 straightforward question, Mike.

22 Did you prepare a draft permit at or
23 near the time that you drafted the paragraph at the
24 top of page 9 that recommends that the permit be

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1 granted?

2 **A. Yes.**

3 **Q.** Okay. And, to the best of your
4 recollection, when did you prepare that draft
5 permit?

6 **A. A few days after I received the
7 information from Terry Steinert.**

8 **Q.** Okay. And did you provide that draft
9 permit to anyone else at the agency?

10 **A. Yes.**

11 **Q.** Okay. And to whom did you provide it?

12 **A. Baleriy Brodsky.**

13 **Q.** Okay. And did you discuss the draft
14 permit with Mr. Brodsky at all?

15 **A. Yes.**

16 **Q.** And tell me what the substance of those
17 discussions were.

18 **A. That we sat in a meeting August 27th. I
19 was trying to look at what was in the application,
20 previous application. I was trying to figure out
21 really what he was asking in the application,
22 because he was talking about KCBX North and South.
23 So I took the information that I had from Terry
24 Steinert.**

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1 **Q.** And let me stop you. That was -- that was
2 the list of the equipment and the equipment
3 numbers, is that correct?

4 **A. Yes.**

5 **Q.** And that was provided to you by e-mail, we
6 discussed earlier, several days after the August
7 27th, 2013 meeting?

8 **A. Within a few days I think, a day or
9 something. During the meeting Terry said he was
10 going to get me some information. He said he was
11 going to have it by Friday. It didn't come until a
12 few days later. And in the meeting I was under the
13 understanding that they were wanting this thing,
14 conditions, and --**

15 **Q.** I'm sorry. Could you say that again,
16 Mike? At the meeting you understood --

17 **A. They was asking us to proceed with this
18 permit process soon, that they needed this
19 equipment for in the North, because in the
20 application it says something about, they had a
21 throughput and they weren't able to -- they
22 couldn't produce what they was wanting to produce
23 with the equipment.**

24 **Q.** They couldn't produce or they couldn't

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1 move material?
 2 **A. Correct.**
 3 **Q.** Okay. And did you ask for the equipment
 4 numbers at the meeting on August 27th, 2013?
 5 **A. Yes.**
 6 **Q.** Okay. Did you ask KCBX for any other
 7 information?
 8 **A. I don't remember.**
 9 **Q.** Okay. Do you recall anyone else at the
 10 agency indicating that you needed any further
 11 information to complete your review of the permit
 12 application at that meeting?
 13 **A. We talked about EJ.**
 14 **Q.** But you don't recall, you or anyone else,
 15 indicating that you needed any other information
 16 besides the equipment numbers?
 17 **A. I was wanting equipment numbers.**
 18 **Q.** That's all?
 19 **A. Yes.**
 20 **Q.** Okay. Now, you indicated that -- we're
 21 going back to the record, Mike, and in the first
 22 paragraph at the top of page 9 of the record, you
 23 indicated that you prepared a draft permit sometime
 24 around September, and you talked with your

1 **were wanting this permit pretty soon.**
 2 **Q.** And do you recall, was that discussion
 3 with Bob after the September 27th meeting, I'm
 4 sorry, August 27th meeting?
 5 **A. Yeah, that was after August 27th.**
 6 **Q.** Did you --
 7 **A. August, no. Yeah, August 27th, yeah.**
 8 **Q.** Other than that discussion with Bob, did
 9 you discuss the draft permit after the discussion
 10 with Bob with anyone else?
 11 **A. No. I think Bob and Baleriy.**
 12 **Q.** And did you provide a copy of the draft
 13 permit to anyone else at the agency besides Bob or
 14 Mr. Brodsky?
 15 **A. I could have.**
 16 **Q.** You just don't recall whether or not you
 17 did?
 18 **A. It could have been an e-mail.**
 19 **Q.** And is it possibly it was attached to one
 20 of the e-mails that your counsel indicated that you
 21 would not be answering any questions about?
 22 **A. Yes.**
 23 **Q.** Okay. Then let's look at the document
 24 again, Mike, and in particular your last paragraph.

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1 supervisor at the time, Mr. Brodsky about it.
 2 Did you talk with anyone else about
 3 the draft permit?
 4 **A. Physically talk, no. I don't know if I**
 5 **talked to Bob or not about it.**
 6 **Q.** And Bob?
 7 **A. Bob Bernoteit.**
 8 **Q.** Okay. At any time --
 9 **A. I want to --**
 10 **Q.** Go ahead.
 11 **A. I talked to Bob about this permit or**
 12 **whatever. He knew that I had this permit.**
 13 **Q.** Okay. Do you recall the substance of that
 14 discussion?
 15 **A. No. I mean, he sat in the meeting. He**
 16 **was in the meeting with us trying to figure out**
 17 **KCBX North, KCBX South.**
 18 **Q.** And what were you trying figure out in
 19 that meeting about the two sites?
 20 **A. I don't remember exactly, but KCBX was**
 21 **wanting to bring these conveyors and these blocks,**
 22 **feed hopper, whatever you want to call them,**
 23 **stacking conveyor, that they wanted to bring it**
 24 **over from their North plant. It seemed like they**

1 That paragraph indicates that you were recommending
 2 that the permit denial be issued.
 3 When -- when did you prepare that
 4 paragraph?
 5 **A. January, January 16th.**
 6 **Q.** And before you prepared that did you have
 7 a discussion about drafting that paragraph with
 8 anyone at the agency?
 9 **A. This paragraph?**
 10 **Q.** Yeah, the last paragraph on page 9 of the
 11 record.
 12 **A. It's part of my analysis sheet.**
 13 **Q.** I'm sorry?
 14 **A. It's part of my analysis sheet, this**
 15 **paragraph.**
 16 **Q.** Right. And is that the document other
 17 than this document? You said it's part of your
 18 analysis sheet.
 19 **A. Yeah. Yeah. I wrote this paragraph.**
 20 **Q.** Right.
 21 And my question to you was, before you
 22 drafted that paragraph, did you discuss drafting
 23 that paragraph with anyone else at the agency?
 24 **A. I don't remember, no.**

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1 Q. So you drafted the last paragraph without
2 any discussion with your supervisor or anyone else
3 about preparing the paragraph that says that the
4 permit denial should be issued?
5 **A. No. I discussed it with my supervisor.**
6 Q. And who was that at the time?
7 **A. Bob Bernoteit.**
8 Q. And tell me the substance of that
9 discussion.
10 **A. That -- how it went down the final day I**
11 **guess.**
12 Q. Tell me, what is the final day?
13 **A. For me it was January 16th, a Thursday.**
14 Q. Okay. And is that the day that you had a
15 conversation with Mr. Bernoteit about this
16 paragraph?
17 **A. I -- it's my job to write the analysis**
18 **sheet.**
19 Q. Okay. But what I asked you was, is that
20 the date that you had your conversation with Mr.
21 Bernoteit about that last paragraph on page 9?
22 **A. I wrote it.**
23 Q. I'm sorry?
24 **A. I wrote that.**

1 **A. The exact date, no.**
2 Q. Okay. Well, let me ask you this, Mike.
3 What happened -- what did you review or do that
4 made you change your determination from the
5 original one you made in the first paragraph on
6 page 9 of the record to your final determination
7 that the permit needed to be denied?
8 What -- what changed? What happened?
9 **A. I took a closer look at the application.**
10 Q. And when did you start doing that?
11 **A. I looked at it several times throughout**
12 **the permitting process from the -- the things in**
13 **July, September, October, November, December,**
14 **January.**
15 Q. Okay. Tell me what -- you said you took a
16 closer look. What did you determine upon your
17 closer look that you didn't identify in September?
18 **A. That there was no calculations in there**
19 **supporting they were in compliance, to demonstrate**
20 **compliance with the applicable rules.**
21 Q. Okay. Did you receive any direction from
22 your supervisor or anyone else to take a closer
23 look at this application after September when you
24 drafted a permit for it?

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1 Q. Yes. I understand you wrote it. What I'm
2 asking you is, you said that you had a conversation
3 with Mr. Bernoteit, your supervisor, before you
4 prepared that paragraph.
5 And my question to you is, was that
6 conversation with Mr. Bernoteit on January 16th?
7 **A. Yes.**
8 Q. Okay. Did you have any conversations with
9 him before January 16th about this paragraph on
10 page 9 of the record?
11 **A. No.**
12 Q. Okay. So then let me ask you, when did
13 you determine that the permit -- you needed to
14 recommend that the permit be denied?
15 **A. Prior, in December.**
16 Q. And when in December?
17 **A. After the 1st.**
18 Q. After the 1st of December.
19 Okay. Now, was it prior to December
20 18th?
21 **A. Yes.**
22 Q. Okay. And do you recall specifically when
23 you made this determination? You say it was after
24 December 1st and before December 18th.

1 **A. Yes.**
2 Q. Okay. And from whom did you receive that
3 direction?
4 **A. My unit manager.**
5 Q. And was that Mr. Brodsky or was that Mr.
6 Bernoteit?
7 **A. I looked at it again and he had some**
8 **comments about it.**
9 Q. And, again, when you say he?
10 **A. Mr. Brodsky.**
11 Q. Mr. Brodsky. So did he direct you to take
12 a closer look at the application after you prepared
13 the draft permit?
14 **A. Yes, I took a closer look.**
15 Q. Pardon me?
16 **A. Yes.**
17 Q. Okay. And you said you had a conversation
18 with Mr. Brodsky about the draft permit in
19 September. Is that when he told you to take a
20 closer look at it, or, I'm sorry, at the permit
21 application? Is that -- you testified earlier that
22 you had a conversation with Mr. Brodsky about the
23 draft permit. Is that the time at which he asked
24 you take a closer look at the permit application or

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1 was it after that?
 2 **A. After.**
 3 **Q.** Okay. And do you recall approximately
 4 when? Was it in September or was it in October?
 5 **A. Probably more in October.**
 6 **Q.** Okay. And did anyone else -- did you have
 7 a conversation with anyone else at the agency about
 8 taking a closer look at the application besides Mr.
 9 Brodsky?
 10 **A. Not at the time, no.**
 11 **Q.** Okay. But later?
 12 **A. He was my unit manager.**
 13 **Q.** Did you have, in October or November, any
 14 conversations with anyone else who had requested
 15 you take a closer look at the application?
 16 **A. Not that I remember.**
 17 **Q.** Okay.
 18 **A. Can I use the bathroom?**
 19 **Q.** Absolutely. Let's take a break.
 20 (Whereupon there was a recess
 21 taken.)
 22 BY MR. DWYER:
 23 **Q.** Mike, we were talking before the break
 24 about your decision to review the application

1 refer to it as, did you review any permits or
 2 permit applications for the North facility?
 3 **A. I looked at them, yes.**
 4 **Q.** Okay. And did you look at them in any
 5 further detail after your discussions with Mr.
 6 Bernoteit about this North and South facility
 7 confusion that you were trying to clarify?
 8 **A. I looked at them again.**
 9 **Q.** Okay. If we look now in the record,
 10 again, Mike, at the record page 010.
 11 **A. Ten?**
 12 MS. PAMENTER: Yes, it's ten.
 13 BY MR. DWYER:
 14 **Q.** It's page 10. I'm sorry.
 15 **A. All right.**
 16 **Q.** And that's called a permit review traveler
 17 sheet. Did you prepare that or tell me what you do
 18 with that document.
 19 **A. Okay. This document is part of the permit**
 20 **application. It's inside of a file. It's inside**
 21 **of a manila folder, basically like that, along with**
 22 **the -- with whatever information is in the**
 23 **application. It's stapled inside of it. It goes**
 24 **along with the file, and I prepared the -- my name**

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1 submitted by KCBX in more detail.
 2 You said you talked with Bob Bernoteit
 3 about that, and you also talked with Mr. Brodsky
 4 about it. And you said that during your discussion
 5 with Mr. Bernoteit you talked about issues between
 6 the KCBX North and South facility, and that they
 7 were bringing this equipment -- they were seeking
 8 to have this equipment from North permitted under
 9 this permit reviewing to operate the South
 10 facility, is that correct?
 11 **A. Yes. Yes.**
 12 **Q.** Okay. And in the course of this further
 13 review of the application, did you review any other
 14 permits or permit applications for the North
 15 facility?
 16 **A. Did I review any, no.**
 17 **Q.** So you didn't review any documents --
 18 **A. Oh -- --**
 19 **Q.** -- any permit documents related to the
 20 North facility?
 21 **A. Before August? Go ahead.**
 22 **Q.** Well, let me ask it more broadly.
 23 In the process of reviewing the permit
 24 application or the request for revision is what I

1 **as an analyst right here. I wrote that.**
 2 **Q.** And so on this document, again, page 10 of
 3 the record, it -- does that basically, you know, a
 4 number of -- there are a number of categories on
 5 it. They're not all filled in. Did you fill in
 6 all of the information that is on it?
 7 **A. No.**
 8 **Q.** Who would have -- who else would have
 9 filled in anything on this permit traveler sheet?
 10 **A. The clerk, BD, Beth Davenport.**
 11 **Q.** And are those her initials at the bottom
 12 of the document?
 13 **A. I recognize them, yes. That's her --**
 14 **would be her initials.**
 15 **Q.** Okay. And on this document, Mike, at the
 16 bottom it's dated January 17th, 2014. Is that the
 17 day that this document was completed and filled
 18 out?
 19 **A. Yes.**
 20 **Q.** So of the entries on it would have been
 21 made on that date, January 17th?
 22 **A. I could only speak for the ones that I**
 23 **entered.**
 24 **Q.** Okay. But I think that you said the only

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1 other person that would have entered anything on it
2 would be Beth Davenport?

3 **A. I want to correct that. She was one of**
4 **the persons that entered something on it.**

5 **Q.** Okay. And who else, if you can tell me?

6 **A. There's other initials on here.**

7 **Q.** And I note in the middle next to a
8 category submitted to Word Processing, are those
9 your initials and then Bob Bernoteit's?

10 **A. Yes.**

11 **Q.** Okay. And then at the bottom next to the
12 column or the row that says denied, the denied
13 block is filled out, and then your name, the date
14 January 17th, and then is that Bob Bernoteit's
15 initials and, again, the date?

16 **A. Yes.**

17 **Q.** Okay. And the date for all of those is
18 January 17th?

19 **A. Yes.**

20 **Q.** Okay. Mike, were you at work on the 17th?
21 Because you said that earlier your last day was the
22 16th. So I just want to know, were you there on
23 the 17th when this document was filled out?

24 **A. Is the 17th a Friday?**

1 number of other people listed as being at that
2 meeting. And a couple of questions I have for you,
3 Mike, are, there's a gentlemen listed on here by
4 the name of Michael Reed. Does he work in the
5 Bureau of Air?

6 **A. Yes.**

7 **Q.** Okay. Do you know why Mr. Reed was at the
8 meeting?

9 **A. I have an idea.**

10 **Q.** Please share it with me.

11 **A. Okay. Mr. Reed is a unit manager in the**
12 **CAAPP Section, so that's major sources. And back**
13 **to the KCBX North and KCBX South, they still had**
14 **separate FESOP or separate FESOP applications, and**
15 **that it still wasn't determined if they wanted to**
16 **combine these two facilities into one, the North**
17 **and the South.**

18 **And this came up about a year earlier**
19 **when KCBX was talking about buying the South**
20 **facility, and I remember an initial review that I**
21 **did, that DTE applied for a FESOP and kind of had**
22 **something drafted up on that, and that there**
23 **already was a FESOP for KCBX North, and they told**
24 **me to take a look at these.**

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1 MS. PAMENTER: It actually is a Friday. I
2 can state that.

3 MR. DWYER: Okay. I'll accept that.

4 THE DEPONENT: No. No.

5 **Q.** Okay. So then my only question is, how
6 could you have initialed it on that date if you
7 weren't there?

8 **A. Initialed this? I wrote my name.**

9 **Q.** Yeah. My question is, if you weren't
10 there on the 17th, how did you do that? I mean, is
11 it possible you did it the day before, on the 16th?

12 **A. It's possible, yes.**

13 **Q.** Okay. But as it reads, it indicates that
14 you initialed that sheet on the 17th?

15 **A. That's what it reads.**

16 **Q.** Okay. I want to go back, Mike, to the
17 August 27th, 2013 meeting briefly. And let me
18 direct your attention to page 183 in the record.

19 Now, it's my understanding, just to
20 confirm that page 183 of the record is a sign-in
21 sheet for that meeting that was held on August
22 27th, 2013?

23 **A. Yes.**

24 **Q.** And along with your name there are a

1 **And what I remember about them was**
2 **that the, if I just took them, the numbers on their**
3 **permit applications for PM-10 and combined them,**
4 **that it was over 100 tons, and that they'd would be**
5 **a major source. So wasn't sure if they was going**
6 **to apply for a major source permit in CAAPP 5 or if**
7 **they was going to remain as a FESOP.**

8 **Q.** And do you recall whether that issue was
9 resolved at the August 27th meeting?

10 **A. At the August 27th meeting, what I**
11 **remember was, there was KCBX North was still going**
12 **to be a FESOP source and KCBX South was a FESOP**
13 **source.**

14 **Q.** Do you remember any discussion that they
15 would treat the facilities as a single source?

16 **A. A single source? I was looking at them as**
17 **individual sources.**

18 **Q.** Okay. Now, let me direct you again into
19 the record if you would, Mike, go ahead and take --

20 **A. Can I clarify? At that meeting or**
21 **whatever, that there was going to be a single**
22 **source as North and South, and at that meeting, you**
23 **know, if they decided that maybe they was going to**
24 **merge or something or whatever, it was going to go**

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1 to Mike Reed, that I wouldn't have the permit
2 application was my intention.

3 Q. Okay. Then if you would, Mike, take a
4 look at page, page 30, 030 in the record.

5 A. Okay.

6 Q. Now, in reviewing the record before your
7 deposition, Mike, did you review this letter dated
8 December 10, 2013?

9 A. I looked at it.

10 Q. Okay. Tell me what you understanding that
11 letter to be about or what was its purpose.

12 A. That the agency is considering information
13 collected by the Illinois EPA from inspections,
14 Bureau of Air Field Offices on different dates
15 between the time period that the permit application
16 was assigned to me, and there were complaint forms,
17 and there were violations in Sections 9 and 32 of
18 the Illinois Environmental Protection Act.

19 Q. Okay. And that letter was sent to KCBX
20 Terminals, correct?

21 A. Yes, to Michael Estadt.

22 Q. Right. And it indicates at the bottom,
23 correct me, Mike, but it indicates that the signor
24 of the letter was Ray Pilapil, who was the Acting

1 A. I didn't write this letter.

2 Q. Okay. Did you review it at all before it
3 was sent out?

4 A. I'm sure I saw it.

5 Q. Before it went out?

6 A. Yes.

7 Q. Okay. Let me ask you this. This letter
8 was sent out on December 10th. According to your
9 earlier testimony, you had done a closer review of
10 the application and determined that there were some
11 issues with it, is that correct?

12 A. Yes.

13 Q. Okay. And was one of the issues that you
14 found that you needed additional information?

15 A. I knew I was lacking information.

16 Q. Yes.

17 So you at that -- before December 10th
18 you determined that you were lacking information in
19 order to make a final permit decision?

20 A. Yes.

21 Q. Okay. And did you contact KCBX --

22 A. What was the date on that?

23 Q. December 10th.

24 A. Okay.

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1 Manager of the Permit Section.

2 Do the initials there indicate that
3 Mr. Pilapil and Mr. Bernoteit signed it, or did Mr.
4 Bernoteit sign it for Mr. Pilapil? What do those
5 initials down there mean, if you know?

6 A. I know Mr. Bernoteit's initials.

7 Q. I'm sorry? You don't know?

8 A. I know his initials are there.

9 Q. Okay. And above -- or, to the left of
10 that are the initials REP?

11 A. Yes.

12 Q. And do you know if those are the initials
13 of Mr. Raymond Pilapil at the agency?

14 A. Yes.

15 Q. Okay. And below that, Mike, again on this
16 letter, are Mr. Pilapil's typed in initials, and I
17 think what are your typed in initials?

18 A. Correct.

19 Q. And then next the set is I assume the
20 person who actually typed the letter in your Word
21 Processing pool?

22 A. Correct.

23 Q. Okay. So my question to you about the
24 letter is, did you assist in preparing this letter?

1 Q. Did you -- so my question is, did you
2 contact KCBX and say, there's some information I
3 need to continue reviewing your application?

4 A. No.

5 Q. Okay. Is there a reason why you didn't
6 contact them?

7 A. I was told not to talk about permit
8 issues.

9 Q. Okay. Who directed you not to talk to
10 KCBX about permit issues?

11 A. Previous, it came in from the previous
12 permit.

13 Q. I'm sorry?

14 A. We did a permit before, and I had no
15 contact with KCBX then.

16 Q. Okay. So my question was, when you
17 determined that you needed additional information
18 prior to December 10th, why didn't you contact the
19 permit applicant and ask for the information?

20 A. I was told not to talk about KCBX.

21 Q. And by whom?

22 A. Bob Bernoteit.

23 Q. And do you know why he directed you not to
24 contact the permit applicant to discuss the

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1 additional information?

2 **A. No.**

3 **Q.** Okay. So at that point in time your
4 direction was to not contact the permit applicant
5 to discuss any of the issues you'd identified on
6 your review?

7 **A. Correct.**

8 **Q.** Okay. Then if you would, Mike, take a
9 look at the record, I think it starts at page 11.
10 The document that I want to talk about starts at
11 page 11.

12 Now, did you review that document in
13 preparing for your deposition today, Mike?

14 **A. Yes.**

15 **Q.** And is that letter a response on behalf of
16 the KCBX to the December 10th letter that we just
17 talked about?

18 **A. Yes.**

19 **Q.** Okay. And, Mike, did you review that
20 letter before you made your recommendation to issue
21 a permit denial?

22 **A. Yes.**

23 **Q.** Okay. And, Mike, did you rely in any way
24 on that letter in making your recommendation of a

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1 permit denial?

2 **A. I looked at -- what was the question? Did**
3 **I rely on it?**

4 **Q.** Yeah.

5 Did you review or rely upon it in
6 making your recommendation of a permit denial?

7 **A. Yes.**

8 **Q.** Okay. Then let's look at some other
9 documents. The first what I want to go to now,
10 Mike, is, I want to talk to you about the
11 inspection reports that are in the record. So
12 first if you'd go to pages 40 through 70, and I
13 believe those are copies of September 11th,
14 September 13th inspections conducted of the
15 facility by the agency.

16 Is that your understanding of those
17 documents?

18 **A. Yes.**

19 **Q.** Okay. And a similar question as before,
20 Mike. Did you review those or rely upon them in
21 making your recommendation of a permit denial?

22 **A. I reviewed them.**

23 **Q.** Did you rely upon any of the information
24 in there to make your recommendation of a permit

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1 denial?

2 **A. I don't know if I relied on them, no.**

3 **Q.** Do you know if somebody else in the agency
4 relied upon them?

5 **A. They could have.**

6 **Q.** Okay. Now, a similar question. If we go
7 to pages 31 through 39, did you review those
8 inspection reports before you made your
9 recommendation of a permit denial?

10 **A. I looked at them.**

11 **Q.** And did you rely upon any of the
12 information in there in making your recommendation
13 of a permit denial?

14 **A. No.**

15 **Q.** Okay. And then if you'll go to pages 85
16 to 101. Did you review that November 6th, 2013
17 inspection report in making your determination to
18 recommend permit denial?

19 **A. What page does this go up to?**

20 **Q.** Page 85 to page 101.

21 **A. I didn't rely on them, no.**

22 **Q.** Okay. Now, if you'd look at page 29 of
23 the record, Mike.

24 **A. Okay.**

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1 **Q.** Before today did you -- have you seen that
2 letter, Mike?

3 **A. Yes.**

4 **Q.** Okay. And when did you first see that
5 letter?

6 **A. I seen it before January 16th.**

7 **Q.** Okay. But do you know if you saw that
8 letter at or near the time that it -- that it's
9 dated, December 16th?

10 **A. It was getting close to Christmas. I**
11 **remember putting it in the file, looking at it.**

12 **Q.** Do you remember talking about the letter
13 with anyone?

14 **A. I think Bob Bernoteit.**

15 **Q.** Okay. Do you recall the substance of the
16 conversation with Bob about the letter?

17 **A. Just that there was a lot of, definitely**
18 **some public interest in this.**

19 **Q.** Okay. A similar question. Mike, did you
20 review this letter or rely upon it in making your
21 recommendation of a permit denial?

22 **A. No.**

23 **Q.** Okay. And then, Mike, let's talk about
24 the citizen complaint forms, which start at page

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1 222.
 2 **A. 222. It's a little hard to read here.**
 3 **Q.** Okay.
 4 **A. There's a line through it. Is that it?**
 5 **Q.** Oh, yeah, there is.
 6 **A. Okay.**
 7 **Q.** There's a line through mine, too.
 8 **A. I just wanted to clarify that I was on the**
 9 **same page.**
 10 **Q.** I have to confess, I'm not quite there
 11 yet. Okay. Mike, looking at that first page, 222,
 12 have you seen that document before today?
 13 **A. It's part of the file that they give me.**
 14 **I recognize the page number.**
 15 **Q.** And is it your understanding that there
 16 are a series of similar documents in the record?
 17 **A. Yes.**
 18 **Q.** Okay. And the copies in the record, do
 19 they appear to have information, at least on the
 20 first page of what you're looking at, 222, redacted
 21 or blackened so that it can't be seen?
 22 **A. Yes.**
 23 **Q.** Okay. And, Mike, have you ever seen a
 24 version of any of these complaint forms in the

1 **them.**
 2 **Q.** Do you think it's possible you saw them
 3 with names on them?
 4 **A. It's possible, yes.**
 5 **Q.** Okay. But as we sit here today you don't
 6 have a clear recollection whether or not you saw
 7 them with the names and addresses or blacked out?
 8 **A. I think they had names on them.**
 9 **Q.** And the other information, including the
 10 address and telephone number, etc.?
 11 **A. It's possible.**
 12 **Q.** Okay. And did -- if I asked this, I
 13 apologize. But did you rely upon those documents
 14 in making your recommendation of a permit denial?
 15 **A. I didn't, no.**
 16 **Q.** Okay. Do you know if anyone else at the
 17 agency relied upon them in making the
 18 recommendation to deny the permit?
 19 **A. I don't know.**
 20 **Q.** Okay. Now, Mike, if we can go now to
 21 finish up to the very beginning of the record, page
 22 1. Now, did you review that document in
 23 preparation for the deposition today?
 24 **A. Yes.**

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1 record that was not redacted and having information
 2 removed or darkened so it can't be seen?
 3 **A. If it was in the file, I could have.**
 4 **Q.** But as we sit here, do you recall
 5 reviewing citizen complaint forms that are included
 6 in the record at pages 222 to 537? Did you review
 7 those before making your recommendation of a permit
 8 denial?
 9 MS. PAMENTER: Just for clarification, the
 10 redacted version or the clean version?
 11 MR. DWYER: Well, we're going to start
 12 with any.
 13 MS. PAMENTER: Okay. Fine. I'm sorry.
 14 THE DEPONENT: I had access to this
 15 information.
 16 BY MR. DWYER:
 17 **Q.** Did you review it before making your
 18 determination to recommend a permit denial?
 19 **A. I looked at some of these.**
 20 **Q.** Okay. And do you recall as we sit here
 21 today, did you review them in an unredacted form
 22 before you made that recommendation of a permit
 23 denial?
 24 **A. I could have seen them with no names on**

1 **Q.** Okay. And is that what I'll refer to as
 2 the permit denial letter?
 3 **A. Yes.**
 4 **Q.** And that's dated January 17th, 2014?
 5 **A. Correct.**
 6 **Q.** And if we look to the last page of that,
 7 Mike, if you'd go back there first, again, that
 8 letter is signed by Ray Pilapil as the Acting
 9 Manager of the Permit Section. Below that there
 10 are initials, and, again it shows Mr. Pilapil's
 11 typed in initials, then your typed in initials, and
 12 it appears, I don't know if you can tell me, that
 13 it's initialed also by, is that by Mr. Bernoteit?
 14 **A. Yes.**
 15 **Q.** Okay. So my first question, Mike, is, did
 16 you participate in preparing this letter?
 17 **A. Bob wrote it.**
 18 **Q.** Did you participate at all? Did you
 19 discuss the letter with Mr. Bernoteit?
 20 **A. Yes.**
 21 **Q.** Okay. When did you discuss the letter
 22 with Mr. Bernoteit?
 23 **A. In December.**
 24 **Q.** Do you recall when in December?

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1 **A. After the 1st.**
 2 **Q.** Okay. Was it before December 18th?
 3 **A. Yes.**
 4 **Q.** Okay.
 5 **A. Around there. I can't picture what the**
 6 **18th is on. Go ahead.**
 7 **Q.** Was it -- what I was going to ask you, was
 8 it before December 10th?
 9 **A. It was --**
 10 **Q.** Go ahead. Go ahead.
 11 **A. It was after December 1st.**
 12 **Q.** Okay. December 10th is the date that we
 13 discussed earlier was the date that the letter was
 14 sent by Mr. Pilapil advising KCBX that they were
 15 going to consider some additional information in
 16 making the permit decision.
 17 And so my question to you is, do you
 18 recall whether you talked with Bob about the permit
 19 denial letter before the December 10th letter was
 20 sent?
 21 **A. I don't recall.**
 22 **Q.** Okay. Tell me what you, you know, the
 23 substance of your discussion with Mr. Bernoteit
 24 about the permit denial letter.

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1 **A. That -- what we talked about in there, in**
 2 **my permit denial letter?**
 3 **Q.** What did you talk with Mr. Bernoteit
 4 about, you know, as much detail as you can recall?
 5 **A. What time period?**
 6 **Q.** Well, you indicated that you talked with
 7 Mr. Bernoteit about the denial letter in December.
 8 **A. Yeah.**
 9 **Q.** And you weren't sure exactly when in
 10 December. And so my question to you was, tell me
 11 what was -- what was the substance of your
 12 discussion with Mr. Bernoteit about the permit
 13 denial letter.
 14 **A. Reasons for denial.**
 15 **Q.** Okay. And looking at the letter there
 16 are -- the letter contains I believe five numbered
 17 paragraphs with what I'll call five denial reasons
 18 if that's fair.
 19 Did you discuss paragraphs 1 through 5
 20 of the letter with Mr. Bernoteit in December?
 21 **A. Did I discuss them all, no.**
 22 **Q.** Pardon me?
 23 **A. All? You said 1 through 5.**
 24 **Q.** Yeah. And you said you didn't discuss

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1 them all?
 2 **A. No.**
 3 **Q.** Which ones did you discuss with Mr.
 4 Bernoteit, which paragraphs?
 5 **A. I talked about number 4.**
 6 **Q.** Can you tell me, you know, what -- you
 7 know, number 4 indicates that the application
 8 didn't demonstrate whether particulate matter
 9 emissions from the ten conveyors, the one box
 10 hopper, and the one stacker would comply with
 11 212.321. Is that a regulation that applied to the
 12 facility?
 13 **A. Yes.**
 14 **Q.** Okay. Mike, I'm going to give you right
 15 now what we'll get to in a second, what's been
 16 marked as Deposition Exhibit 13, and that's a copy
 17 of some of the regulations cited in the denial
 18 letter we're talking about. And so if you'd look
 19 at those regulations, Mike, and particularly go to
 20 212.321.
 21 **A. Okay.**
 22 **Q.** Are you familiar with that regulation,
 23 Mike?
 24 **A. Yes.**

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1 **Q.** Okay. And the paragraph 4 of page 2 of
 2 the record states that the application did not
 3 include data that would prove the actual emission
 4 levels pursuant to 35 Illinois Administrative Code
 5 201.122, or any other information that could be
 6 used to estimate emissions, the Illinois EPA could
 7 not assess whether these emission units have a
 8 particulate matter emission rate at levels below
 9 which would be allowed by this rule.
 10 Now, my question to you is, you said
 11 you talked with Bob about that. Did you discuss
 12 with Bob that you'd made a determination that this
 13 was a problem with the permit application or a
 14 deficiency in it?
 15 **A. I knew there was a deficiency in there.**
 16 **Q.** And what I want to understand is, what
 17 information -- when did you determine that this
 18 information needed was not in the permit, that was
 19 not in the permit application?
 20 **A. I looked at it several times.**
 21 **Q.** It being the permit application?
 22 **A. Correct.**
 23 **Q.** Okay. And can you recall when your last
 24 review of the application regarding the issue of

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1 compliance with 212.321 occurred?

2 **A. When I last looked at it?**

3 **Q.** Before the permit denial letter was
4 issued? When did you last look at it before the
5 permit denial letter was issued?

6 **A. Well, probably the day -- that day I**
7 **looked at the application one more time.**

8 **Q.** Okay.

9 **A. That being the Thursday of January 16th.**

10 **Q.** Okay. So let me -- let me ask you this.
11 Let's go back and look at the permit application
12 that's in the record.

13 MR. GRANT: Can I ask you how much longer
14 you're going to proceed?

15 MR. DWYER: We're almost done.

16 MS. PAMENTER: We've been keeping track.

17 BY MR. DWYER:

18 **Q.** Mike, if you'd take a look in the record
19 at --

20 **A. What page?**

21 **Q.** Mike, in particular, if you'd take a look
22 at the page starting at page 213. Tell me what you
23 understand these tables to provide you in the
24 application.

1 **Q.** Sure, if you would.

2 **A. I don't have that. I wasn't looking at**
3 **the application.**

4 MS. PAMENTER: Mr. Dwyer, to assist, it's
5 R196.

6 BY MR. DWYER:

7 **Q.** I'm sorry. Mike, if you'd look at page
8 196 of the record.

9 **A. Okay.**

10 **Q.** Does it indicate there that --

11 **A. It says Tables 5 and 6 in the initial**
12 **application.**

13 **Q.** So if we go back to that DTE application,
14 and we looked at Tables 5 and 6 that begin I think
15 on page 213.

16 **A. Okay.**

17 **Q.** And do those tables provide information
18 about equipment, including portable conveyors
19 related to their maximum material handling rate,
20 the particle size, emission factors, their control,
21 PM emission rates?

22 **A. Okay. I see it.**

23 **Q.** My question to you is, in looking at those
24 tables, if you look at page 214 in particular, my

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1 MR. GRANT: I object to -- hold on a
2 second. I'm not supposed to be objecting.

3 MS. PAMENTER: Just to clarify for the
4 record, the actual permit application that was
5 submitted is R186 to R204. Page R213 to which
6 you're referring is referenced in the permit
7 application as opposed to have having been
8 attached.

9 MR. DWYER: Okay. Mike, counsel is
10 certainly correct.

11 Did you look at the documents, in
12 particular the documents at page 213 through 218 of
13 the record? Did you review those documents in the
14 course of your review of the application for permit
15 submitted by KCBX?

16 THE DEPONENT: Did I review this document?

17 **Q.** Yes.

18 **A. I'm sure I looked at it.**

19 **Q.** Okay. And were those tables on those
20 pages, were those tables specifically referenced in
21 the KCBX's application?

22 **A. No.**

23 **Q.** No?

24 **A. I'll go back to the application.**

1 question to you, Mike, is this. Is this the kind
2 of information that you believe was missing from
3 the KCBX application?

4 **A. Yes. There's some missing information.**

5 **Q.** I'm sorry, Mike?

6 **A. Yes.**

7 **Q.** Okay. And specifically is this the type
8 of information that you believe you needed in order
9 to make a determination as to compliance with
10 Section 212.321?

11 **A. It would be helpful.**

12 **Q.** Okay. What other information besides this
13 do you believe you would need to make a
14 determination about the permit application's
15 compliance with 212.321?

16 **A. That they would do a sample calculation**
17 **using their information.**

18 **Q.** Okay. Anything else?

19 **A. Any other support documentation that they**
20 **could provide us.**

21 **Q.** Okay. And other than permit denial
22 paragraph number 4 --

23 **A. I want to -- I reference to the ID numbers**
24 **of the --**

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1 Q. Of the equipment?

2 A. Yeah.

3 Q. Okay. And didn't -- didn't Mr. Steinert

4 provide you that information for the pieces of

5 equipment in the e-mail he sent you after the

6 August 27th meeting?

7 A. He provided me ID numbers.

8 Q. Okay. And so what other numbers are you

9 saying that you needed?

10 A. I don't know how these -- how them ID

11 numbers correspond to the information that you're

12 having me look at.

13 Q. Okay. So, well, and that's what I'm

14 trying to understand is. If you go back to page

15 214.

16 A. Okay.

17 Q. Does that -- does that table provide

18 information on portable conveyors located at the

19 South facility?

20 A. In the description it doesn't say it's

21 portable conveyors.

22 Q. Well, if you look at the table on 214,

23 Mike, it says in the -- about one-third of the way

24 down it says coal/petcoke portable conveyors

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1 emissions. Okay. And then it lists the different

2 portable conveyors.

3 A. Okay. I see it.

4 Q. So my question is, I think you said yes,

5 that's the kind of information you needed to be

6 able to make a determination regarding whether the

7 permit complied with 212.321, and then you said

8 that you needed some additional information.

9 I'm just trying to understand, what

10 other additional information?

11 A. Well, this one ends at PC-12 --

12 Q. Right.

13 A. -- portable conveyor.

14 Q. Right. And so that's what I want to

15 confirm is, did you need that type of information

16 that is on page 214 --

17 MS. PAMENTER: I'm sorry. Are you

18 finished with your answer? You were saying this

19 ends at PC-12. Did you finish your answer to his

20 question?

21 THE DEPONENT: What was the question? You

22 just wanted to know if I needed information.

23 BY MR. DWYER:

24 Q. I thought what you were going to say is

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1 that that table only lists equipment that was

2 already at the South facility, and that it -- that

3 table doesn't contain information for the portable

4 conveyors that we are requesting to be permitted.

5 A. Yeah, there's no information about the

6 conveyors that are permitted. I said something

7 about, it ends at PC-12, and what I was thinking

8 was, when I asked Terry for identification numbers,

9 I think his starts with PC-13.

10 Q. Right. And so that table you're looking

11 at in the record doesn't contain information for

12 PC-13 to 23?

13 A. No.

14 Q. Okay. And my question is, is that -- is

15 that the kind of information that you felt you

16 needed to assist you in making a determination of

17 whether or not the permit complied with 212.321?

18 A. Yes.

19 Q. Okay. And so ideally, Mike, what you

20 would have preferred to have in the application was

21 a table like the table on page 214 that included

22 this same information for the equipment that was

23 being requested to be permitted?

24 A. Yes.

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1 Q. Okay. Was there any other information

2 that you determined you needed to make an

3 assessment or determination of compliance with

4 212.321 that you didn't have?

5 A. I wanted them to make a sample

6 calculation.

7 Q. Okay. I'm sorry. You said that earlier.

8 Okay.

9 So then back, Mike, to the denial

10 letter. Other than denial point or paragraph 4,

11 were you involved in drafting any of the other

12 paragraphs in the letter?

13 MS. PAMENTER: Just to clarify for the

14 record, we're on document R1 currently.

15 BY MR. DWYER:

16 Q. Yeah. I'm sorry. Mike, we're back to the

17 permit denial letter that begins the record at 1.

18 Earlier you had indicated that the

19 only one of the paragraphs that you had discussed

20 with Bob Bernoteit before the letter was issued was

21 paragraph 4.

22 And so my question is, did you have

23 discussions or have any involvement in preparing

24 paragraph 1, 2, 3, or 5?

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1 **A. Bob prepared this. I just talked to him**
 2 **about what was in there.**
 3 **Q.** But did you agree with Bob that the
 4 deficiencies -- that there were deficiencies as
 5 identified in paragraphs 1, 2, 3, and 5 based upon
 6 your review of the information that you had?
 7 **A. Another one we talked about was number 3.**
 8 **Q.** Okay. Tell me the best you can recall
 9 what your discussion was.
 10 **A. How 212.302 -- or, 301 has to do with**
 11 **emissions beyond the property line. I didn't know**
 12 **how they was controlling these conveyors.**
 13 **Q.** Okay. Let me just finish up. I've got
 14 one last question for you, Mike.
 15 If you would go to the record in front
 16 of you to page 150. Have you seen that document
 17 before today, Mike?
 18 **A. As part of the -- what they've given me.**
 19 **Q.** Okay. But, and let me be more specific.
 20 Did you review this document before you made your
 21 determination and recommendation that the permit
 22 should be denied?
 23 **A. On page 150?**
 24 **Q.** Well, the entire document.

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1 **A. What number? Just give me a number.**
 2 **Q.** It starts at page 150.
 3 MS. PAMENTER: And it goes to page 163 for
 4 the record.
 5 THE DEPONENT: I don't remember this here.
 6 I looked at it.
 7 BY MR. DWYER:
 8 **Q.** Well, Mike, prior to making your
 9 recommendation that the permit denial be issued,
 10 did you -- did you review or rely upon this
 11 document in making that determination?
 12 **A. I'd say I could have reviewed this**
 13 **document if I had access to it, but if I relied on**
 14 **it, no.**
 15 **Q.** Well, I mean, I want to be clear here.
 16 Did you not have access to it before you made your
 17 permit denial recommendation?
 18 **A. I'd say I didn't rely on this.**
 19 **Q.** You didn't rely on it?
 20 **A. No.**
 21 MS. PAMENTER: It's time.
 22 MR. DWYER: Okay. Mike, thank you very
 23 much. The only thing on the record, you know,
 24 we're, obviously for the record, going to reserve

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1 our right to reopen the deposition subject to the
 2 Board's determination on the documents and on the
 3 certified questions.
 4 MR. GRANT: Also the calendar.
 5 MS. HODGE: What?
 6 MR. GRANT: Finite time, finite amount of
 7 time.
 8 MS. HODGE: Oh, okay.
 9 MR. DWYER: I don't have anything else.
 10 MS. PAMENTER: We have no questions.
 11 Thank you.
 12 MR. DWYER: Do you want to reserve
 13 signature?
 14 MS. PAMENTER: Can we go off the record?
 15 MR. DWYER: Sure.
 16 (Whereupon there was an off the
 17 record discussion.)
 18 MS. PAMENTER: He'll read. We'll reserve
 19 signature. Thank you.
 20 (Whereupon Mr. Grant decided in
 21 Mr. Bernoteit's deposition that
 22 signature would be waived for
 23 both depositions.)
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1 STATE OF ILLINOIS)
 2)
 3 COUNTY OF SANGAMON)
 4)
 5)
 6 I, DONNA M. DODD, a Certified Shorthand
 7 Reporter and a Notary Public, within and for the
 8 State of Illinois, do hereby certify that the
 9 witness whose testimony appears in the foregoing
 10 deposition was duly sworn by me; that the testimony
 11 of said witness was taken down by me to the best of
 12 my ability and thereafter transcribed, and that the
 13 attached transcript contains a true and accurate
 14 translation of my shorthand notes referred to.
 15 Given under my hand and seal this 11th
 16 day of April, A.D., 2014.
 17
 18 *Donna M. Dodd*
 19 Certified Shorthand Reporter
 20 and Notary Public
 21 CSR # 082-003912
 22
 23 My commission expires
 24 May 19, 2014.



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1 BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

2 KCBX TERMINALS COMPANY,)

3 Petitioner,)

4 vs.) PCB 14-110

5 ILLINOIS ENVIRONMENTAL) (Permit Appeal-Air)

6 PROTECTION AGENCY,)

7 Respondent.)

8

9 Discovery Deposition of ROBERT BERNOTEIT,

10 taken at the instance of the Petitioner, on April

11 9, 2014, scheduled for the hour of 1:30 p.m., at

12 3150 Roland Avenue, Springfield, Illinois, before

13 Donna M. Dodd, Certified Shorthand Reporter and

14 Notary Public, pursuant to the attached

15 stipulation.

16

17

18

19

20

21

22 DONNA M. DODD, CSR

23 donnadoddcsr@att.net

24 (217) 852-2474

(217) 487-7715

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3 Direct Examination by Mr. Dwyer 4

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6

7

8

9

10 EXHIBITS MARKED

11 None marked

12

13

14

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23

24

1 APPEARANCES:

2

3 EDWARD W. DWYER

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6 Hodge, Dwyer & Driver

7 Attorneys at Law

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11

12 Appeared on behalf of the Petitioner,

13

14

15 KATHRYN A. PAMENTER

16 CHRISTOPHER J. GRANT

17 Assistant Attorney Generals

18 Attorney General's Office

19 68 West Washington Street, 18th Floor

20 Chicago, Illinois 60602

21 (312) 814-0608

22 kpamenter@atg.state.il.us

23

24 Appeared on behalf of the Respondent.

ALSO PRESENT:

Mr. James Lee Morgan, IEPA

Mr. Jeff Culver, Koch Companies

1 IT IS HEREBY STIPULATED AND AGREED by and

2 between Counsel for the Petitioner and Counsel for

3 the Respondent that this deposition may be taken in

4 shorthand by DONNA M. DODD, an Illinois Certified

5 Shorthand Reporter and Notary Public, and

6 afterwards transcribed into typewriting, and the

7 signature of the Witness is waived by agreement.

8 (The witness was sworn by the Reporter.)

9 ROBERT BERNOTEIT,

10 called as a witness herein, at the instance of the

11 Petitioner, having been duly sworn upon his oath,

12 testified as follows:

13 DIRECT EXAMINATION

14 BY MR. DWYER:

15 Q. Bob, would you state your full name for

16 the record?

17 A. Robert W. Bernoteit.

18 Q. Bob, my name is Ed Dwyer. We've met

19 before. I just want to go over a couple of things

20 here. We're here to take your deposition in the

21 case of KCBX Terminals versus IEPA.

22 Bob, I know you've been deposed

23 before, but just a couple of quick rules. I would

24 ask you, for the court reporter's benefit, to try

5

1 and always answer audibly any question, since she
2 can't transcribe anything other than an oral
3 answer.

4 If you have any questions or don't
5 understand a question, please ask me to rephrase
6 it. If you need to take a break at any time, just
7 say so.

8 **A. Okay.**

9 **Q.** Okay. Bob, we'll try to be quick with the
10 background here. I know you've got somewhere you
11 need to be. So just as you sit here today, Bob,
12 are you employed by the Illinois EPA?

13 **A. Yes.**

14 **Q.** Okay. And tell me, what is your current
15 title?

16 **A. I am the Unit Manager for the State and
17 FESOP Unit in the Permit Section.**

18 **Q.** And, Bob, during the period, let's just go
19 back from July 2013 until the present, did you have
20 any other job title at the agency?

21 **A. Yes. From May 28th of 2013 until around
22 December 2nd of 2013 I was the Acting Permit
23 Section Manager.**

24 **Q.** Okay. And in that capacity did you

6

1 supervise Mike Dragovich?

2 **A. Yes.**

3 **Q.** Okay. And was there a unit supervisor
4 between you and Mr. Dragovich during that period?

5 **A. Yes.**

6 **Q.** Okay. And what is his name?

7 **A. That would be Baleriy Brodsky.**

8 **Q.** Okay. Bob, the first document I would ask
9 you to take a look at is Exhibit 1, and in
10 particular, if you would take a look at, if you
11 would look, Bob, it's page 1, 2, 3, 4. I think it
12 begins on page 5. It's titled Notice of Discovery
13 Deposition to Robert Bernoteit.

14 **A. Okay.**

15 **Q.** Do you have that in front of you, Bob?

16 **A. Yes.**

17 **Q.** And that's -- I'll submit to you, I'd like
18 to have you look at that page, the second page
19 after it, and then the third page.

20 So looking at this document, it's
21 three pages the portion we want to talk about, Bob.
22 Have you seen those three pages before today?

23 **A. Yes.**

24 **Q.** Okay. And tell me, when did you see that

7

1 for the first time, just your best recollection?

2 **A. I don't recall.**

3 **Q.** Okay. Now, directing your attention to
4 the third page of the document, it's titled
5 Deposition Rider to Robert W. Bernoteit. That
6 Rider requests three categories of information, if
7 they exist, for you to bring them today. And just
8 for the record, had you seen that page of this
9 document before today?

10 **A. Yes.**

11 **Q.** Okay. And did you review the page that's
12 entitled Deposition Rider to Robert W. Bernoteit?

13 **A. Yes.**

14 **Q.** All right. And did you bring any of the
15 documents requested in Paragraphs 1 through 3 with
16 you today?

17 **A. I did not on the advice of counsel.**

18 **Q.** Okay. And in preparation for the
19 deposition today, Bob, did you review any
20 documents?

21 **A. Yes. I've reviewed the record.**

22 **Q.** And if you would look at what's been
23 marked Exhibit 3 in front of you, would you look at
24 that and confirm whether or not that is a copy of

8

1 the record that you reviewed in preparation for
2 today?

3 Does it appear to be a copy of the
4 record?

5 **A. Yes, it appears to me to be a copy of the
6 record.**

7 **Q.** Okay. Other than that document, which is,
8 I'll represent to you, about 550 pages, did you
9 review anything else in preparation for your
10 deposition today, Bob?

11 **A. No, I did not.**

12 **Q.** Okay. And in preparation for the
13 deposition today, did you have any discussions with
14 anyone about your deposition?

15 **A. Today?**

16 **Q.** Prior to today.

17 **A. I met with counsel. I just spoke briefly
18 with both Mike Dragovich and Julie Armitage. I
19 told Mike I understood he was being deposed, and I
20 advised him to tell his side of the story the best
21 that he could remember and to tell the truth.**

22 **Q.** Okay.

23 **A. And my conversation with Julie Armitage,
24 she instructed me of the same.**

9

11

1 Q. Okay. Other than those discussions, Bob,
2 did you talk about the deposition today with anyone
3 else?

4 A. No.

5 Q. Okay. And you referred to counsel. Just
6 so I'm clear --

7 A. **Let me take that back. I did talk with**
8 **Raymond Pilapil, just notifying him that I was**
9 **going to be out of the office today for a**
10 **deposition.**

11 Q. Okay. And just to really clarify, you
12 said you also spoke with counsel. Do you mean Mr.
13 Grant and Ms. Pamenter and Mr. Morgan?

14 A. Yes.

15 Q. All three of them?

16 A. Yes.

17 Q. Okay. And did you speak with them all
18 together?

19 A. Yes.

20 Q. Okay. On one occasion?

21 A. **It was multiple occasions.**

22 Q. Okay. Then let me direct your attention
23 now, Bob, to, I think it's Exhibit 2. There should
24 be a copy of it in front of you. And that document

1 administratively, but --

2 MR. GRANT: I'm going to object to his
3 answering any questions regarding the document
4 whatsoever. I don't want to go through 20 minutes
5 of did you see this line or can you read that box.
6 The document speaks for itself. It's in the
7 record, or it's at least in the case, and I don't
8 want him answering questions about it.

9 MR. DWYER: So, just -- and just -- I just
10 want to make the record clear that counsel for Mr.
11 Bernoteit is directing him not to answer any
12 questions regarding Exhibit 2.

13 MR. GRANT: Exactly, yes.

14 MR. DWYER: Okay. And would you -- I'm
15 just -- I want to ask the question so I can certify
16 the rest of this.

17 So, Mr. Bernoteit, if I were to ask
18 you questions regarding the information in Exhibit
19 2, I just want to confirm that, on advice of
20 counsel, you would not be answering any of those
21 questions?

22 THE DEPONENT: That is correct.

23 MR. DWYER: Just certify that for me.
24

10

12

1 is a letter from your counsel, Ms. Pamenter, to
2 myself, Mr. Read, and Kathy Hodge, and it has
3 what's referred to as a privilege log attached to
4 it. And my first question is, have you seen that
5 document before today?

6 MR. GRANT: I'm going to object on the
7 basis that that document was created by the
8 Illinois Attorney General's Office prior to
9 litigation in this case, and it's obviously for,
10 those logs as we discussed this morning, it's the
11 subject of a decisional motion before the Hearing
12 Officer and I'm going to object to any question
13 regarding that document with Mr. Bernoteit and
14 direct him not to answer any questions.

15 BY MR. DWYER:

16 Q. Okay. I, just for the record, Chris, I'm
17 going to ask him again. Before today have you seen
18 Exhibit 2?

19 A. **Have I --**

20 MR. GRANT: Yeah, go ahead. That question
21 you can answer.

22 THE DEPONENT: No, I have not.

23 MR. DWYER: Okay. I'm going to go ahead
24 and begin this, and I'm happy to deal with it

1 (Whereupon the question will be
2 certified.)

3 BY MR. DWYER:

4 Q. Bob, the next thing is, we'll really focus
5 on the record at this point. So directing your
6 attention to the record, to the very first page of
7 the record. I guess before that, just
8 preliminarily, Bob. Tell me what in your -- in
9 your current position, what are your
10 responsibilities?

11 A. **My responsibilities are to assign incoming**
12 **permit applications, answer questions to the permit**
13 **analyst, and help them to prepare the final**
14 **documents and letters, and for permits or notice of**
15 **incompletenesses I sign on behalf of my boss, the**
16 **Permit Section Manager.**

17 Q. Okay. In relation to the permit appeal
18 we're here on today, Bob, did you exercise that
19 same type of role?

20 A. Yes.

21 Q. Okay. Can you tell me, you know, as
22 briefly as you can, Bob, the process from a permit
23 application being received by the agency, tell me
24 what the steps are once a permit application comes

13

1 in.

2 **A. Our administrative support staff creates a**
3 **file and normally brings the file to me once**
4 **they've created it, and then I will assign it to a**
5 **permit engineer. The permit engineer will review**
6 **the file, typically determine whether the**
7 **appropriate fees have been paid, whether the**
8 **application contains the -- the appropriate**
9 **information to make our decision upon.**

10 **If the application contains the**
11 **appropriate information, then it -- he will begin**
12 **drafting a permit. He will submit the permit, the**
13 **draft permit to me. I will review and make**
14 **comments, return the draft permit back to the**
15 **engineer to finalize it. Sometimes we share a copy**
16 **with an Applicant.**

17 **We'll finalize the permit. He'll**
18 **submit it to me, and then I will sign on behalf of**
19 **the Permit Section Manager, return the file to our**
20 **administrative support staff, and they will mail**
21 **the permit.**

22 **Q. Okay. Now, if I missed this, I apologize.**
23 **But in this circumstance I don't know that you**
24 **mentioned the subunit manager, Mr. Brodsky. Would**

14

1 it go to Mr. Brodsky before it came to you for
2 review?

3 **A. Mr. Brodsky was the Acting FESOP Unit**
4 **Manager up until the beginning of December 2013.**

5 **Q. And so --**

6 **A. He was filling in in my place while I was**
7 **the Acting Permit Section Manager.**

8 **Q. Okay. And so then in that process, Bob,**
9 **do you ever go back to a permit reviewer and say,**
10 **we need some more information?**

11 **A. If -- yes. If the permit analyst has**
12 **skipped over some things and I find out more**
13 **information is needed, I will return the file or**
14 **discuss with the analyst that more information may**
15 **be needed.**

16 **Q. Okay. In that process, Bob, are there any**
17 **internal or external time frames that the agency**
18 **has for moving the permit through the review**
19 **process?**

20 **A. Well, the external time frame is set by**
21 **Section 39(a) of the Illinois Environmental**
22 **Protection Act, which in most cases is a 90-day**
23 **review by the agency.**

24 **Q. But are there any other internal shorter**

15

1 deadlines within, that are internally imposed by
2 the agency?

3 **A. Internally? Normally I would like -- I**
4 **would advise the analyst that I would like to see**
5 **the draft permit by the 75th day of the**
6 **application.**

7 **Q. Then if you'd turn your attention to**
8 **Exhibit 3, Bob, and let's start at the beginning.**
9 **You know, we're here because KCBX has appealed the**
10 **permit denial. The first document in the record**
11 **I'd like to talk with you about is the permit**
12 **denial letter, which is at page 1. Do you have**
13 **that in front of you?**

14 **A. Yes.**

15 **Q. Okay. And if you'd direct your attention,**
16 **please, Bob, to page 3. The letter on page 3 below**
17 **the signature of Mr. Pilapil also has -- is that**
18 **your initials written in?**

19 **A. Yes.**

20 **Q. Okay.**

21 **A. Yes.**

22 **Q. Did you sign the letter, Bob?**

23 **A. No, I did not.**

24 **Q. Okay. Mr. Pilapil did?**

16

1 **A. Yes.**

2 **Q. And that's in part because your positions**
3 **changed as of January 17th?**

4 **A. My position changed as of beginning of**
5 **December.**

6 **Q. I'm sorry. And so Mr. Pilapil actually**
7 **signed the permit denial letter?**

8 **A. Yes.**

9 **Q. Tell me, what is your initials on there,**
10 **what does that indicate, Bob?**

11 **A. That indicates that I have reviewed the**
12 **document and feel that it's acceptable for the**
13 **Section Manager to sign.**

14 **Q. Okay. Then, Bob, if we go to the first**
15 **page of this document -- well, let's talk generally**
16 **about it.**

17 **Can you tell me, Bob, what your role**
18 **was in preparing the January 17th denial letter?**

19 **A. I actually drafted the letter.**

20 **Q. And did you have assistance from anyone**
21 **else in drafting that?**

22 **A. I consulted with Chris Presnall and Jim**
23 **Morgan and I was actually -- I actually shared**
24 **copies with Julie Armitage prior to us finalizing**

17

19

1 **and initialing the permit.**

2 **Q.** Okay. And did you have any discussions
3 with Mr. Brodsky or Mr. Dragovich about the
4 contents of the denial letter?

5 **A. I did not have any conversations with Mr.**
6 **Brodsky because he was no longer involved at that**
7 **point. I did have some minor conversations with**
8 **Mr. Dragovich.**

9 **Q.** Tell me to the best you can recall, Bob,
10 what -- what was the substance of the discussions
11 with Mr. Dragovich?

12 **A. That we were preparing to deny the permit**
13 **and just the reasons for the denial.**

14 **Q.** Okay. And can you tell me to the best of
15 your recollection, when did -- when did you start
16 drafting the permit denial letter?

17 **A. It was on or about December 5th of 2013.**

18 **Q.** Okay. And did you have conversations with
19 Mr. Bernoteit -- I'm sorry, with Mr. Dragovich
20 then?

21 **A. I may have, just letting him know that**
22 **management had decided to consider denying this**
23 **permit.**

24 **Q.** Okay. And did you -- at that point in

1 **Q.** Okay. Did you review any other documents
2 in preparing the permit denial letter?

3 **A. I don't recall.**

4 **Q.** I'm going to ask you about a series of
5 documents. For example, do you recall reviewing a
6 series of inspection reports that were prepared by
7 the Field Operations Section?

8 **A. Yes. I reviewed a handful of inspection**
9 **reports.**

10 **Q.** Okay. And, similarly, did you review
11 documents I'll refer to as citizen complaint forms?

12 **A. I examined them, but I did not review them**
13 **in any great detail.**

14 **Q.** Okay. Can you tell me, Bob, the
15 difference? You said you examined them but you
16 didn't review them in detail.

17 **A. There were a stack of 50 of them, and**
18 **there wasn't a lot of substance to some of the**
19 **complaints. Some of the complaints were not**
20 **directed towards KCBX. Some weren't very specific.**

21 **Q.** Okay. I'd like to talk a little bit more
22 about those. They're in the record at -- what
23 page?

24 If you would, Bob, please take a look

18

20

1 time, did you direct Mr. Dragovich to do anything
2 with the permit application?

3 **A. I asked him to give the application to me**
4 **so that I may start the process.**

5 **Q.** Okay. And you mentioned that you talked
6 with Mr. Presnall and, I'm sorry, you mentioned
7 somebody else?

8 **A. Mr. Morgan.**

9 **Q.** Mr. Morgan.

10 **A. And Julie Armitage.**

11 **Q.** And can you tell me, to the best of your
12 recollection, when those conversations took place?

13 **A. It was on or around December 5th of 2013.**

14 **Q.** And were those just -- were they
15 face-to-face conversations or conference calls?

16 **A. One was a face-to-face conversation.**

17 **Q.** Okay. In looking at the denial letter,
18 Bob, you indicated that you had Mr. Dragovich bring
19 you the permit application. Did you review
20 anything else in preparing the denial letter?

21 **A. I reviewed the application that was**
22 **submitted in July of 2013, and I also reviewed the**
23 **documents that were referenced in the December 2013**
24 **Wells letter.**

1 at page 222, starting at page 222 of the record.
2 Really I want to talk about the complaints that are
3 at page 222 through 347. And looking at the record
4 that you have before you, Bob, it appears that
5 those complaints, at least in the record, show that
6 the material was redacted or removed from them, is
7 that correct?

8 **A. Yes.**

9 **Q.** Okay. And specifically it looks like the
10 name of the Complainant and their address are
11 redacted, is that correct?

12 **A. Yes.**

13 **Q.** And would that appear to be the case with
14 that series of complaints from page -- the first
15 page until page 348?

16 **A. Yes. It appears all the names and**
17 **addresses have been redacted.**

18 **Q.** Okay. Now, Bob, when you reviewed these
19 complaints, when you were preparing the permit
20 denial letter, were the complaints that you
21 reviewed redacted like those that you just reviewed
22 in the record?

23 **A. I do not believe they were.**

24 **Q.** Okay. So the ones that you reviewed had

21

23

1 the information -- the information, all information
2 was on them, they were not redacted?

3 **A. I believe they were not redacted.**

4 **Q.** Okay. And then after that set of
5 complaint forms, there's an additional set of them
6 that comprises almost the rest of the entire
7 record. And my question to you is, did you review
8 those complaint forms in preparing the permit
9 denial letter?

10 **A. I don't recall if those additional ones
11 were provided to me at that time.**

12 **Q.** Okay. And in terms of that, Bob, who
13 provided you the complaint forms that you did
14 review?

15 **A. Brad Frost.**

16 **Q.** Okay. And do you recall when you received
17 those from Mr. Frost?

18 **A. It was after December 5th, 2013.**

19 **Q.** Going back to the denial letter, Bob, you
20 began preparing this I think you said around
21 December 5th, is that correct?

22 **A. Yes.**

23 **Q.** Okay. And you indicated that you reviewed
24 the inspection reports and the complaints that we

1 Senator Durbin and I think it's Congressman Kelly?

2 **A. No, I did not.**

3 **Q.** After the initial draft of the letter and
4 up until January 17th, did you make any changes to
5 the permit denial letter?

6 **A. Perhaps some minor edits, grammatical
7 changes.**

8 **Q.** Let me -- let me ask you, Bob, to take a
9 look at, there's actually another letter, at page
10 172 of the record, and that letter is to the
11 Director just from I think Congressman Kelly alone.
12 Do you recall reviewing that letter, Bob?

13 **A. Yes.**

14 **Q.** Okay. And that letter is dated November
15 15th. Do you think you reviewed that letter before
16 you prepared the permit denial on or about December
17 5th?

18 **A. Yes.**

19 **Q.** And did you rely upon any of the
20 information in there?

21 **A. We reviewed it, but perhaps we considered
22 it, but it wasn't a direct factor in -- to my
23 knowledge, it wasn't a direct factor in our
24 decision.**

22

24

1 just talked about and the request for revision
2 application.

3 Did you review anything else in
4 preparing the permit denial letter?

5 **A. I believe there was correspondence from
6 Senator Durbin's office and Congressman Kelly's
7 office, but I don't recall any other additional
8 information.**

9 **Q.** Okay. And in terms of that letter, Bob,
10 or those two letters, I'm trying to find those and
11 we'll talk about them briefly.

12 If you'd look at page 29, Bob. Okay.
13 You reviewed that in preparing the permit denial.
14 Did you rely upon any of the information in that
15 letter in preparing the permit denial letter?

16 **A. I looked at it, but this letter is
17 actually dated I believe after I completed -- after
18 I drafted the letters initially, but yeah, I read
19 the letters.**

20 **Q.** Okay. Well, let me ask you this then. In
21 terms of that, if you read this subsequent to
22 you -- to preparing the initial permit denial
23 letter, did you make any changes to the permit
24 denial letter after reviewing the letter from

1 **Q.** Okay. Did the agency, to your knowledge,
2 undertake any efforts to verify any of the
3 statements in the letter?

4 **A. I do not know.**

5 **Q.** Did you personally?

6 **A. No, I did not personally.**

7 **Q.** Okay. Bob, are you familiar with the KCBX
8 facilities in Chicago that are, you know -- well,
9 let me start there. Are you familiar with their
10 two facilities in Chicago?

11 **A. Yes. I've been involved with permitting
12 both facilities.**

13 **Q.** And were you directly involved in the
14 permitting of either facility?

15 **A. I was directly involved in the permitting
16 of KCBX North, and I helped to -- I helped Mr.
17 Dragovich prepare drafts of the, at the time, the
18 DTE Energy facility, which later became the KCBX
19 South.**

20 **Q.** And would you agree with the
21 characterization these would be generally
22 considered material handling facilities?

23 **A. Yes.**

24 **Q.** And as we sit here, do you know what kind

25

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1 of materials these facilities -- well, let's focus
 2 on South, Bob. Do you know what kind of materials
 3 the South facility handles?
 4 **A. My understanding is that they handle coal,**
 5 **coke, and at one time handled salt.**
 6 **Q.** And is that based upon your knowledge of
 7 the permit application documents for the facility?
 8 **A. That is based on my recollection of the**
 9 **permit.**
 10 **Q.** Okay. And you indicated you were directly
 11 involved in the permitting of this North facility?
 12 **A. Yes.**
 13 **Q.** Do you recall what type of permits you
 14 worked on there?
 15 **A. I worked on the FESOP that was issued in**
 16 **April of 2012.**
 17 **Q.** And, again, you didn't indicate you looked
 18 at it, but did you look at any of that information
 19 regarding the FESOP permit for the North facility
 20 in preparing the denial letter?
 21 **A. No, we did not.**
 22 **Q.** Do you know if Mike Dragovich did?
 23 **A. I do not know what Mike reviewed.**
 24 **Q.** Okay. Going back to the permit process in

1 Bob. That document is entitled Permit Review
 2 Traveler Sheet. We talked with Mike a little bit
 3 about this today, and one of the things I wanted to
 4 ask you about is, correct me if I'm wrong, but the
 5 document appears to be a document that accompanies
 6 the permit from the time it comes in the door until
 7 the final decision is made?
 8 **A. Yes.**
 9 **Q.** Okay. And it appears to have a number of
 10 categories for information to be filled in or
 11 checked off during that process. Is that a fair
 12 statement?
 13 **A. Yes.**
 14 **Q.** Okay. And on this document in particular
 15 it, in fact, I would say the majority of the
 16 information or boxes and areas to be filled in are
 17 empty, and my question to you is, is that normal?
 18 **A. Yes.**
 19 **Q.** Okay. So a number of these items, they
 20 just may not apply?
 21 **A. They may not apply, that's correct.**
 22 **Q.** Okay. And this document indicates that,
 23 there's a notice to contact Brad Frost. My
 24 understanding from Mike's testimony this morning is

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1 general, Bob. During the review process some
 2 documents are prepared, and I'd like to talk to you
 3 about a couple of them.
 4 If you'd look at pages starting with
 5 page R004 of the record. Are you familiar with
 6 that document? I think it's five pages, Bob. Are
 7 you familiar with that document?
 8 **A. Yes, I've seen it before.**
 9 **Q.** Okay. And is it your understanding that
 10 that was prepared by Mr. Dragovich?
 11 **A. Yes.**
 12 **Q.** Okay. And do you recall whether you
 13 reviewed that document before you prepared the
 14 permit denial letter?
 15 **A. Before the denial, no.**
 16 **Q.** Okay. Did you review it after you
 17 prepared the permit denial letter?
 18 **A. Reviewed it, yes, after the permit denial**
 19 **letter was prepared.**
 20 **Q.** And do you recall when that was, Bob? I
 21 mean, obviously after December 5th, but do you know
 22 when between that and January 17th?
 23 **A. It was probably on January 17th.**
 24 **Q.** Okay. And then if you'll look at page 10,

1 that has to do with environmental justice?
 2 **A. Correct.**
 3 **Q.** And can you tell me what your
 4 understanding of that issue is and its role in your
 5 permit review process?
 6 **A. Environmental justice is one of our**
 7 **Director's priorities as of the last year or so,**
 8 **and that means that for sources located in**
 9 **environmentally -- or, take that back, racially**
 10 **sensitive areas or areas where the standard income**
 11 **is below a certain level, that we have to do a few**
 12 **additional steps before we are in position to issue**
 13 **the permit.**
 14 **Q.** Okay.
 15 **A. Namely, we have to do some outreach to**
 16 **community groups in those areas.**
 17 **Q.** And for the record, that was done in this
 18 case, to your knowledge?
 19 **A. Yes.**
 20 **Q.** Okay. And so then, Bob, looking at that,
 21 at the bottom, is that your writing or is that Mike
 22 Dragovich's? It says a copy of the denial letter
 23 has been sent to Legal and CASM by Bob Bernoteit.
 24 Do you know, is that your writing or is that --

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1 **A. No, that is not my writing.**
 2 **Q.** Okay.
 3 **A. That is probably our clerk who mailed out**
 4 **the denial letter wrote that.**
 5 **Q.** Okay. And then if we look at that bottom
 6 portion where it appears, at least on the line for
 7 submitted to word processing, your -- Mike said
 8 these are his initials, and appears to be yours,
 9 and the date January 17th, 2014. Do you see that?
 10 **A. Yes.**
 11 **Q.** Okay. And so did you initial this
 12 document on January 17th?
 13 **A. Yes.**
 14 **Q.** Okay. And it indicates that Mike did as
 15 well. And my question is, earlier today Mike
 16 indicated he wasn't at work on that day.
 17 **A. That's correct.**
 18 **Q.** So did you initial it for him?
 19 **A. I initialed it for him.**
 20 **Q.** Okay. Bob, regarding the environmental
 21 justice outreach, do you know, is there a -- is
 22 there a regulation or a part of the Illinois
 23 Environmental Protection Act that requires that?
 24 **A. I don't believe there is, but it is our**

1 **Q.** And, to your knowledge, was this document
 2 in this case completed within ten days?
 3 **A. I have no knowledge whether it was**
 4 **completed within the ten days.**
 5 **Q.** And as far as I can tell here, it
 6 indicates that the date the permit was received was
 7 July 23rd, 2013, and then it says a Notice of
 8 Incompleteness deadline is August 21st, 2013. Is
 9 that -- am I reading that correctly?
 10 **A. Yes.**
 11 **Q.** Okay. But it doesn't really indicate when
 12 this document was completed?
 13 **A. That is correct.**
 14 **Q.** So it's possible that this document could
 15 have been completed anytime between July 23rd and
 16 January 17th?
 17 **A. That is correct.**
 18 **Q.** Okay. Do you know, Bob, if this was
 19 completed before you prepared the permit denial on
 20 December 5th?
 21 **A. No, I do not know when this was completed.**
 22 **Q.** And would Mr. Dragovich be the one to
 23 complete this document?
 24 **A. Yes.**

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1 policy.
 2 **Q.** Okay.
 3 **A. In fact, I believe the policy is a result**
 4 **of a lawsuit that we settled with a Chicago legal**
 5 **clinic.**
 6 **Q.** All right. Now, Bob, I want to talk about
 7 another -- a couple of forms that I think sort of
 8 are involved in -- in the permit reviewing process,
 9 and if you'd go to page 24 of the record. Are you
 10 familiar with this page, Bob?
 11 **A. Yes.**
 12 **Q.** Okay. And tell me what this -- its role
 13 is in the permitting process.
 14 **A. This is a checklist that another one of**
 15 **our unit managers, Charlie Zeal, developed a few**
 16 **years ago to help the permit analysts screen**
 17 **applications to make sure that all of the**
 18 **appropriate information had been received.**
 19 **Q.** And for this document is there a timeline
 20 or a time by which it needs to be completed?
 21 **A. It needs to be completed, at the top it**
 22 **says within ten days of being assigned an**
 23 **application that we ask that the analyst to**
 24 **complete it.**

1 **Q.** And then if we look at the next page, Bob,
 2 it's page 25. Now that's referred to as a
 3 Completeness Review Worksheet. Again, had you
 4 reviewed this document before preparing the permit
 5 denial?
 6 **A. I believe it was in the file, but I don't**
 7 **recall looking at it at that time. This**
 8 **Completeness Review Sheet is only for the**
 9 **construction permit application fees.**
 10 **Q.** Right. And it appears that it indicates
 11 at the bottom that it's going to be an existing
 12 synthetic major source without changing status.
 13 What do you understanding that to mean
 14 in relation to the permit application?
 15 **A. That means that the source is not changing**
 16 **from a minor source or from a synthetic or major**
 17 **source, the fee category.**
 18 **Q.** And it indicates that they're adding 10
 19 conveyors and that they've paid the \$10,000 fee?
 20 Is that what that means at the end of that part?
 21 **A. Yes.**
 22 **Q.** Okay. And the next page of that form,
 23 Bob, I just want to understand. It has sort of a
 24 series of columns and rows for dates that final

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1 action have to be taken and it's blank.
 2 Is that -- would that be common or
 3 normal?
 4 **A. Yes.**
 5 **Q.** Okay. So if we go back then, Bob, to page
 6 1, to the permit denial letter for denial point
 7 1(a) you said you prepared the letter based upon
 8 your review, and really 1(a) to me is sort of a
 9 preface to the more detailed of 1(b) denial points,
 10 would you agree?
 11 **A. Yes.**
 12 **Q.** Okay. And so I think the 1(b), you know,
 13 i, ii, iii, iv and v, those appear to be in large
 14 part taken directly from 35 Illinois Administrative
 15 Code 201.152?
 16 **A. Yes.**
 17 **Q.** Is that correct?
 18 **A. Yes.**
 19 **Q.** And just for your assistance, Bob, we'll
 20 probably be referring to Exhibit 13 there. Bob, if
 21 we look at the denial letter, in particular the
 22 items that identifies in 1(b) as not being provided
 23 in the application.
 24 The first one is information

1 Bob, which is (b)ii, the quantities and types of
 2 raw materials to be used in the emission unit or
 3 air pollution control equipment. So your
 4 determination was that there wasn't such
 5 information in the application?
 6 **A. Not with respect to the new equipment that**
 7 **was being added to the facility.**
 8 **Q.** Okay. And so let's talk about that. If
 9 we can go to the application first, which is --
 10 MR. GRANT: 186.
 11 BY MR. DWYER:
 12 **Q.** If you could go to page 186, Bob, that's
 13 where the cover letter to the application begins.
 14 And did you review that letter, Bob, in preparing
 15 the permit denial?
 16 **A. Yes.**
 17 **Q.** And do you recall whether that letter
 18 indicated that KCBX was seeking to permit the ten
 19 conveyors, the stacker, and the hopper that were
 20 permitted at the North facility for movement to the
 21 South facility?
 22 **A. Yes.**
 23 **Q.** Okay. And then in the application, if you
 24 could look at page 196, and in that application,

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1 concerning the processes to which the emission unit
 2 or the air pollution control equipment is related.
 3 And so I just want to understand, what information
 4 did you need to address that that wasn't in the
 5 permit?
 6 **A. The application, to my recollection, only**
 7 **requested that ten conveyors, the box hopper, and**
 8 **the stacker be added to the source. It did not**
 9 **provide any information concerning where at the**
 10 **facility those units were to be located.**
 11 **Q.** Now, would you agree that by their nature
 12 these are referred to as portable conveyors?
 13 **A. That's what was described in the July 2013**
 14 **application.**
 15 **Q.** So would you expect them to be -- would
 16 you expect a diagram to show where they would be if
 17 they were portable and designed to be moved?
 18 **A. Yes, I would.**
 19 **Q.** Okay. How would -- how would -- what
 20 would that -- what would that diagram show you?
 21 **A. Well, the diagram could show specific**
 22 **location or a range of locations on the property**
 23 **where that equipment may be.**
 24 **Q.** Okay. And if we look at the next point,

1 Bob, it refers in response to a request for raw
 2 material and material usage information to Tables 5
 3 and 6 in the initial application. Do you see that?
 4 **A. Yes.**
 5 **Q.** Okay. And did you look at the Tables 5
 6 and 6 that were in the initial application when you
 7 were preparing the permit denial letter?
 8 **A. I did not know what initial application**
 9 **was referred to.**
 10 **Q.** Okay. Did you talk with Mike Dragovich
 11 about that?
 12 **A. No, I did not.**
 13 **Q.** Okay. Is there any reason why you didn't
 14 talk to him about it?
 15 **A. It's clear to me that -- or, it's not**
 16 **clear to me or any casual observer that this**
 17 **information -- where to find this information.**
 18 **Q.** Okay. So, to your knowledge, was Mike
 19 able to find that information?
 20 **A. To my knowledge, no, Mike was not able to**
 21 **find that information.**
 22 **Q.** And do you know whether Mike reviewed a
 23 document that had a Table 5 and 6 in his review of
 24 the application for permit?

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1 **A. I don't know if he reviewed anything with**
2 **a Table 5 or 6 in it.**

3 **Q.** If you look in the record at -- so then,
4 Bob, let me ask you to look at, starting at page
5 213, and I'll represent to you that this
6 information contains excerpts from a September 2012
7 PTE Construction permit application.

8 Did you review this information in
9 preparing the permit denial letter?

10 **MR. GRANT:** I'm going to disagree with the
11 representation and I'd be happy to talk about it,
12 but I don't think this was a 2012 PTE application.
13 If I'm wrong, I'm wrong, but our understanding is
14 that this was a 2008.

15 **MS. HODGE:** Pardon me? Say that again.

16 **MR. GRANT:** Our understanding is this was
17 a 2008 submission. I'd be happy to go off the
18 record and clarify it if you'd like.

19 **MS. PAMENTER:** Maybe we should go off the
20 record.

21 **MR. DWYER:** Yeah. Let's go off the
22 record.

23 (Whereupon there was an off the
24 record discussion.)

1 **from the North, so I don't know exactly where the**
2 **equipment was going to be coming from.**

3 **Q.** Okay.

4 **A. For purposes of the permit, we were**
5 **looking at 12 new pieces of equipment. They could**
6 **have been purchased new. They could have been**
7 **relocated from anywhere.**

8 **Q.** Okay. And do you recall at the August
9 27th, 2013 meeting that was held, do you recall
10 that meeting?

11 **A. Yes.**

12 **Q.** Okay. And I think you were in attendance
13 at the meeting?

14 **A. Yes.**

15 **Q.** And at that time, it's my understanding,
16 correct me if I'm wrong, from Mr. Dragovich's
17 testimony, that the State indicated at that meeting
18 that the only additional information it needed was
19 the equipment numbers, is that correct?

20 **A. I recall that's what Mike asked Mr.**
21 **Steinert of KCBX, but I was not aware of what**
22 **exactly was or was not included in the July**
23 **application.**

24 **Q.** Okay. Well, let me ask you then if you'd

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1 **BY MR. DWYER:**

2 **Q.** Bob, we'll try to clear this up a little
3 bit. Looking at the page 213 of the record, my
4 question to you is this. The information that's
5 provided in that table on page 213 and page 214, my
6 question is, is that the kind of information that
7 you believe was missing from the request for
8 revision application?

9 **A. Yes.**

10 **Q.** Okay.

11 **A. Because these tables were submitted well**
12 **in advance of the July 2013 application. They**
13 **would not have contained information for the ten**
14 **portable conveyors, box hopper, and stacker that --**

15 **Q.** Right.

16 **A. -- were to be added.**

17 **Q.** And just for the record, Bob, to your
18 knowledge, those ten portable conveyors and the
19 stacker and the hopper, they had been previously
20 permitted to operate at the North facility, is that
21 correct?

22 **A. That's -- the cover letter explained that**
23 **they -- the equipment may be relocated from the**
24 **North. It did not say that they were to be located**

1 take a look in the record at page 182, and that's
2 an e-mail from Mr. Steinert to Mr. Dragovich.
3 Would you agree with that?

4 **A. Yes.**

5 **Q.** And does the e-mail indicate and provide a
6 list of numbers for the equipment and indicate that
7 it's to be added from the North facility?

8 **A. That is -- that is what it reads, yes.**

9 **Q.** Okay. And so just so I understand, Bob,
10 did you review the e-mail that's in the record at
11 page 182 before preparing the permit denial letter?

12 **A. I did not see that when I prepared the**
13 **permit denial letter.**

14 **Q.** And so it would be fair to say you didn't
15 consider that in preparing the permit denial
16 letter?

17 **A. I had not seen this e-mail at that time.**

18 **Q.** Okay. Did you see it subsequent to that
19 time?

20 **A. I have seen it since I've reviewed the**
21 **record.**

22 **Q.** After the permit appeal had been filed?

23 **A. Yes.**

24 **Q.** Okay. So then, Bob, if we go back to the

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1 denial letter at the page 1 of the record, and in
2 particular denial point 1(b)iii, it references the
3 nature, specific points of emission and quantities
4 of uncontrolled and controlled air contaminant
5 emissions at the source.

6 And just so I understand, is that also
7 the type of information that was contained in
8 Tables 5 and 6 that were referenced in the
9 application, but there was not that specific
10 information for these 12 pieces of equipment?

11 **A. In Tables 5 and 6 that you reference --
12 May I look at those?**

13 **Q.** Oh, absolutely. Please do. 213 and 214.
14 The conveyors are on 214.

15 **A. In addition to the information that is in
16 Tables 5 and 6, I would -- I would have also liked
17 to have seen hourly process rates and emission
18 rates.**

19 **Q.** For each of the pieces of equipment?

20 **A. Yes.**

21 **Q.** And tell me why that information was
22 necessary.

23 **A. That's necessary to compute compliance
24 with Section 212.321 of our regulations, of the**

1 tell me what type of map that you believe the
2 agency needed to be able to make a compliance
3 determination for the permit application?

4 **A. Well, the type of map that we would be
5 looking for is location of the proposed equipment
6 at the site. We knew that the site used water
7 spray cannons, towers, and we would -- we would
8 have liked to have seen a map showing the location
9 of the proposed equipment with respect to the water
10 systems.**

11 **Q.** Okay. Realizing -- I just want to ask,
12 realizing, Bob, that the equipment is portable as
13 it's titled so it would be moved around at the
14 site?

15 **A. Yes, I understand that. But, again, a
16 good application would have taken that into
17 consideration and shown either an exact location
18 where the equipment would be or a range of areas
19 where the equipment would be.**

20 **Q.** All right. So then if we look at the next
21 denial point in the letter, Bob, which indicates
22 that, pursuant to 35 Illinois Administrative Code
23 201.160(a)(1), no construction permits can be
24 granted unless the applicant submits proof that

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1 **Board's regulations.**

2 **Q.** Okay. Now, Bob, if you look at page 213
3 and page 214, isn't that information in the last
4 two columns on the right, at least for this
5 equipment? I'm not saying for the equipment that
6 we were seeking to be permitted, but --

7 **A. The last two columns on the right? The
8 print is kind of small, but it appears to me that
9 it's pounds per day and tons per year emission
10 rates.**

11 **Q.** Oh, I'm sorry. I misspoke. Bob, if you'd
12 look at the first column, that appears to contain
13 hourly rates.

14 **A. Okay.**

15 **Q.** Do you see that?

16 **A. Yes.**

17 **Q.** Okay. So, again, this is the kind of
18 information that the State needed and did not
19 believe was present in the application and that's
20 what resulted in these denial points (b) i, ii,
21 iii, and iv?

22 **A. Yes.**

23 **Q.** Okay. And then with respect to, Bob,
24 denial point 1(b) -- or, 1(b)v, what -- can you

1 emission unit or air pollution equipment will be
2 constructed or modified to operate so as to not
3 cause a violation of Title 35 the Environmental
4 Protection -- Title 35 of the Environmental
5 Protection, Subtitle B; Air Pollution, Chapter 1,
6 Pollution Control Board.

7 Again, there it doesn't really tell us
8 what you didn't have. It seems to me that the next
9 denial point, paragraph 3, seems to provide a
10 detail for that.

11 **A. Well, it states we didn't have proof that
12 the new equipment would be constructed or operated
13 in a way that would be in compliance with the
14 Board's rules.**

15 **Q.** Okay. Now, you know, you were aware that
16 they were portable conveyors, and so the
17 determination was, you didn't have enough
18 information about how portable conveyors would be
19 operated at the site?

20 **A. We didn't have any information to
21 determine compliance with Section 212.321, which is
22 commonly known as our process waiver rule.**

23 **Q.** And based upon your review of the
24 application and the other documents that you

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1 mentioned, that there was no information sufficient
2 for you to make that determination?

3 **A. That's correct.**

4 **Q.** Okay. So then if we go to denial point
5 three, Bob, it indicates that it doesn't show
6 compliance with 212.301, which is the Fugitive
7 Particulate Matter Regulation?

8 **A. Yes.**

9 **Q.** Okay. And then it goes on to say, this is
10 based upon observations made by the Division Air
11 Pollution Control's field staff and the citizen
12 complaint forms.

13 In terms of -- I think you indicated
14 earlier you did review the inspection reports. Can
15 you tell me what information or what observations
16 in those reports you relied upon in making the
17 denial determination point three?

18 **A. It seemed like there were a lot of issues
19 with dust blowing in the area, in particular a
20 neighbor surrounding the KCBX South site.**

21 **Q.** Okay. And then if you can, Bob, take a
22 look at, I think it's Exhibit 13, and I think we've
23 got 35 Illinois Administrative Code 212.301 copied
24 there. Did you find that, the regulation, Bob?

1 **control their dust.**

2 **Q.** Okay. Well, I want to ask you about that,
3 Bob, then. There was -- there's a document in the
4 record that you didn't indicate you'd reviewed, but
5 I would like for you to take a look at now, and
6 it's at page 150.

7 **A. Okay.**

8 **Q.** Before now, Bob, have you seen that
9 document?

10 **A. I saw that when I was reviewing the
11 record.**

12 **Q.** Okay. But prior to preparing your permit
13 denial letter, did you review this document?

14 **A. No, I did not.**

15 **Q.** And is there a reason why you didn't?

16 **A. It was not submitted with the permit
17 application.**

18 **Q.** And that was -- that was why it was not
19 considered?

20 **A. The Permit Section did not have this
21 document.**

22 **Q.** Do you know when the Permit Section
23 received the document?

24 **A. No, I do not.**

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1 **A. Yes.**

2 **Q.** Does -- to me 212.301 appears to sort of
3 layout this general prohibition against fugitive
4 matter, and to me defines pretty specifically how
5 you determine that. Is that a fair statement?

6 **A. Yes.**

7 **Q.** Okay. And in considering the observations
8 made in the inspection reports when you were
9 preparing this denial point, can you tell me where
10 they -- where they made the determination
11 consistent with what's required by 212.301?

12 **A. I don't recall anywhere where a 212.301
13 violation was alleged in the inspection reports.**

14 **Q.** Okay. And let me ask you this. Just in
15 terms of reviewing an application for a permit,
16 what would the Applicant need to provide to show
17 compliance with 212.301?

18 **A. In general the Applicant should provide
19 the means of how they are going to control their
20 emissions from their handling storage activities.**

21 **Q.** And would that -- would that be some type
22 of process or procedure or program?

23 **A. In some cases it may. In some case it may
24 be identification or a description of how they**

1 **Q.** Okay. As we sit here today, to your
2 knowledge, is it possible that the Permit Section
3 never received the document?

4 **A. I don't know.**

5 **Q.** Okay. Well, I think Mr. Dragovich
6 indicated that he had seen it. Do you know why he
7 would have seen it and you would not have?

8 **A. No, I don't.**

9 **Q.** Okay. But if you had seen it, would your
10 decision have been the same? You would not have
11 considered it as part of the application of the
12 record?

13 **A. Could you repeat the question?**

14 **Q.** It was a bad question. I'm sorry. Let me
15 rephrase this, Bob. The document you're looking
16 at, is that referred to as a Fugitive Particulate
17 Operating Program?

18 **A. Yes.**

19 **Q.** Okay. And would that be a method of
20 demonstrating compliance with 212.301?

21 **A. Yes.**

22 **Q.** Okay. And just to confirm, if you had
23 reviewed that, would it have changed your drafting
24 of the permit denial, the permit denial letter, in

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1 particular I guess denial point number three?

2 **A. Not at that point, because we were getting**

3 **complaints up until December that, from neighbors**

4 **that there was dust on their property and there was**

5 **dust blowing in the air around the facility.**

6 **Q.** Okay. And, to your knowledge, did the

7 agency confirm that those complaints were accurate

8 or correct?

9 **A. I don't have any knowledge of that.**

10 **Q.** Okay. So at that point in time, to your

11 knowledge, there were complaints of dust leaving

12 this property and affecting off-site property

13 owners?

14 **A. Yes.**

15 **Q.** But, to your knowledge, there was no

16 confirmation that those in fact were accurate

17 complaints?

18 **A. I know that our field staff went out and**

19 **investigated, but I do not know the results of**

20 **their investigations.**

21 **Q.** Other than --

22 **A. Other than what was indicated in their**

23 **inspection reports.**

24 **Q.** Okay. And then for denial point number

1 with respect to the document in the record at --

2 starting at page 150 and continuing until page 163,

3 was a document that you did not review before

4 preparing the permit denial letter, is that

5 correct?

6 **A. Yes.**

7 **Q.** And I think your earlier testimony, just

8 to be clear, was that, to your knowledge, it wasn't

9 in the permit file or in the Permit Section file or

10 records?

11 **A. I don't believe it was. I believe it was**

12 **submitted to our Division of Legal Counsel.**

13 **Q.** And do you know why it wasn't provided to

14 the Permit Division or your unit?

15 **A. No, I don't.**

16 **Q.** Okay. Have you asked anyone that

17 question?

18 **A. No.**

19 **Q.** If you look -- if you would look at that

20 document, Bob, the very last page is a diagram, and

21 since this is a reduction of a large blueprint

22 size, it's very difficult for at least me to read

23 anything.

24 But earlier you had indicated, as to

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1 four, Bob, can you tell me what -- are we talking

2 again about the type of information we referred to

3 in the Tables 5 and 6? Is that the type of

4 information that you don't believe the agency had

5 at the time you were preparing the permit denial

6 letter?

7 **A. That is correct.**

8 **Q.** Bob, if you had the type of information

9 that was contained in Tables 5 and 6 that were

10 referenced in the request for revision application,

11 would that have enabled you to make a compliance

12 determination?

13 MR. GRANT: I'm going to object on the

14 basis it calls for speculation, but you can go

15 ahead and answer the question.

16 MR. DWYER: I'll withdraw it. Let me just

17 take a short break.

18 (Whereupon there was a recess

19 taken.)

20 BY MR. DWYER:

21 **Q.** Bob, we're back on the record. I haven't

22 done a good job of asking these questions, Bob, so

23 I'm going to try to clarify them.

24 I think your earlier testimony was,

1 one of the denial points, that you needed a diagram

2 that would show you where the equipment sought to

3 be permitted would be located in relation to I

4 think the water cannon system, is that correct?

5 **A. Yes.**

6 **Q.** Okay. And is this the type of diagram

7 that you're thinking should have been in the

8 application? And I know it's difficult to read it,

9 but --

10 **A. Yeah. Hopefully we would have had**

11 **something that would have been similar but maybe**

12 **blown up a bit so that it could be readable and**

13 **understandable.**

14 **Q.** Okay. And based upon your review of the

15 application and the other documents you mentioned

16 earlier you reviewed before preparing the permit

17 denial, such a diagram wasn't in the information

18 that we submitted?

19 **A. Not with respect to the new equipment that**

20 **was being added in the July application.**

21 **Q.** Right. And so let me ask you, Bob. If

22 you had had a document like the document we've been

23 talking about, which I'll refer to as the Fugitive

24 Particulate Operative Program, it's at pages 150

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1 through 163, would that have enabled you to make a
2 compliance determination with respect to 212.301?

3 MR. GRANT: Let me object again based on,
4 it calls for speculation, but go ahead and answer
5 the question, if you can.

6 THE DEPONENT: My understanding was that
7 the water cannon system was not in place and fully
8 operational in early December, so I -- I do not
9 know whether or not the facility would be in
10 compliance with 212.301 at that point.

11 BY MR. DWYER:

12 Q. But if you had that information, would
13 that enable you to determine compliance with
14 212.301 at or around December 5th?

15 A. It would have.

16 MR. GRANT: Can you, just for my
17 information, that information, do you mean that
18 map?

19 MR. DWYER: I mean the entire document.

20 MR. GRANT: Oh.

21 THE DEPONENT: It may have assisted us,
22 but I'm not sure that it would have shown
23 compliance.
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1 BY MR. DWYER:

2 Q. Okay. What other kinds of information
3 would you have needed to make that determination of
4 compliance of 212.301?

5 A. I think the fact that we were getting
6 complaints from neighbors, the fact that there were
7 newspaper articles almost on a daily basis
8 complaining about petcoke and the dust in the area,
9 and some of the problems that were being identified
10 in the inspection reports, I think the absence of a
11 lot of that information would have made us more
12 comfortable in knowing that there wasn't going to
13 be a problem with fugitive dust emissions from the
14 site.

15 Q. And just, again, so I understand, Bob, it
16 was not so much the absence of information
17 entirely, it was this additional information about
18 citizen complaints that affected your ability to
19 determine compliance with 212.301?

20 A. It was that and the fact that we were
21 aware that this site was under enforcement for some
22 violations of 212(k).

23 Q. And what relation did that have to your
24 decision?

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1 A. That seemed to point us in the direction
2 that there may have been violations of 212.301.

3 Q. But at the time you were preparing the
4 permit denial letter, roughly around December 5th,
5 there was no determination or adjudication by a
6 Court or the Board that those violations had
7 occurred, was there?

8 A. To my knowledge, no.

9 Q. Okay. All right. Did you consider or
10 review the complaints filed in Court against KCBX
11 when you were preparing the permit denial letter?

12 A. I had reviewed it prior to preparing the
13 denial letter, yes.

14 Q. And did you rely upon any information in
15 there, in the complaint?

16 A. May have considered some information.

17 Q. Okay. Do you recall what information in
18 particular?

19 A. No, not at this time.

20 Q. Okay. Bob, if we look now at denial point
21 five, tell me, what information did you rely upon
22 in preparing 5a-c?

23 A. We were alerted by Bureau of Land that
24 there was a storage pile at the site that had

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1 vegetation growing on it, and I believe there was a
2 Land violation notice that had alleged that that
3 was a waste pile, and obviously because we thought
4 it was a waste pile, the thought was that the site
5 was accepting waste, and we had no proof of siting
6 approval for the site.

7 Q. And other than the inspection reports that
8 you referred to, did you rely upon anything else in
9 preparing denial point 5a-c?

10 A. I believe there was a Land violation
11 Notice.

12 Q. So you reviewed a violation notice issued
13 to the site?

14 A. Yes.

15 Q. By the Bureau of Land?

16 A. Yes.

17 Q. Okay. And do you know whether -- does
18 that inspection report indicate whether there was
19 any sampling conducted or analysis of this material
20 that was alleged to be a waste under the definition
21 in the Act?

22 A. My understanding, no, there wasn't. Let
23 me back up. I don't know if there was any sampling
24 of the material, but my understanding was that that

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1 waste pile had been on the site for more than a
2 year, and that's why we had considered it to be a
3 waste pile.

4 Q. And that understanding that you had about
5 how long this material had been at the site, what
6 was that based upon?

7 A. **Based upon I believe the Bureau of Land
8 inspection.**

9 Q. Okay. And did you have any discussions
10 with the Bureau of Land or anyone in the Bureau of
11 Land regarding preparation of denial point 5a, b,
12 and c?

13 A. **No, I did not have any direct conversation
14 with Bureau of Land personally.**

15 Q. And just, do you know as we sit here, Bob,
16 and I guess I should have asked this much earlier
17 but, Bob, you are also a registered professional
18 engineer, is that correct?

19 A. **No, I'm not.**

20 Q. You're not. Okay.

21 Bob, do you have any experience
22 during your time at the agency working in the
23 Bureau of Land?

24 A. **No.**

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1 Q. Okay. Do you know as we sit here whether
2 or not you can make a determination of whether or
3 not a material is a waste just from visual
4 observation?

5 A. **No, I don't.**

6 Q. Okay. I want to go back and ask you about
7 some other documents, Bob, and whether or not you
8 reviewed them.

9 Well, let me go back. Let me start
10 here. Bob, you were at the August 27th, 2013
11 meeting?

12 A. **Yes.**

13 Q. Okay. Can you tell me to the best of your
14 recollection what -- what was discussed at that
15 meeting?

16 A. **My recollection was how to handle future
17 permitting of the two KCBX sites, whether to treat
18 them as one source or two sources, and whether or
19 not they were to be permitted under a single permit
20 or two permits, and whether or not they should be
21 under FESOP or Title 5 permits.**

22 Q. And, Bob, do you recall whether there was
23 any resolution on that issue at the meeting?

24 A. **My understanding was that KCBX was going**

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1 to consider combining the two sites into one under
2 a FESOP, but they were going to get back to us on
3 their final decision.

4 Q. Okay. Were there any other issues
5 discussed at the meeting aside from the permitting
6 issues you just described?

7 A. **I don't recall at this time what other
8 issues. I know Mike had questions about
9 identification of the new equipment. I know it was
10 brought up that they were going to install more
11 water cannons, but I don't recall any other issues.**

12 Q. Well, let me just ask you. Mike mentioned
13 this earlier, and I just want to raise it.

14 Do you recall any discussion about
15 this, we talked about it earlier, the environmental
16 justice policy of the management?

17 A. **Yeah. Yeah. Now I remember. It was
18 brought up that we would have to do some
19 environmental justice outreach before the issuance
20 of the -- before any issuance of a permit based on
21 the July 2013 application.**

22 Q. And you mentioned it earlier, but I just
23 want to confirm. Was it your understanding that at
24 the end of that meeting that all the agency needed

60

1 to complete its review of the application was the
2 equipment numbers?

3 A. **My understanding that was requested, but I
4 don't have any further recollection of what was --
5 what we committed to or if anything else had been
6 requested.**

7 Q. So something else may have been requested,
8 you just don't recall?

9 A. **I just don't recall.**

10 Q. Okay. If you would look in the record,
11 Bob, at it's at page 30. Had you seen that letter
12 before, Bob?

13 A. **Yes.**

14 Q. Can you tell me when is the first time you
15 saw that letter?

16 A. **That is a letter that I drafted.**

17 Q. Okay. And did anyone else participate in
18 the drafting of it?

19 A. **Yes.**

20 Q. Okay. Who else participated in the
21 drafting of the letter?

22 A. **Julie Armitage, Chris Presnall, and Jim
23 Morgan.**

24 Q. And then let me direct your attention then

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1 to a letter before that, starting at page 11 of the
2 record. Have you seen that letter before?

3 **A. Yes.**

4 **Q.** And did you review that letter prior to
5 issuing the permit denial letter?

6 **A. I read through the letter prior to the
7 denial.**

8 **Q.** And did you consider any of the
9 information or rely upon any of the information in
10 it in preparing and issuing the permit denial
11 letter?

12 **A. There were legal arguments that were
13 brought forth in that letter that -- that I really
14 could not make a determination on.**

15 **Q.** Because you're not a lawyer?

16 **A. Because I'm not a lawyer.**

17 **Q.** Okay. Let's go back to the permit denial
18 letter. I apologize, Bob. I should have asked
19 this earlier, but I did want to ask you. I did
20 want to ask you, in the first -- very first
21 paragraph, Bob, before the numbered paragraphs, it
22 indicates the agency has reviewed the application
23 for construction permit for the above project, and
24 that the application is being denied because

1 and indicate you needed additional information?

2 **A. At that point I was asked by Julie
3 Armitage to proceed with a denial, and those points
4 were items that I had identified as being deficient
5 with the application.**

6 **Q.** Independent of any discussion with Ms.
7 Armitage?

8 **A. Yes. Yes.**

9 **Q.** Let me just ask that more pointedly, Bob.
10 Were you directed to prepare the denial letter?

11 **A. I was directed to prepare the Wells
12 letter, and I asked, should I prepare a denial
13 letter, also. I asked of Julie, and she indicated
14 that I should.**

15 **Q.** Okay. And when -- when did you have that
16 conversation with Julie?

17 **A. December 5th.**

18 MR. DWYER: Okay. Let's just take a
19 break.

20 (Whereupon there was a recess
21 taken.)

22 BY MR. DWYER:

23 **Q.** Bob, I'm going to hand you a document.
24 Bob, here's what I've marked -- what I've marked as

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1 Sections 9 and Section 39.2, and then additional
2 regulations might be violated.

3 And what I want to ask is, to your
4 knowledge, what part of Section 9 would have been
5 violated if you issued the permit?

6 **A. To my knowledge, I'm not a lawyer, other
7 than perhaps being the prohibition of air
8 pollution. Section 9 is always quoted or referred
9 to in our denial letters.**

10 **Q.** Okay. Bob, back before or on or about
11 December 5th when you indicated you started to
12 prepare the permit denial letter, did -- did you
13 consider contacting the Applicant to advise them of
14 the information that you felt was missing or
15 deficient?

16 **A. No, we did not --**

17 **Q.** Okay.

18 **A. -- at that point.**

19 **Q.** Okay. Did you discuss that with Mike
20 Dragovich at that point in time?

21 **A. No, I did not.**

22 **Q.** Did you discuss it with anyone else?

23 **A. Discussed it with Julie Armitage.**

24 **Q.** And why didn't you contact the Applicant

1 Exhibit 12.

2 MR. GRANT: Give me a second. Can you
3 give us a second?

4 MR. DWYER: Absolutely.

5 (Whereupon there was an off the
6 record discussion.)

7 BY MR. DWYER:

8 **Q.** Bob, I've given you a document that we've
9 marked as Exhibit 12.

10 **A. Okay.**

11 **Q.** Have you -- are you familiar with this
12 press release, Bob?

13 **A. No, I'm not.**

14 **Q.** Okay. And directing your attention to the
15 fourth full paragraph, in particular the very last
16 sentence.

17 **A. Okay.**

18 **Q.** Were you aware of this decision by the
19 IEPA to halt permit activity that's referenced in
20 this press release?

21 **A. I was instructed to identify to Julie
22 Armitage any pending permits for petcoke
23 operations, but I was not aware that this was
24 contained in a release.**

1 Q. Okay. And the reason I asked about this,
2 you mentioned earlier in your testimony that there
3 were a number of news reports, I think you said
4 daily, containing complaints about dust and
5 material blowing off the site?

6 A. Yes.

7 Q. And so I wanted to know if you also were
8 familiar with this one, and more specifically I'm
9 asking you, with respect to this press release, did
10 you review it or were you aware of this halting
11 permit activity that's referenced in it prior to
12 January 17th?

13 A. I was instructed that prior to issuance of
14 any permits for petcoke operations that I needed
15 the approval of the Bureau Chief.

16 Q. And let me ask you as you sit here today,
17 other than the KCBX facility, were you aware of any
18 other permits for petcoke facilities that were
19 currently under review?

20 A. Yes.

21 Q. And can you tell me what other facilities
22 those were, if you recall?

23 A. I believe there was one for Beemsterboer.
24 I cannot recall at this time names of any other

1 I promise.

2 MR. GRANT: We don't have anything, and I
3 think we're going to waive on both deps, waive
4 signature on both deps.

5 MR. DWYER: Okay.

1 facilities.

2 MR. DWYER: I don't have anymore.

3 MS. PAMENTER: We just want to have one
4 moment.

5 MR. DWYER: We can step out.

6 (Whereupon there was a recess
7 taken.)

8 BY MR. DWYER:

9 Q. We've just got one last question. Bob,
10 since December 5th has the agency issued any
11 permits to petcoke facilities?

12 A. Not to my knowledge.

13 Q. Is it possible though that they may have?

14 MR. GRANT: Are you thinking specifically
15 Air permits?

16 MR. DWYER: Yeah. I'm sorry. Air permits.
17 I apologize.

18 THE DEPONENT: I'm not aware of any. It
19 may be possible that one of the other units in the
20 Permit Section, but I'm not aware of any.

21 Q. But to the best of your knowledge, the
22 units that you supervise have not issued any?

23 A. That is correct.

24 MR. DWYER: Okay. All right. We're done.

1 STATE OF ILLINOIS)
2)
3 COUNTY OF SANGAMON)
4)
5)

6 I, DONNA M. DODD, a Certified Shorthand
7 Reporter and a Notary Public, within and for the
8 State of Illinois, do hereby certify that the
9 witness whose testimony appears in the foregoing
10 deposition was duly sworn by me; that the testimony
11 of said witness was taken down by me to the best of
12 my ability and thereafter transcribed, and that the
13 attached transcript contains a true and accurate
14 translation of my shorthand notes referred to.

15 Given under my hand and seal this 11th
16 day of April, A.D., 2014.

17 *Donna M. Dodd*

18 Certified Shorthand Reporter
19 and Notary Public

20 CSR # 084-005912



21 My commission expires
22 May 19, 2014.
23
24

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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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

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

Discovery Deposition of Julie Armitage,
 produced, sworn and examined on behalf of the
 Petitioner, on April 16, 2014, scheduled for the hour
 of 1:30 P.M., at Hodge, Dwyer & Driver, 3150 Roland
 Avenue, Springfield, Illinois, before CYNTHIA M. SMITH,
 an Illinois Certified Shorthand Reporter and Notary
 Public.

Cynthia M. Smith, Owner
 cindy-m-smith@att.net
 217-523-6559
 217-971-5295

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14	MARKED
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17	(Exhibits were retained by the Petitioner.)
18	
19	
20	
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24	

1 APPEARANCES:

2 MR. EDWARD W. DWYER
 3 MS. KATHERINE D. HODGE
 4 MR. MATTHEW C. READ
 5 Hodge, Dwyer & Driver
 6 Attorneys at Law
 7 3150 Roland Avenue
 8 Springfield, Illinois 62705
 9
 10 Appeared on behalf of the Petitioner,
 11
 12 MS. KATHERYN A. FARMER
 13 Assistant Attorney General
 14 MR. CHRISTOPHER J. GRANT
 15 Assistant Attorney General
 16 Environmental Bureau
 17 Office of the Illinois Attorney General
 18 69 West Washington Street, 18th Floor
 19 Chicago, Illinois 60602
 20
 21 MR. JAMES LEE MORGAN
 22 Deputy General Counsel for Air Enforcement
 23 Division of Legal Counsel
 24 Illinois Environmental Protection Agency
 1021 North Grand Avenue East
 Springfield, Illinois 62794
 Appeared on behalf of the Respondent.

20 ALSO PRESENT:

21 Mr. David J. Kolaz, P.E.
 22 Mr. Tom Safley

1 IT IS HEREBY STIPULATED AND AGREED BY and between
 2 Counsel for the Petitioner and Counsel for the
 3 Respondent that this deposition may be taken in
 4 shorthand by CYNTHIA M. SMITH, an Illinois Certified
 5 Shorthand Reporter and Notary Public, and afterwards
 6 transcribed into typewriting, and the signature of the
 7 Deponent is waived by agreement.

8 (Petitioner's Exhibit
 9 Numbers 1 and 2 were
 10 marked for identification
 11 prior to the deposition by
 12 the Court Reporter.)
 13 (The deponent was sworn
 14 by the Court Reporter.)

15 JULIE ARMITAGE
 16 Of lawful age, being produced, sworn and examined on
 17 behalf of the Petitioner, deposes and says:

18 DIRECT EXAMINATION
 19 BY MR. DWYER:

20 Q Julie, we know each other, but there are a
 21 number of things that we are going to have to go through
 22 here. But, as you know, my name is Ed Dwyer.
 23 What we are here for today is the permit
 24 applied for by KCBX Terminals Company, Case Number

1 PCB 14-110. I'm going to ask you some questions about
2 your disclosure that the state has provided to us and
3 about the record in this matter.

4 But if you would just start with some
5 background. Would you state your full name and spell
6 your last name for the record?

7 A Okay. Full name. Julie Kay, K-A-Y, Armitage,
8 A-R-M-I-T-A-G-E.

9 Q Okay. And, Julie, you work at the IEPA; is
10 that correct?

11 A Correct. Yes.

12 Q Can you just tell me, starting with currently,
13 what is your current title? And -- and we'll talk about
14 your duties and responsibilities in that title and any
15 prior ones that you had at the agency. So, if we start
16 with your current position, what is your title?

17 A My current title is Chief of the Bureau of
18 Air.

19 Q And, in that position, Julie, can you just
20 briefly describe what your duties and responsibilities
21 are?

22 A Oh, I am responsible for the Illinois EPA Air
23 Pollution Control Program. I've approximately a 250
24 person staff. Approximately a 75 million dollar budget.

1 Attorney General's Office. The unit was also involved
2 in the Section 31 process, the compliance matters that
3 went through that. We, also, were responsible for all
4 things other than rule making and pure legislative-type
5 matters. So appeals, permitting-related issues leading
6 up to and on the heels of an appeal. Regulatory relief.
7 The FESOP standards. Variance provisional variances. I
8 believe that's by and large the work that we do.

9 Q Okay. And did you supervise people in that
10 position?

11 A Yes, I was the supervisor.

12 Q And approximately how many?

13 A Oh, six.

14 Q And were those technical positions or were
15 those attorneys?

16 A Attorneys.

17 Q Okay. And how long were you in that position,
18 Julie?

19 A I was in that position dating to 1993.

20 Q Okay. Prior to 1993, did you hold a prior
21 position at the agency?

22 A Between '90 and '93, I was an air enforcement
23 staff attorney.

24 Q Okay. And, in that position, what were your

1 I'm responsible for establishing and implementing
2 policies that speak to all facets of air pollution
3 control. So permit-related matters, compliance-related
4 matters, air quality-related matters, monitoring-related
5 matters. That's the general gist.

6 Q And then, Julie, how long have you been in
7 that position?

8 A I have been in that position since August of
9 -- August 1st of 2013.

10 Q Okay. And, prior to August 1st of 2013, did
11 you hold a prior position at the agency?

12 A Yes.

13 Q Okay. And, again, what was -- is the title of
14 your prior position?

15 A Oh, immediately prior I was manager of the Air
16 Enforcement Unit.

17 Q And then, if you would describe briefly, what
18 were your duties and responsibilities as the manager of
19 the Air Enforcement Unit?

20 A I was responsible for all things related to
21 enforcement of air pollution control. Laws and
22 regulations. So I was involved in compliance
23 determinations, enforcement determinations relating to
24 the Bureau of Air. We worked towards referrals to the

1 duties and responsibilities?

2 A Oh, similar sort of duties that I described
3 before. Referring matters to the Attorney General's
4 Office. Working with the bureau through the compliance
5 process as it existed at that time. Working with the
6 bureau on permit matters that may yield or effected an
7 appeal. Working with the bureau on regulatory relief
8 type of matters. Again, FESOP standards, provisional
9 variances and that sort of thing.

10 Q And, prior to that position, did you hold
11 another position at the agency?

12 A Not prior to, but during the window of '93
13 through March of 2013, I had other positions there as
14 well.

15 Q What other positions did you hold during that
16 period of time?

17 A So during the period of '90 -- from '93 until
18 just this past August, I was always manager of the Air
19 Enforcement Unit. There were times when I did that and
20 other duties. So, for the period of 2000 to -- November
21 of 2000 and -- 2000 to January of 2000 and -- of 2007, I
22 was manager of the Air Enforcement Unit, Bureau of Air
23 Compliance Section. And during the -- and during the
24 period of '90 -- the period -- the period of -- I want

1 to say it was maybe 2003, when I was the Manager of the
2 Bureau of -- of the Air Enforcement Unit and the Air
3 Regulatory Unit. And then there was a period of time
4 between October of 2000 -- yeah, October of 2011 through
5 March of 2013 that I was -- I was the manager of the Air
6 Enforcement Unit and the agency's acting chief legal
7 counsel.

8 Q So, in terms of what you just described, there
9 were at least some time frames during your employment at
10 the agency where you, for lack of a better term, would
11 have two positions?

12 A Two. Maybe three. Yes.

13 Q During those periods -- and let's start with
14 your initial position at the agency. Did we cover your
15 initial position?

16 A Yes.

17 Q Okay. So starting with your first position
18 at the agency. In that position, did you review permit
19 applications?

20 (Pause.)

21 A It depends on what you mean by the term
22 review.

23 Q Well, tell me, if you can, during your initial
24 position there as the air enforcement attorney, what --

1 then legal advice as to whether or not a legal
2 requirement was met in the application?

3 A If that's what they were asking us to assist
4 them with, we might do that, yes.

5 Q Other than providing kind of legal advice as a
6 staff enforcement attorney, what else would you assist
7 them with? Would you -- for example, would you help
8 them review a calculation?

9 A No.

10 Q Would you help them review the completeness,
11 whether or not all of the information required by that
12 type of permit was present in the application?

13 A We could get into that at times, yeah.

14 Q Okay. So then, in your next position, I have
15 really sort of the same questions. In your next
16 position, did you have the responsibility or -- or the
17 opportunity to review permit applications?

18 A The next position being --

19 Q Your next --

20 A We went from Air Enforcement to the Compliance
21 Section.

22 Q All right.

23 A I think less, though, in the role as the
24 manager of the Compliance Unit.

1 what you would do with respect to permit applications,
2 if anything?

3 A We -- I at times and the staff that worked for
4 me particularly in the Air Enforcement Unit at times
5 reviewed permit applications in concert with permitting
6 staff to assist them in their responsibility.

7 Q Would that include their responsibilities
8 related to issuing a permit?

9 A Yes.

10 Q Okay. And, in that process, would you --
11 would you actually take the application and review the
12 adequacy of it or the completeness of it?

13 A There are times we would be looking at such a
14 thing, but -- but it would not have been our
15 responsibility to -- it is a permit analyst in the
16 Permit Section responsibility to -- to review that
17 application. But we would oftentimes look at those
18 things.

19 Q Okay. And do you recall for what purpose you
20 would look at a permit application when you were on the
21 enforcement unit?

22 A Again, to assist the permit analyst in the
23 Permit Section in the performance of their duties.

24 Q In terms of assisting them, would you provide

1 Q And then in your next position?

2 A The next position being Chief Legal. Not at
3 all, no. Not in the context of serving as the agency's
4 Chief Legal Counsel.

5 Q And, during some of that period, I think that
6 you mentioned that you were wearing two or three hats?

7 A Whenever the air enforcement hat was on,
8 that's the context in which the quote, unquote reviews
9 may at times occur.

10 Q Okay. But would that be the only time when
11 you were wearing or assuming multiple titles?

12 A Yes.

13 Q Okay. And then when you were -- and I'll say
14 promoted, if that's correct, to your next position, at
15 that point in time, would a part of your job or duties
16 and responsibilities involve reviewing permit
17 applications?

18 A It's -- as the Chief -- well, as the Chief of
19 the Bureau of Air, I wouldn't say that it's one of the
20 expressed duties. But I would say that my job is to
21 oversee the activities that occur under me. And so
22 yeah, that's how I would.

23 Q All right. That's fine. I just want to
24 switch over, Julie. Let's just talk about -- excuse me

1 -- your educational background. I know that you are a
 2 lawyer, but, for the record, we need to walk through
 3 some things.
 4 Can you tell me when you received your law
 5 degree?
 6 A In 1988.
 7 Q Okay. And that was from the Southern Illinois
 8 University School of Law?
 9 A Correct.
 10 Q And, prior to that, I assume that you received
 11 an undergraduate degree?
 12 A Yes.
 13 Q And can you tell me the school and when?
 14 A Oh, 1985. From Bradley University.
 15 Q And can you tell me what was your major?
 16 A I have a Bachelor of Science in Finances.
 17 Q Okay. And any minor?
 18 A No.
 19 Q Where were you -- where were you first
 20 employed after you graduated from law school?
 21 A The Attorney General's Office.
 22 Q Okay. Can you tell me -- obviously we both
 23 know a lot of this, but can you tell me where you were
 24 first assigned, what division?

1 A Asbestos Litigation.
 2 Q And how long were you in Asbestos Litigation?
 3 A Not quite two years. Between a year and a
 4 half and two years.
 5 Q And did you go to another division at the AG's
 6 office then?
 7 A No. But, near the tail end of my time in the
 8 asbestos litigation, I was doing general law cases.
 9 Q So then, from the Attorney General's Office,
 10 did you then move to employment at IEPA?
 11 A Yes.
 12 Q Okay. Julie, have you ever given a deposition
 13 before today?
 14 A Yes. Once.
 15 Q Okay. Can you tell me when that was?
 16 (Pause.)
 17 MR. DWYER: If you recall.
 18 THE DEPENDENT: No. It's been a few years. I don't
 19 remember exactly when it was.
 20 Q But was it while you were employed at IEPA?
 21 A Yes.
 22 Q And did it relate to your work at IEPA?
 23 A Yes.
 24 Q Do you recall whether it was an enforcement

1 case?
 2 A No.
 3 Q Do you recall what type of proceeding it was?
 4 A It was in trade secrets.
 5 Q And did you testify subsequently at any kind
 6 of hearing, administrative or judicial?
 7 A No.
 8 Q Other than that, have you ever testified in an
 9 administrative or judicial proceeding?
 10 A No.
 11 Q Okay. Let me show you a couple of documents,
 12 Julie. The first document is marked Deposition Exhibit
 13 17. And, if you would, just take a look at that. And
 14 you know I will represent for the record, Julie, that
 15 that's a Notice of Discovery Deposition that was
 16 directed to you through your lawyer, Mr. Grant. And
 17 that's composed of four pages.
 18 And my first question to you is have you seen
 19 this document before today?
 20 A Yes.
 21 Q Okay. And can you tell me the first time that
 22 you saw the document?
 23 (Pause.)
 24 A I want to say about a week ago.

1 Q Okay. And do you recall who provided you with
 2 that document?
 3 A I believe Jim Morgan.
 4 Q And, again, just for the record, Mr. Morgan is
 5 an attorney at the Illinois EPA Bureau?
 6 A Correct.
 7 Q And directing your attention specifically,
 8 Julie, to the -- and I apologize as it's actually a
 9 five page document and not four pages. Let me direct
 10 your attention to the last page so we can kind of
 11 dispense with a couple of issues we just need to get on
 12 the record.
 13 That document is titled Deposition Rider To
 14 Julie Armitage. And it specifically requests that you
 15 bring such documents consisting of three categories of
 16 information with you to the deposition today. I just
 17 want to confirm that you have seen that before today and
 18 that was approximately a week ago?
 19 A Yes.
 20 Q And just so we get this on the record to
 21 confirm this, have you brought any documents with you
 22 today that are responsive to those three requests?
 23 A No.
 24 Q And can you tell me why you didn't provide

1 those documents today?

2 MS. PAMENIER: Actually, I'm going to answer that

3 question. For the record, we have a pending motion

4 protective order, which is on appeal. This was served

5 after the issue or at least maybe contemporaneously with

6 Mr. Halloran's April 8th order. We would seek the

7 position that whatever ruling of the board that gets

8 issued in response to our interlocutory appeal would

9 apply to the documents requested with the Deposition

10 Rider. And I would instruct the witness not to answer

11 due to that pending issue before the board.

12 MR. DWYER: So that takes care of that.

13 And then the next document I would like you to look

14 at is -- let's get through this one so we can take care

15 of these issues. Let me show you what what's been

16 marked as Deposition Exhibit 2. And I will ask you

17 again before today have you seen that document?

18 THE DEPONENT: Not that I recall.

19 Q Okay. And I -- again, I will represent,

20 Julie, that that's -- that document consists of a cover

21 letter that I -- that is addressed to myself and other

22 lawyers here at my firm from Katie -- from Ms. Parenter.

23 And it indicates -- the cover letter that's attached is

24 what's referred to as a privilege log. And, for the

1 therein.

2 MR. DWYER: And is part of the objection based upon

3 privilege and predecisional deliberative process?

4 MS. PAMENIER: Yeah. Both attorney, client

5 privilege and predecisional deliberative process

6 privilege.

7 MR. DWYER: And just to be clear, if I were to seek

8 to ask Ms. Armitage any questions about it, Counsel,

9 would instruct the witness not to answer any questions?

10 MS. PAMENIER: That's correct.

11 MR. DWYER: All right. The next document that I

12 would like you to take a look at, Julie, is Exhibit --

13 it's marked Exhibit 18. Let me show you a copy of that

14 document. And would you take a look at that and tell me

15 once you've had a chance to look at it, Julie?

16 (At which time, said

17 exhibit was reviewed

18 by the deponent.)

19 THE DEPONENT: Okay.

20 MR. DWYER: Prior to today, Julie, had you seen

21 that document?

22 A Yes.

23 Q Okay. Can you tell me when you first saw the

24 document?

1 record, I will represent that the log consists of a

2 series of rows and columns that identify the name of

3 someone who sent an e-mail, those who received it, the

4 date of the e-mail or document, a brief description of

5 it and then there is a serialized numbering of each of

6 the documents in the last column. Would you agree that

7 that's a fair statement of what the document is or what

8 it contains?

9 A Yep.

10 Q Okay. Now just for the record, if I were to

11 -- I would like to ask you some questions about this

12 document.

13 MS. PAMENIER: And I will object on two bases.

14 One, the privilege log itself is right now the subject

15 of a Motion for Leave to File an Amendment to the Motion

16 to Supplement to include the actual privilege log in the

17 administrative record. Certain of the documents

18 contained within the privilege log are the subject of

19 other motions that are pending before the Hearing

20 Officer and the board. Given that situation, with

21 everything in terms of the privilege log and the

22 documents therein, until we will get a ruling on it, I'm

23 going to instruct the witness not to answer questions

24 with respect to the privilege log and the document

1 (Pause.)

2 MR. DWYER: And maybe to be more specific, to be

3 helpful, the first page is a Notice of Filing of the

4 Respondent's witness disclosure. And then the next two

5 pages I'll represent contain the actual Respondent's

6 Witness Disclosure. And more specifically I will ask

7 you have you seen Page 2 and 3 of Exhibit 18 before

8 today?

9 (At which time, said

10 exhibit was reviewed

11 by the deponent.)

12 THE DEPONENT: Yes.

13 MR. DWYER: Okay. And directing your attention to

14 Paragraph 2 at the bottom of Page 2 of the exhibit.

15 That indicates that the Respondent, who is the Illinois

16 EPA in this case, may call you as a witness in response

17 to KCEK's case in chief at hearing. And it identifies

18 you and your current title.

19 And then it -- it states, beginning at the bottom

20 of Page 2, To the extent that it may be considered

21 opinion testimony -- and it goes on to recite that you

22 would tender an opinion. And so just stopping with that

23 part, Julie, can you tell me -- I'm trying to understand

24 what that means that -- to the extent that it may be

1 considered an opinion testimony, is -- is there a
 2 question about whether or not you have an opinion
 3 that's been disclosed here today?
 4 MS. FARMER: Object to the extent that it calls
 5 for a legal conclusion.
 6 You can answer if you know.
 7 THE DEPENDENT: To the extent part, I have an
 8 opinion. The question is whether the opinion positions
 9 me or my testimony more as an expert witness or a fact
 10 witness.
 11 MR. DWYER: Okay. And I guess -- so let's clarify
 12 that. Is this being tendered as an expert opinion by
 13 the -- by the Respondent here today?
 14 MS. FARMER: That may be a question for Counsel.
 15 We have tendered her as an expert witness to the extent
 16 that the opinion that is being given may serve as an
 17 expert opinion.
 18 MR. DWYER: Okay. I'm not sure -- okay. Well,
 19 we'll try to work with that. And we may have to revisit
 20 it. But, for now, Julie, let me ask you some questions
 21 about the document.
 22 Do you recall when you -- again, I may have asked
 23 you this before. And if so, my apologies. Do you
 24 recall when you first saw this? We are talking about

1 participated in discussions about. And I now -- I
 2 apologize. Let's focus just on Paragraph 2 of the
 3 document. With whom did you discuss it?
 4 A Legal counsel.
 5 Q Okay. When you say legal counsel is that a
 6 single person?
 7 A No. I believe that -- I believe that there
 8 were three attorneys present.
 9 Q Okay. And, please, tell me who those
 10 attorneys are or were?
 11 A Katie, Chris and Jim.
 12 Q And just, for the record, you are indicating
 13 Ms. Farmer, Mr. Grant and Mr. Morgan?
 14 A Yes.
 15 Q And tell me when -- when that discussion took
 16 place?
 17 A I would say -- I don't remember the exact
 18 date.
 19 Q Well, I mean would it be fair to say that it
 20 was sometime prior to April the 4th?
 21 A Yes.
 22 Q Is it possible it was on April the 4th?
 23 A No. I think it was before April the 4th.
 24 Q Okay. To the best that you can recall?

1 Pages 2 and 3.
 2 THE DEPENDENT: I saw it in draft form and then I
 3 again saw it in final form.
 4 Q Do you have a copy of the draft form with you
 5 today?
 6 A No.
 7 MR. DWYER: Okay. Do you have a copy of the draft
 8 form?
 9 MS. FARMER: That would be prepared by legal
 10 counsel and we contend privilege.
 11 MR. DWYER: I think -- if she's being tendered as a
 12 controlled expert witness, I think it's subject to
 13 disclosure. So I'm requesting it. That's fine if you
 14 want to decline that, but I would request a copy of
 15 that.
 16 Q And so you first saw it as a draft before it
 17 came into its final form?
 18 THE DEPENDENT: I believe so.
 19 Q Which is Exhibit 18.
 20 Did you participate in preparing this document
 21 at all?
 22 A I didn't write anything, but I participated in
 23 the discussion.
 24 Q Okay. And just tell me with whom you

1 A I want to say it was a day, maybe two before.
 2 Q All right. That's fine.
 3 And do you recall how long that discussion
 4 was?
 5 A Somewhat brief.
 6 Q Were there more than one discussion about
 7 Paragraph 2 of the exhibit?
 8 A No.
 9 Q And just to confirm, you did not draft this
 10 document itself, but you were familiar with what is set
 11 forth here in Paragraph 2?
 12 A Correct.
 13 Q Okay. And, in this opinion that is in
 14 Paragraph 2 of the exhibit, the first part of it states
 15 that the KCBX Terminals Company did not present
 16 sufficient information to the Illinois EPA in support of
 17 its July 23rd, 2013 construction permit application to
 18 establish that the facility located at 10730 South
 19 Burley Avenue in Chicago would not cause a violation of
 20 the Illinois Environmental Protection Act and the
 21 corresponding regulations. And then it identifies a
 22 specific section of the Illinois Environmental
 23 Protection Act and a series of regulations. I will
 24 refer to them as air regulations. Is that fair?

1 A Yes.

2 Q Okay. And it goes on to say that if -- that

3 -- that the determination is that -- well, strike that.

4 The last sentence of the opinion states that

5 the basis for your opinion is the administrative record.

6 I want to sort of switch that and talk a little bit

7 about it because it's -- well, let me represent to you

8 that in front of you is a document that's been marked as

9 Exhibit 3. Julie, if you would take a look at that and

10 tell me if that appears to be a copy of the

11 administrative record that's referred to in your

12 opinion?

13 (At which time, said

14 exhibit was reviewed

15 by the deponent.)

16 THE DEPONENT: It appears to be the administrative

17 record.

18 MR. DWYER: Okay. And so then in looking back at

19 your opinion -- I don't want to recite it again

20 unnecessarily, but it appears your opinion is that there

21 wasn't sufficient information in the application to the

22 agency to establish that the facility wouldn't cause a

23 violation of -- of, first of all, the Section 9 of the

24 Act and then the regulations that we talk about. So

1 upon in that portion of your opinion that indicated that

2 the permit application didn't contain sufficient

3 information to demonstrate it wouldn't cause a violation

4 of Section 9?

5 A I believe so, yes.

6 Q Okay. First, let me ask you this. When you

7 state, in your opinion, Section 9, can you tell me --

8 can you be more specific, Julie? Which portion? I mean

9 would you agree that Section 9 has several subsections?

10 A Yes.

11 Q And so, when you say Section 9 of the Illinois

12 Environmental Protection Act, is your opinion that all

13 subsections of Section 9 would be violated if the permit

14 application had been granted?

15 A No.

16 Q Okay. Can you tell me which section or

17 sections you believe would have been violated?

18 A I believe Section 9 A would have been.

19 Q And is Section 9 A a prohibition against

20 causing, threatening or allowing air pollution?

21 A Yes.

22 Q And so then let's focus more on the documents

23 with respect to that part of your opinion. Let's start

24 with using the record numbered pages --

1 taking those in pieces, can you first tell me, Julie, is

2 your opinion based upon all of the documents in the

3 administrative record?

4 A Yes.

5 Q Okay. So then -- then assuming that, please

6 tell me, with respect to the determination that the

7 permit application submitted did not demonstrate it

8 wouldn't cause a violation of Section 9, I would like

9 you to tell me specifically which documents in the

10 record you reviewed to form that opinion?

11 (At which time, said

12 exhibit was reviewed

13 by the deponent.)

14 MS. FARMER: Do you want tabs to keep track of

15 'em or, as you find them, do you want to tell him

16 because there is a lot there?

17 MR. DWYER: Let's go off the record for just a

18 second.

19 (Short recess was taken.)

20 MR. DWYER: Okay. Let's go back on the record.

21 THE DEPONENT: All right.

22 Q Okay. Let's start with -- have you had a

23 chance to look through the record and identify the

24 documents that you believe that you reviewed and relied

1 MS. FARMER: I'm sorry to interrupt, but I want

2 to clarify one thing. When you said whether Section 9 A

3 would be violated if the permit were granted, did I hear

4 the question correctly?

5 MR. DWYER: I couldn't tell you unless it's read

6 back.

7 MS. FARMER: Because I don't believe that, that

8 is her opinion in terms of whether there was sufficient

9 information in the application as to whether granting

10 the permit would not cause a violation.

11 MR. DWYER: Of 9 A. That's -- yeah, that's what I

12 thought I asked. I think so. That's what I intended.

13 MS. FARMER: Okay. I just didn't want her to

14 believe that she was answering the question of whether

15 the permit application was granted would cause a

16 violation of 9 A. So --

17 MR. DWYER: It may be fair to rephrase it again

18 just so I understand, Julie. And I will try to restate

19 that. With respect to that portion of your opinion

20 which states that KOBX did not present sufficient

21 information to the Illinois Environmental Protection

22 Agency in support of its application to establish that

23 the facility would not cause a violation of Section 9,

24 you were referring to Section 9 -- Subsection A of

1 Section 9 of the Act?
 2 THE DEPENDENT: Yes.
 3 Q Okay. So my question to you now is -- well,
 4 let's look at the record. You've tabbed a number of
 5 pages in the record. Let's start from the beginning of
 6 the record. What is the first document that you relied
 7 upon in -- in making that opinion and the page numbers?
 8 A The first document is R000011.
 9 Q And what is that document, Julie?
 10 A It is KCEX's response to the agency's letter.
 11 It's labeled response to December 10, 2013 letter.
 12 Q And what about that document or what
 13 information in it did you rely upon?
 14 A What I would say is it's more about what
 15 isn't here --
 16 Q Okay. Tell me --
 17 A -- than what is. It's -- the position was
 18 that this letter didn't adequately address the concern
 19 at issue.
 20 Q Okay. What -- what -- what wasn't in that
 21 letter that you believe that the agency needed?
 22 A We needed something that would demonstrate
 23 that the actual or threatened 9 A -- that we believed
 24 KCEX was causing or threatening or allowing would not be

1 exacerbated or would not continue to exist and would not
 2 be exacerbated by the issuance of the pending permit
 3 transaction.
 4 Q And what would that have been?
 5 MS. FARMER: Objection. Calls for speculation.
 6 You can answer if you know.
 7 MR. DWYER: That's fair.
 8 Q What type of information would that or could
 9 that have been, Julie, that would have addressed that
 10 concern you have stated?
 11 THE DEPENDENT: To our mind, it would have been
 12 something that would have addressed fugitive dust
 13 emissions from the various activities at the facility.
 14 Q And just so I'm clear would -- do you mean
 15 something in the form of air pollution control
 16 equipment?
 17 A It could be.
 18 Q Okay. What else could it be?
 19 A It could be -- it could be any number of
 20 measures. The concerns were for fugitive emissions and
 21 potential fugitive emissions related back to storage
 22 piles, conveying, loading, unloading and tracking. And
 23 so the concern was that those potential points of
 24 emissions had not adequately been addressed so as to

1 eliminate our concern for -- for air pollution.
 2 Q Okay. And just again -- and you tell me if
 3 this is incorrect. So it could have been actual
 4 equipment?
 5 A (Nods affirmatively.)
 6 Q Or it could have alternatively or in
 7 combination also have been policies, practices or
 8 procedures?
 9 A Yes. It could -- yes.
 10 Q And that was again in referring to the first
 11 document -- well, you know we should go back and clean
 12 this up in the record. Starting with Page 11, what is
 13 that document, Julie?
 14 A It's a letter from -- from KCEX to the Permit
 15 Section Manager on Hodge, Dwyer & Driver letterhead
 16 labeled Response to December 10, 2013 letter.
 17 Q And is that December 10, 2013 letter -- would
 18 you be comfortable referring to the letter as the Wells
 19 letter?
 20 MR. GRANT: It's 2014.
 21 MR. DWYER: The response is 2014?
 22 MR. GRANT: Oh, ignore me, Court Reporter.
 23 MR. DWYER: And so staying with that then, the
 24 document that we've been talking about starting at Page

1 11 was the response to what I have referred to as the
 2 Wells letter. And you indicated that the information
 3 that you believe could have or would have assisted the
 4 agency would have been some information regarding
 5 physical equipment or control of the equipment for
 6 fugitive emissions and, or some types of policies
 7 practices or procedures?
 8 A Yes.
 9 Q Okay. Is there anything else that you believe
 10 would have been -- would have addressed that concern of
 11 the agency?
 12 (Pause.)
 13 MR. DWYER: That could have been in this letter and
 14 was not?
 15 THE DEPENDENT: To address fugitive concerns, by and
 16 large, it would be addressed in that general type of
 17 way.
 18 Q Okay. And so then let's go to the next
 19 document that you have tabbed or marked. And if you
 20 could tell me the page?
 21 A Okay. The next -- the next letter is a letter
 22 dated December 18, 2013. Again, a letter to the Permit
 23 Section manager from KCEX on Hodge, Dwyer & Driver
 24 letterhead. It's the initial response to the Wells

1 letter.

2 Q Okay. And what in there did you review or
3 rely upon in your determination with respect to the --
4 to the permit -- the permit application not providing
5 enough information to demonstrate that it wouldn't
6 cause, threaten or allow a violation of 9 A?

7 A Well, again, here there is virtually nothing
8 that is responsive to the issue of fugitive dust. Now
9 it's largely a request and/or offer of additional time
10 to respond to our Wells letter.

11 Q Okay. So the letter was seeking additional
12 time to respond to the Wells letter. And so is it fair
13 to say that it might -- that it doesn't -- well, do you
14 think that it attempted to substantively respond to the
15 Wells letter?

16 A No. But I considered it. It's considered a
17 part of the record.

18 Q (Nods affirmatively.)

19 A And, as a part of the record, that doesn't
20 speak to the issue of concern. So I necessarily am
21 putting it into the pot of information that I would have
22 looked at for this fugitive dust issue.

23 Q All right. And then, if we go to the next
24 tabbed document, what page is that Julie?

1 A No, I do not know.

2 Q And do you know by whom the document was
3 completed?

4 A I have reason to believe it would have been
5 completed by Mike Dragovich.

6 Q And so, if we go to the next document that
7 you've tabbed, if you could just tell me what page of
8 the record that is.

9 A Oh, R29.

10 Q Okay. And tell me what that document is,
11 Julie?

12 A This is a letter to the IEPA Director,
13 Director Bonnett from Senator Durbin and Congresswoman
14 Kelly expressing -- well, that's what it is.

15 Q Did that -- tell me then what in that letter
16 you -- you relied upon or based your opinion on with
17 respect to the insufficient information in the
18 application in relation to potential or threatened 9 A
19 violation?

20 A This letter was speaking to the concern for
21 the air pollution in the facility.

22 Q Okay. And, when you say concerns, does --
23 does the letter identify what those concerns are?

24 A It touches upon them, yes.

1 A Oh, R0 -- R24.

2 Q And what is that document, Julie, R 24?

3 A That's an Air Permit Application Completeness
4 Screening Checklist.

5 Q And when did you first see that document?

6 A I actually did not see this document until I
7 looked at the administrative record.

8 Q And when was the first time that you reviewed
9 that?

10 A When I saw this written document as it appears
11 here. I saw it when I looked at the administrative
12 record say a week or so ago.

13 Q All right. And, again, with respect to that
14 page of the record, what -- what in there do you believe
15 supported your determination of insufficient
16 information?

17 A There is at least two indications here that
18 the application was not complete. Item 11. The
19 question is if the permit was due today, could you write
20 an enforceable permit with the information provided in
21 the application. Answer options are yes, or no or not
22 applicable in the answer mode. And the answer was no.

23 Q And do you know when that document was
24 completed?

1 Q Okay. And did you agree and -- and accept as
2 accurate and true all of the statements in that letter?

3 A We -- we accepted that it was an expression of
4 concern for the air pollution from the facility.

5 Q But did you seek to verify any of the
6 statements in there as far as their veracity?

7 A Not necessarily, no.

8 Q Okay. And, Julie, when did you first see that
9 document?

10 A On or about December 16th.

11 Q And is that the date of the letter?

12 A Yes.

13 Q And did you discuss that document with anyone
14 at the time that you first saw it?

15 A When the letter -- I don't quite recall
16 exactly how I came into possession of the letter, but
17 upon receiving the letter, I noted that this letter
18 should be put to the permit record on the pending
19 construction permit transaction.

20 Q The letter is addressed to the director of
21 the agency; is that correct?

22 A Yes.

23 Q And, as we sit here today, do you know if you
24 received this from the director or from someone else?

1 A I assume that I received it from the director.
 2 And I know that this is my handwriting up here in the
 3 corner.
 4 Q Is that the handwriting up in the upper
 5 right-hand corner of the record?
 6 A Correct.
 7 Q Did you have any discussions with the Director
 8 about that letter?
 9 A Yes.
 10 Q Okay. And tell me when did you have that
 11 discussion? Was it on December 16th or at or near that
 12 time?
 13 A At or near that time.
 14 Q Can you tell me the substance of that
 15 discussion?
 16 A Oh, it would have been -- it really would have
 17 been primarily in two records. One, that we had an
 18 additional expression of concern for air pollution from
 19 the facility. And, two, it was with regard to getting a
 20 draft response to the letter prepared.
 21 Q Okay. And did you, in fact, prepare a
 22 response to the letter?
 23 A I know that a response was prepared and I know
 24 that -- that I worked with people on preparing that.

1 Q And with whom did you work on preparing the
 2 response?
 3 A I want to say that I was working with
 4 legislative staff.
 5 Q Okay. And, as we sit here today, you don't --
 6 do you recall whether or not the Director assigned you
 7 or asked you to take any action with respect to the
 8 letter that we've been talking about?
 9 A Oh, she did not ask for me to take any
 10 particular action, no.
 11 Q Who made the determination to prepare a
 12 response to the letter?
 13 A She did.
 14 Q Okay.
 15 A It's -- it's standard protocol for us to
 16 respond to a letter of this type with a letter.
 17 Q And she -- and I want to be clear, but she
 18 didn't direct you to work on the response?
 19 A No.
 20 Q Okay. Do you know if a response was ever sent
 21 to the letter?
 22 A I believe one was, yes.
 23 Q And just to finish up, did you ever have any
 24 conversations with Senator Durbin or Congresswoman Kelly

1 about the letter?
 2 A No.
 3 Q Okay. Did you have any conversations with
 4 Senator Durbin or Congresswoman Kelly about the KCBX
 5 facility or the permit or anything related to the
 6 facility?
 7 A Neither of them individually, no.
 8 Q But collectively?
 9 A No, not collectively either.
 10 Q Did you have discussions with anybody on
 11 Congresswoman Kelly's staff or Senator Durbin's staff
 12 about the permit application, about the KCBX site or
 13 anything related to that?
 14 A Oh, conversations were had with persons from
 15 Senator Durbin's office.
 16 Q Okay. And do you recall when those
 17 conversations took place?
 18 A I know that they occurred post referral of
 19 KCBX to the Attorney General's Office for enforcement
 20 action because I know one of the conversation pieces was
 21 that we had made that referral and that action was being
 22 pursued through the AG's office against KCBX.
 23 Q Julie, do you have any idea -- I mean I will
 24 submit to you that I have looked through the record and

1 I don't claim to know it by heart, but I don't recall
 2 seeing a copy of IEPA's response to this in the record.
 3 Have you seen a response to this letter?
 4 A I believe there is one.
 5 Q Do you know why it wasn't included in the
 6 record?
 7 A I don't believe that we relied upon it in
 8 making our permitting determination.
 9 Q But you did rely upon the letter that we sent
 10 to you?
 11 A Yes. We thought it spoke to concerns for 9 A.
 12 Q So then, if we move to the next document that
 13 you have marked, what page is that, Julie?
 14 A It's R30.
 15 Q Okay. And can you tell me just briefly what
 16 that document appears to be?
 17 A Oh, it's our Wells letter.
 18 Q Okay. And if you would, again, tell me what
 19 in there did you refer -- rely upon in making your --
 20 you know in tendering your opinion that the information
 21 in the application you received was insufficient to
 22 demonstrate that if you issued a permit it would cause a
 23 violation of 9 A?
 24 A The thought would be that the dust conveying

1 to KCBX -- that we have concerns for air pollution and
 2 intended to factor that into our permit transaction.
 3 But it also spoke to land issues as well.
 4 Q Right. And did -- just my understanding of
 5 the letter was that it also notified KCBX that the state
 6 would be considering additional information in making
 7 its permit decision?
 8 A Correct.
 9 Q And is it fair to say that it indicated that
 10 it would be considering citizen complaints?
 11 A Yes.
 12 Q Okay. And did it indicate that it would
 13 consider anything else?
 14 A It indicated that it would consider field
 15 inspection reports. Several of those. Citizen
 16 complaints. Other available information. And then,
 17 also, like I said before, we would consider the land
 18 issue as well.
 19 Q Let me just go back to that one category you
 20 mentioned -- and other available information. What --
 21 what does that refer to, if you know?
 22 A Well, in the complaint, it is as duly
 23 specifically mentioned in next paragraph, but arguably
 24 it would be included in the information mentioned or in

1 the paragraph mentioned above in the other categories.
 2 Q As we sit here right now, Julie, do you know
 3 what other available information means or what that
 4 references aside from what we've discussed?
 5 A Well --
 6 (Pause.)
 7 THE DEPONENT: The one thing that isn't
 8 specifically mentioned that I believe was relied upon
 9 falls under the other category. Some of this is
 10 potentially attached to things, but I know documents
 11 that we looked at were the Fugitive Dust Plan, the
 12 initial Fugitive Dust Plan for the company that was the
 13 carryover from DIE. And then the -- what I believe is
 14 the most current version of the Fugitive Dust Plan.
 15 Which I believe is maybe November the 1st of 2013
 16 vintage. So those are things that would be looked at
 17 that aren't specifically articulated there I believe.
 18 And I can tell you that along the way we were
 19 looking at other documents as points of reference. So,
 20 for example, other sources fugitive -- other sources
 21 fugitive dust plans.
 22 MR. DWYER: So just so I understand. You were
 23 looking at Fugitive Dust Plans that were part of the
 24 permits for other facilities?

1 A Uh-huh.
 2 Q Okay.
 3 A The things that we looked at were fugitive
 4 dust plans from other facilities. California
 5 regulations. Things that would potentially give us
 6 insight into measures that could be taken to address
 7 fugitive dust.
 8 Q Okay. Let's focus on -- I think that I
 9 recall, but, Julie, is the date of that letter December
 10 the 10th of 2013?
 11 A Yes.
 12 Q All right. And is the signatory of that
 13 letter -- is it Mr. Raymond Pilapil?
 14 A Yes.
 15 Q And before December 10th -- well, before today
 16 had you seen that letter?
 17 A Yes.
 18 Q Okay. And did you see that letter on -- prior
 19 to December the 10th?
 20 A I -- I don't -- I -- I may have seen a draft
 21 of it.
 22 Q But -- and that's actually what I was going to
 23 ask you. Did you -- to the extent that you can recall,
 24 did you participate in the drafting of the December 10th

1 what we've referred to as the Wells letter?
 2 A I did not draft the document.
 3 Q Okay. Let me ask you this, Julie. Does the
 4 Wells letter anywhere in it advise KCBX that its
 5 application or the information that the agency had was
 6 insufficient for it to make a determination of whether
 7 or not the permit, if issued, would or would not have
 8 violated the Act?
 9 (At which time, said
 10 exhibit was reviewed
 11 by the deponent.)
 12 THE DEPONENT: Arguably, yes.
 13 MR. DWYER: Okay. Well, can you help me with
 14 arguably yes? Where does it indicate in there that KCBX
 15 has provided insufficient information?
 16 A What it indicates, starting with Paragraph 1,
 17 is that we intend to consider information outside of the
 18 application in making our determination. Then it
 19 specified some of the information that we intend to
 20 consider. And it proceeds to say that we believe that
 21 the documentation that -- that's specified and other
 22 documents that we intend to consider indicate
 23 violations. The next paragraph suggests that KCBX may
 24 have previously formed this information by way of either

1 filing of the complaint and/or issuance of violations
 2 from the Bureau of Land. And then the next paragraph
 3 indicates that the facility may respond.

4 Q Okay.

5 A To my mind --

6 Q Go ahead.

7 A To my mind, when one gets one of these
 8 letters, we're not just providing notice that we are
 9 going to consider something beyond the application. We
 10 are providing notice that we are going to consider
 11 something beyond the application. And I think it's --
 12 this is how I view it. It's implicit that I don't have
 13 information that speaks to that point. And that's why
 14 I'm asking you to provide the information that speaks
 15 to the point because I either have something that
 16 doesn't speak to the point or it inadequately speaks to
 17 the point. Or I -- so it's either a complete lack of
 18 information or there may be some existence of
 19 information, but it's -- it isn't adequate.

20 Q So you used the term implicit in there. If
 21 you would tell me where in there it asks KCBX for any
 22 additional information because of insufficiency in
 23 what's already been submitted?

24 A It does not expressly note a deficiency.

1 Q Do you want to take a break right now?

2 A No, I'm fine.

3 Q Okay. All right. Were these other things
 4 that you considered -- you said that you looked at -- I
 5 mean you tell me if you're comfortable with FPOPs or
 6 fugitive dust plans, whatever terminology you want to
 7 use.

8 A Either works.

9 Q You indicated that some of the other
 10 information that the state was considering was
 11 regulations from California and fugitive dust plans for
 12 other facilities?

13 A (Nods affirmatively.)

14 Q Why aren't those in the record?

15 A I -- I will say that we didn't necessarily
 16 rely -- in fact, we didn't rely upon them on their face.
 17 But they were certainly documents that we at least
 18 looked at to shore up my opinion that the Fugitive Dust
 19 Plan in this matter seemed to have inadequacies.

20 Q Okay. And so, in terms of this information,
 21 when did -- Julie, when did you look at the Fugitive
 22 Dust Plans from other facilities?

23 A It varied.

24 Q Well, let me ask you this. Did you review

1 that information prior to the -- the date of the Wells
 2 letter?

3 A Yes.

4 Q A week prior? Two weeks prior? If you can
 5 recall.

6 A I just can't recall.

7 Q Can you recall when you first --

8 A I -- I probably started looking at that sort
 9 of documentation as early as September the 1st.

10 Q And --

11 MS. FARMER: Can I just clarify for the record
 12 are we talking about -- because I don't want to get into
 13 the enforcement actions. Are we talking about the
 14 enforcement action or are we talking about the permit
 15 application/appeal process? I just want to be clear for
 16 the record because she said that she wears a lot of
 17 hats. I want to make sure that we understand what hat
 18 you are wearing.

19 MR. DWYER: Well, the documents that we were just
 20 discussing, Julie, reviewing other facilities fugitive
 21 dust plans, the California regulations, were you looking
 22 at those in relation to permit decisions or for some
 23 other purpose?

24 (Pause.)

1 MR. DWYER: Were you looking at them for both
 2 purposes?

3 THE DEPARTMENT: For both purposes.

4 Q Okay. And -- and you indicated that, that was
 5 the earliest you started to look at the information was
 6 around September the 1st?

7 A (Nods affirmatively.)

8 Q Okay. And who else looked at that information
 9 besides you at the agency in relation to the permit
 10 matter?

11 A Oh, I may have been the only one.

12 Q All right. And so I want to confirm then --

13 A Well, when I say that -- when I say that --

14 Q Okay.

15 (Pause.)

16 THE DEPARTMENT: The Fugitive Dust Plan is a means by
 17 which the facility represents that it demonstrates
 18 compliance with the 212 Rule. So it certainly is an
 19 issue. And -- and if -- if the facility is not
 20 complying with the 212 Rule or even if it is complying
 21 with the 212 Rule, it could still give rise to air
 22 pollution. But separate from that -- from that is an
 23 enforcement concern. So there is commonality there.
 24 But -- for example, the inspection reports were relied

1 upon in making the permitting determination. No doubt
2 about that. Those were squarely relied upon. And, as a
3 part of that inspection process, which was the
4 establishing of the facility's compliance status, one of
5 the things that was going on was that there were reviews
6 of the reviews for the adequacy of the fugitive dust
7 control as set forth in the Fugitive Dust Plan. So
8 certainly Joe Kotas was addressing that.

9 Q That was a long response. When you say I was
10 looking at that are you talking about looking at other
11 facilities FPOPs?

12 A Yes.

13 Q Okay. Anybody other than Joe and yourself?

14 A As directly relates to permitting, it probably
15 would just have been Joe and -- and me.

16 Q Okay. Is there any reason why -- and I will
17 represent to you that -- that Mike Dragovich was the
18 permit analyst assigned to this permit application. Is
19 there any reason why Mike Dragovich would not have
20 looked at that information?

21 MS. FARMER: That information being?

22 MR. DWYER: That information being -- I'm sorry --
23 the other facilities Fugitive Dust Plans, the California
24 regulations and any other, you know, information related

1 document that you have tabbed in the record -- what
2 page does that start at?

3 THE DEONENT: It's R31.

4 Q And what is that document, if you know?

5 A Oh, it is an inspection report. A Bureau of
6 Air inspection report.

7 Q And -- and when was that one conducted? Is
8 that a September inspection?

9 A No. It is a November 6th and 19 of 2013
10 inspection.

11 Q And, again, that's a document that you
12 identified that you relied upon in making a
13 determination that the application that was submitted
14 did not have sufficient information to demonstrate that
15 issuing the permit would not cause a violation of
16 Section 9 A. And so tell me what the information was
17 in the inspection report that you relied upon, if you
18 could or if you would?

19 A Okay. One of the things that I will note is
20 pile size, pile height, pile footprint. And then there
21 is a description of -- I'm at Page 35. Then there is a
22 description of how material is handled, how it's loaded
23 out, how it's unloaded, how it loads around the site.
24 And then how emissions are controlled. And it is noted

1 to the fugitive dust issue.

2 THE DEONENT: It's not been the practice of the
3 Illinois EPA to review the Fugitive Dust Plans in the
4 context of permitting transactions. So Mike would not
5 have -- in the ordinary course have reviewed a Fugitive
6 Dust Plan. And he did not review the Fugitive Dust
7 Plans in this instance. To my knowledge anyway.

8 Q To make it clear, are we talking about
9 Fugitive Dust Plans from other facilities or period?

10 A Period. And for other facilities as well.

11 Q All right.

12 MS. HODGE: I need to take a break.

13 MR. DWYER: Let's go off the record.

14 (Short recess was taken.)

15 MR. DWYER: Let's go back on the record.

16 Q Julie, we left off duly on the same letter. I
17 think we were trying to move from there.

18 MS. FARMER: Was there a pending question?

19 THE REPORTER: (Nods head no.)

20 MR. DWYER: No.

21 MS. FARMER: I just wanted to double check.

22 MR. DWYER: I don't think so.

23 Q Let's leave the Wells letter. Okay?

24 Let's move on. Let's move to -- so the next

1 in the sixth column over that particulate matter
2 emissions are controlled according to an operating
3 program.

4 Q And so just so we are clear, we talked earlier
5 about Fugitive -- Fugitive Dust Plans. Is that the same
6 thing as an operating plan or is it different?

7 A It's the same. It is their fugitive dust
8 program or operating plan.

9 Q Are there additional pages in the inspection
10 report that you relied upon?

11 A Yes. Another thing that was noted here is in
12 the fourth paragraph down --

13 Q And is this on page what, Julie?

14 A Three of five.

15 Q What page or bates number?

16 A It's R33.

17 Q All right.

18 A There is a discussion of 42 towers have been
19 installed of the water cannon system. The 43rd cannon
20 is still to be installed. Cannons capable of applying
21 water suppression. Capable as opposed to necessarily
22 doing that and how it will do that. There is further
23 notation that, that water cannon system is not yet
24 fully automated. The barometric measurement device is

1 yet to be interfaced. Let's see --

2 (At which time, said
3 exhibit was reviewed
4 by the deponent.)

5 THE DEPONENT: Inventory numbers are -- are
6 mentioned further down. So the -- the volume of
7 material at the facility and the movement in and out had
8 been of concern. And that goes to those points.

9 Let's see what else. It also was of interest to me
10 down at the bottom, at the very last paragraph, first
11 sentence, Estadt had an operator start up the water
12 cannon system. And then we observed its radius. It was
13 noted what the reach of the -- the waterline is.

14 Let's see. It's -- now we're on R34. Still
15 ongoing discussion about the nature of the water cannon
16 system. When you get to the second full paragraph, it
17 indicates that the weather system or the weather station
18 rather was roughly installed, but not yet operational.

19 Then, in the paragraph immediately following that,
20 it mentions the tank that is installed, but -- and that
21 will be used, but is not yet used to store surfactant.
22 In fact, the last sentence in that paragraph says the
23 surfactant system is not yet operational.

24 And there is talk in there about -- a little bit of

1 ascertain whether what was written on the page was
2 specific enough and adequate enough to -- to speak to
3 what the facility, in fact, was doing to control
4 fugitive dust emissions.

5 Q I want to make sure when you say what was
6 written on the page -- on the page of the Fugitive Dust
7 Plan?

8 A Yes.

9 Q Okay.

10 A Yes.

11 Q And whether or not that matched up with what
12 Mr. Kotas was observing?

13 A Not just even whether it matched, but whether
14 it was specific enough in terms of what the facility
15 actually was doing to control emissions. Because the
16 facility was representing that was their plan for
17 complying with 212. And, in our opinion, their plan
18 for -- the Plan for 9 A was what was written on the face
19 of the Fugitive Dust Plan. So we needed to look at the
20 measures that were written on the face of the Fugitive
21 Dust Plan. And we looked at all of the iterations and
22 -- including the 11 1 iteration. And we were looking at
23 what Joe was and wasn't observing during the inspections
24 to attempt to shore up whether they had or did not have

1 talk in there about the old rail unloading system and
2 the new rail unloading system.

3 Q And let me just stop you on that point, Julie.
4 What about that information led you to

5 determine that you had insufficient -- that there was
6 insufficient information for the permit application to
7 demonstrate that if a permit was issued it would be in
8 violation.

9 MS. FARMER: When you say that information are
10 you referring to the rail car process?

11 MR. DWYER: Yes. The information that you just
12 mentioned.

13 THE DEPONENT: Well, for that particular
14 information and for that -- for a bunch of other
15 information, the facility had noted in its application
16 for permit and/or its Fugitive Dust Plan that the means
17 by which it was complying with the 212 Rules and, from
18 our perspective, the means by which it would -- it would
19 not cause, threaten or allow air pollution would be
20 fugitive dust measures. And what we were -- what we
21 were trying to link up were the measures that Joe was
22 and wasn't seeing. The measures that were and weren't
23 delineated in the fugitive dust submittal as recent as
24 the November the 1st submittal. We were trying to -- to

1 adequate measures in place.

2 Q Okay.

3 A And what we were really trying to see is were
4 we dealing with a situation where there were adequate
5 measures. There were measures there. They may have
6 been adequate, but they just weren't written on the page
7 or if just simply everything that they had was written
8 on the page and it just wasn't adequate. And, at the
9 end of the day, it seems --

10 Q I'm sorry.

11 A -- it seemed to be a combination.

12 Q That's not what I asked, but that's fine.

13 Okay. Let me go back and finish up with this
14 inspection, Julie. I think it was on the first -- on
15 the first page that you talked about some of the
16 information that you reviewed in making your opinion
17 with respect to whether or not the application was
18 sufficient to demonstrate that it would not result in
19 causing or threatening a violation of 9 A. I thought
20 that you talked about -- and correct me if I'm wrong --
21 the presence of the piles and the size of the piles.

22 A Uh-huh.

23 Q And I assume you are referring to the Pet
24 Coke?

1 A Pet Coke and or Coal.
 2 Q That's what you are referring to?
 3 A The size of the pile.
 4 Q And I think that you said the volume?
 5 A Yes. We were concerned for the height and
 6 the -- and the footprint of the pile and the movement of
 7 the pile and other fugitive dust -- other activities at
 8 the facility that would give rise to fugitive dust.
 9 Q So what I want to ask you is was the presence
 10 of the piles of a certain height in and of itself part
 11 of the basis for your determination as to whether or not
 12 issuing the permit might or might not cause a violation?
 13 A Can you say that again?
 14 Q Was the presence of the piles and, or their
 15 size in and of itself part of the agency's concern and
 16 -- and is that part of the basis for your opinion that
 17 you didn't have sufficient information in the
 18 application to demonstrate that the facility would not
 19 -- if the permit were issued that the facility would not
 20 cause a violation?
 21 A Yes.
 22 Q Okay. Let's go to the next document. Well,
 23 let me ask you this. I mean let's step back. I want to
 24 make sure that I understand a couple of things. Julie,

1 what is your understanding of what the request for
 2 revision -- which was the application we talked about --
 3 what do you understand that the facility was seeking to
 4 get permitted?
 5 A Ten portable conveyors and a few other things.
 6 And at least some of that equipment, if not all of it,
 7 was being moved from the north KCBX location to the
 8 south location.
 9 Q Okay. So then tell me this. How would the
 10 addition of the -- the ten -- I'll represent to you it's
 11 ten portable conveyors, one stacker and one hopper.
 12 A (Nods affirmatively.)
 13 Q How would the addition of that equipment to
 14 the facility -- and I'm saying to the south facility all
 15 right?
 16 A (Nods affirmatively.)
 17 Q How would the addition of that equipment --
 18 how would that effect your assessment of the adequacy of
 19 their fugitive plan?
 20 MS. PAMENTER: When you say the fugitive plan, are
 21 you referring to the FFOP dated in November?
 22 MR. DWYER: We can talk about each one. I mean I
 23 thought that in the inspection report here -- given the
 24 date, I thought that we were referring to the existing

1 plan.
 2 MS. PAMENTER: I want to make sure that we are
 3 talking about the plan as opposed to the measures within
 4 the plan.
 5 MR. DWYER: I'm not sure how to separate that out.
 6 MS. PAMENTER: Can you repeat your question?
 7 MR. DWYER: Can you read my question back.
 8 (At which time, said
 9 question was read back
 10 by the Court Reporter.)
 11 MR. DWYER: This is my question, Julie. How would
 12 the addition of the ten portable conveyors and the
 13 stacker and the hopper to the south facility -- how
 14 would that affect the agency's evaluation of the
 15 adequacy of the -- and, first, we will start with the
 16 fugitive dust plan existing in September of 2013?
 17 MS. PAMENTER: Objection. If we are talking about
 18 the adequacy of the Fugitive Dust Plan, which is a part
 19 of the enforcement action.
 20 MR. DWYER: We've already had testimony here that,
 21 that is what Mr. Kotas was looking at. He's already in
 22 the record and the inspection report referenced that.
 23 We're entitled to inquire.
 24 MS. PAMENTER: My objection stands.

1 She can answer if she can.
 2 THE DEPONENT: So what was your question again?
 3 MR. DWYER: I would say it if I could. Let's give
 4 this another shot. Can you read back my second effort
 5 at attempting to ask this question.
 6 (At which time, said
 7 question was read back
 8 by the Court Reporter.)
 9 THE DEPONENT: I believe that the September -- I
 10 believe it's September -- the Fugitive Dust Plan that
 11 existed at the time of September of 2013 was still --
 12 was a carryover -- well, it was -- it was DIES and
 13 KCBX present Fugitive Dust Plan.
 14 MR. DWYER: Okay.
 15 A It was all of three pages long. And I think
 16 it was three pages plus a map. But it was only three
 17 pages long. It did not -- it did not describe in
 18 detail the measures that the facility had in place to
 19 address fugitive dust emissions. It seemed wanting in
 20 terms of additional measures. The point, among others,
 21 of Joe's inspection was to observe what the facility
 22 had on site that may not or may have been left out of
 23 its expression of fugitive emission controls. But then
 24 also to -- to -- I guess just to delineate for us with

1 specificity what they did and did not have. The concern
 2 was that the site, during the pendency of the permittee
 3 transaction that's at issue, was the subject of some
 4 citizen concern. It was also the subject of some
 5 concern as observed by our inspector. And the concern
 6 was that the facility did not have employed adequate
 7 measures to address fugitive emissions. And that lack
 8 of fugitive control measures would cause, threaten or
 9 allow violations of either the board's 212 reg and or
 10 cause air pollution. So a specific concern of the
 11 permitting transaction was that the equipment that you
 12 mentioned, the ten conveyors, they were emission
 13 sources. They would or could anyhow give rise to
 14 fugitive emissions. So we had concerns for the site as
 15 it was presumably still without the ten conveyors that
 16 are there. And a concern on our part was that the
 17 existing conditions would perhaps be exacerbated if we
 18 moved or allowed the movement of additional equipment to
 19 the site without ensuring that additional fugitive
 20 measures were instituted at the facility.

21 Q Okay.

22 A So that's the sort of information that we were
 23 attempting to secure in the context of the permitting
 24 transaction and perhaps in others as well.

1 Bob, I -- I would have spoken in terms of -- in terms
 2 of -- the fugitive dust measures at the facility are
 3 still wanting. I believe that the facility still poses
 4 concern for air pollution.

5 Q And that would have been based upon your
 6 review of the way it was submitted?

7 A Yes

8 Q Let's go now to the next document that you've
 9 marked in the record, if you can. And -- and what page
 10 is that, Julie?

11 A It's R40.

12 Q Okay. And is that the beginning of a longer
 13 document?

14 A Yes.

15 Q Okay. And is -- is that an inspection report?

16 A Yes.

17 Q Okay. And did you -- in preparing your
 18 opinion, did you rely upon that entire inspection
 19 report?

20 A Yes.

21 Q Okay. And then -- and what -- I'm sorry.

22 What was the date of that information, Julie?

23 A The inspections were conducted on September
 24 the 11th and the 13th of 2013.

1 Q Okay. And then let's talk, Julie, about --
 2 well, did the agency, subsequent to September, receive
 3 information regarding the -- the Fugitive Dust Plan at
 4 the facility with any changes to it?

5 A Yes.

6 Q And -- okay. And was that in November?

7 A Yes. A plan came in, in November.

8 Q And did -- at or near that time, did you see
 9 that plan?

10 A Yes.

11 Q Okay. Did you discuss that plan with anyone
 12 else at the agency?

13 A I -- I reviewed the plan. And there were --
 14 there were some communications with agency staff
 15 regarding the plan, yes.

16 Q In terms of agency staff, did that include
 17 Mr. Dragovich?

18 A No, I did not talk to him about that.

19 Q Okay. Did you discuss the amended Fugitive
 20 Dust Plan with Mr. Bernoteit?

21 A What I would have discussed with Mr. Bernoteit
 22 wouldn't so much have been the fugitive plan itself, but
 23 the measures that were set forth within the plan. So
 24 the conversation would not necessarily have been, hey,

1 Q And the date of the report, though, is
 2 November?

3 A November the 26th of 2013.

4 Q All right. And then, if we move to the next
 5 document you've tabbed in the record that you relied
 6 upon, what is that document?

7 A As far as -- well, it's R77. It's a Violation
 8 Notice to KM Railways from the Bureau of Land -- issued
 9 by Bureau of Land.

10 Q Okay. And is that a document that you relied
 11 upon in making the determination that the information
 12 presented in the application was not sufficient to
 13 demonstrate that a violation of 9 A would occur?

14 A Yes.

15 Q Okay. And then, if we go to the next document
 16 I think that you tabbed, what is that?

17 A It's R81. It's a Violation Notice to KCEX
 18 from the Bureau of Land.

19 Q And would your answer -- never mind.

20 Let's go to the next one. The next document
 21 that you tabbed in the record is?

22 A It's R103.

23 Q And what is that document?

24 A Oh, the complaint filed by the Attorney

1 General's Office against KOEX.

2 Q Okay. And what information in there did you
3 rely upon in preparing your opinion that the application
4 contained insufficient information to demonstrate that
5 if the permit were issued that a violation of 9 A would
6 occur?

7 A I believe we relied on the 9 A portion of the
8 complaint.

9 Q Okay. And do you know if that's Count 1 or
10 Count 2?

11 A Count 1, Air Pollution. And then I'm not sure
12 what we have here.

13 MS. PAMENIER: I think that there are some pages
14 that are -- now that we are actually flipping through
15 every page of this, it appears that there are some
16 copying that just got mixed up. So I just want to make
17 sure that we get this (indicates) extracted ultimately,
18 but we can discuss that after the deposition. So --

19 THE DEPONENT: Here (indicates) is another one that
20 I didn't tab but. Here (indicates) is another one.

21 MS. PAMENIER: I think that there is two pages of
22 the complaint that got mixed into an inspection report.
23 And then it goes to the full complaint. So I just want
24 to reference that she is referring to the full complaint

1 the complaint?

2 A Yes.

3 Q Okay. And then can you tell me the next
4 document that you tabbed as a document that you relied
5 upon in preparing your opinion?

6 A Well, I tabbed R116.

7 Q And what is that?

8 A That is the earliest Fugitive Dust Plan that
9 KOEX was utilizing.

10 Q Okay. And if you would look, does that appear
11 to be an exhibit that was attached to the complaint that
12 you tabbed earlier?

13 A Yes.

14 Q Okay. And, when you say earlier, just so
15 we're all clear, is it your understanding that would
16 have been the plan in effect in approximately September
17 of 2013?

18 A Correct.

19 Q And then let's go to the next document in the
20 record that you've identified as having relied upon.

21 And what is that document?

22 A It's R119. It is a letter to Illinois EPA's
23 Office of Community Relations from Keith Harley of the
24 Chicago Legal Clinic.

1 and we'll double check that.

2 MR. GRANT: I don't have that.

3 MS. PAMENIER: There are bates numbers on them.
4 They are identical to 103. I think it's just a copying
5 problem.

6 Can we go off the record?

7 MR. DWYER: Let's go off the record.

8 (Short recess was taken.)

9 MR. DWYER: Let's go back on the record.

10 MS. PAMENIER: Thank you.

11 MR. DWYER: All right. Julie, we went off the
12 record to try and clarify some confusion with what's
13 been used to present Exhibit 3, a copy of the
14 administrative record. You were indicating earlier that
15 the next document you had reviewed in forming your
16 opinion I will just say in regarding the 9 A issue was a
17 document in the record that begins at Page --

18 THE DEPONENT: Page 103.

19 Q Okay. And that is a copy of?

20 A A complaint filed against KOEX by the Attorney
21 General's Office.

22 Q Okay. And, just to sort of clarify, I thought
23 you indicated that the information that -- in particular
24 that you had reviewed and relied upon was in Count 1 of

1 Q Is that a two-page letter?

2 A Yes.

3 Q And then the next document that you tabbed or
4 identified earlier as a document you relied upon is?

5 A It is the November 1st submission of the -- of
6 the -- of what I will call the revised fugitive
7 particulate operating program.

8 Q Okay. And in terms of that document, Julie,
9 what -- I might get this question right one of these
10 times -- what information in there did you review in
11 determining that the information provided by the
12 application was not sufficient to demonstrate that if a
13 permit were issued that it would not cause a violation
14 of the Act, in particular 9 A?

15 A Again, it's more about what wasn't here than
16 what was here.

17 Q Okay.

18 A So we looked at everything that was here to
19 see what it -- what it accomplished in terms of fugitive
20 control. And -- and as to what's here -- the concern
21 was still for enough specificity so that we could
22 understand precisely what was being done at -- at what
23 intervals and by whom and to what end. Then, on top of
24 that, there was -- is the issue of were there things --

1 there were measures not referenced in this document that
2 we believed could and -- and perhaps should be utilized
3 and that we knew by way of the inspections performed by
4 the Bureau of Air were not being employed. And so the
5 concern -- I guess the point would be the plan didn't
6 allay our concerns that there were not -- that there
7 were insufficient fugitive dust measures that the
8 facility was taking to preclude air pollution.

9 Q Okay. And -- and I should have asked this
10 earlier, but, Julie, you did mention earlier that you
11 had reviewed fugitive dust plans for other facilities.
12 Were these items or deficiencies that you identified in
13 what I will call the amended plan that we are talking
14 about right now in the record -- were those things
15 included in the other plans that you reviewed those
16 elements or items or things regarding talking about
17 frequency and procedures?

18 A Some -- some may have been, yes.

19 Q Okay. Can you tell me, as we sit here, the
20 Fugitive Dust Plans you reviewed from other facilities?
21 What other facilities were those?

22 A Oh, to -- well, several come to mind. I
23 looked at Vulcan McCook.

24 Q And Vulcan McCook -- what is that?

1 Q I want to clarify something regarding
2 Chenetco. It's -- my understanding was that it's really
3 closed?

4 A It is.

5 MS. FARMER: And what do you know about the B.P.
6 Whiting facility? They are technically in Indiana.
7 What do you know?

8 THE DEFONENT: I have seen an operating permit of
9 theirs. So --

10 MR. DWYER: Okay. So I just want to understand.
11 Did you compare the document we are talking about on the
12 record, which is the -- which is what I will call the --
13 the newer Fugitive Dust Plan that was submitted to the
14 agency by KCEK in November of last year? Did you
15 compare that plan with those other facilities plans?

16 A I wouldn't say that I compared them, no.

17 Q Okay. And -- and, in that process, other
18 than you, did anyone else go through that process of
19 reviewing those in conjunction with reviewing what KCEK
20 submitted in November of 2013?

21 MS. FARMER: For purposes of the permit appeal?

22 MR. DWYER: I'm sorry. For purposes of the permit
23 appeal.

24 THE DEFONENT: Not specifically

1 A A quarry.

2 Q A quarry.

3 What kind of material do they have?

4 A Rock. Stone. That sort of thing.

5 Q Okay. Do they handle Pet Coke?

6 A No.

7 Q So you said Vulcan McCook?

8 A I looked at all of the facilities. I looked
9 at how they handled some sort of the commodity, some
10 sort of the bulk material at Vulcan McCook.

11 Chenetco. Beelman. Those are the ones that
12 are coming to mind that I looked at. I, also, looked
13 at some of the plans for the Illinois refineries. I
14 looked at B.P. Whiting.

15 Q That's an Indiana facility?

16 A Uh-huh.

17 Q Let me ask you about a couple of those. Are
18 all of those facilities operating with current permits?

19 A Yes.

20 Q Okay. And can you tell me for the Chenetco
21 facility --

22 A Oh. Actually, I'm sorry.

23 Q Go ahead.

24 A I would like to change my answer.

1 Q But for what other purposes?

2 A For -- for purposes -- one relevant purpose
3 was for purposes of compliance and enforcement. So Joe
4 was looking at these documents or at least looking to
5 these concepts for purposes of conducting his inspection
6 and --

7 Q Yeah. Julie, that's fine. Let's go to the
8 next document that you have tabbed in the record. And
9 just, if you could, for the record, tell me what page it
10 is and what is the document?

11 A This is another inspection of the Illinois
12 EPA. It's R164. It has a report date of March 9 of
13 2013.

14 Q What was the date of the inspection?

15 A September 5th of 2013.

16 Q Okay. And then the next document that you
17 tabbed is?

18 A A November 15th letter. It's R172. It's
19 dated November 15th. It's a letter to Director Bonnett
20 from Congresswoman Kelly.

21 Q For that one, again, Julie, before today have
22 you seen that letter?

23 A Yes.

24 Q Okay. And do you recall when you first saw

1 the letter?

2 A Oh, in close proximity to its receipt.

3 Q Was that letter addressed to the Director?

4 A Yes.

5 Q And did you have any conversation with anyone

6 about that letter?

7 A My recollection's that there were

8 conversations with the Director and legislative staff

9 to speak to the fact that we had received yet another

10 letter of this type.

11 Q Okay. And, in that process, did anyone

12 investigate or seek to determine the accuracy of any of

13 the statements in that letter?

14 A No.

15 Q Okay. Did -- do you know -- as we sit here,

16 do you know if the agency prepared a response to that

17 letter?

18 A Oh, I believe that we -- that we did. What

19 I'm not certain of is whether there was -- there were

20 two response letters to the Congresswoman or one. She

21 was the signatory on --

22 Q The first letter that we discussed?

23 A Yeah. Yes.

24 Q Okay. Did you know -- did you participate in

1 preparing a response to this letter?

2 A I participated in preparing a response -- a

3 response letter. I'm only aware that there was one

4 response to the two communications from Congresswoman

5 Kelly. And I think the response was potentially a

6 response to -- to the two inquiries.

7 Q And did you have any discussions with the

8 Congresswoman regarding this letter that we are talking

9 about on the record or anyone on her staff or --

10 A I did not, no.

11 Q Okay. Do you know if anyone at the agency

12 did?

13 A I don't know.

14 Q Okay. We can then move to the next document.

15 And what is the page?

16 A It's R186.

17 Q Okay. And what is that document, if you know

18 or can tell me?

19 A This appears to be the application for permit

20 dated July 23rd, 2013. It's from this application that

21 the subject appeal arises.

22 Q Okay. And is there an application attached

23 with that letter?

24 A Yes.

1 Q Okay. And just -- before today, when did you

2 first see that document that is -- well, we will start

3 with the cover letter.

4 A I can't say exactly when I first saw the

5 application. Though, I have seen the application and

6 cover letter. I was certainly aware of its existence

7 somewhere within the first 30 days of receipt.

8 Q All right. And do you recall the occasion as

9 to why you would have been familiar with it within the

10 first 30 days after it was filed or received?

11 A I believe I first became aware of the

12 application for permit in the context of environmental

13 justice policy. So the agency has an -- a practice

14 whereby it is -- for every application it receives, it

15 assesses whether the application is a working facility,

16 location and potential to an area. And that application

17 is flagged for some level of outreach to the public on

18 the application and on the potential proposed

19 determination on the application.

20 Q Is that -- is that a regulatory or statutory

21 requirement?

22 A No.

23 Q Okay. So is that just an internal agency

24 policy?

1 A Yes.

2 Q Okay. And -- and the bureau there implements

3 that or do all bureaus implement that?

4 A The entire agency implements it.

5 Q And so then, after the cover letter, Julie,

6 is the application. And so you indicated that you were

7 aware of it within the first 30 days because of the

8 internal Environmental Justice Policy. When did you

9 next look at it, if at all?

10 A The conversation next turned to the fact that

11 there was, on August 30th, 2013, a dust event. In that

12 southeast Chicago pocket. And that the emissions from

13 KCEX had arguably caused use and air pollution.

14 Q Let me just stop you. You say the event

15 occurred and arguably caused air pollution. From whom

16 did you receive that information?

17 A We actually received that information from --

18 from any number of people.

19 Q Okay. Well -- and I want to ask you a little

20 bit more about that. You say we, but when did you first

21 become aware of that? I mean obviously it's on or after

22 August the 30th?

23 A Right. It was. I -- I'm trying to remember

24 what day of the week August the 30th was, but it was

1 very proximate to the event.

2 Q Okay.

3 A It was characterized as the blackout event.

4 Q It was characterized as a blackout event by?

5 A By persons who had been in the vicinity at the
6 time. So, for example, we did hear from -- we heard
7 from citizens. We actually heard from the Attorney
8 General's Office. We heard from the media. We heard
9 from -- from public officials. I mean on behalf of
10 their constituents. Calls started coming in very
11 quickly relative to that August 30th event.

12 Q Okay. When you say we, I want to make sure
13 that I understand. Are these written complaints that
14 you received or someone else at the agency received?

15 A We did not receive the whole -- we -- to my
16 recollection, we did not receive much in the way of
17 written complaints in the traditional fashion proximate
18 to the incident.

19 Q So I want to understand this. When you say we
20 received, were these calls to the agency from these
21 various individuals?

22 A Yes.

23 Q Or entities?

24 A Yeah.

1 Q From citizens and --

2 A I think largely from media outlets.

3 Q Okay.

4 A I think our legislative liaisons were quickly
5 taking calls from -- particularly from local officials.

6 Q And let's go back. I want to talk through
7 this so I understand. If you know, what -- what was the
8 nature of the citizens calls? What were they -- were
9 they asking the agency to do something?

10 A I think early on it was expressing concern for
11 air pollution impact, bulk terminal handling.

12 Q And what about the media inquiries -- what was
13 the nature of their inquiries?

14 A A similar expression of concern for the impact
15 of the facility on that southeast Chicago area.

16 Q And I think that you said elected officials?

17 A Yes.

18 Q And, when you say elected officials, can you
19 tell me more specifically -- elected officials from the
20 state, from the city, from the county?

21 A We had the -- there were aldermen contacting
22 us. We had various state officials contacting us.
23 State legislators. Congresswoman Kelly's office
24 contacted us at some point as did Durbin's office. We

1 Q And did those come to you or someone else at
2 the agency?

3 (Pause.)

4 MR. DWYER: I mean if we start with the citizens,
5 who fielded the calls from the citizens?

6 (Pause.)

7 MS. FARMER: If you know.

8 MR. DWYER: If you know.

9 THE DEPONENT: Yeah. I think the calls were having
10 a tendency to go into either of our AG type contacts.

11 Q Who would that be?

12 A Shawnda Williams. Brad Frost may or may not
13 -- who is our community relations person. He may or may
14 not have taken calls. As I say, I, myself took at least
15 one call from the Attorney General's Office.

16 Q Okay.

17 A I believe Mark Wells.

18 Q Who called you from the Attorney General's
19 Office?

20 A I took a call from Mark Wells.

21 Q Okay.

22 A Our press person was receiving calls.

23 Q From?

24 A From --

1 also had nongovernmental organizations calling us as
2 well.

3 Q And what organizations were those, if you
4 recall, Julie?

5 A Sure. Fairly early on Keith Harley of Chicago
6 Legal Clinic wrote us, but the rest of the calls were
7 -- arrived from the NRD.

8 Q Natural Resources Defense Counsel?

9 A Uh-huh.

10 Q And did you take that call or do you know who
11 did?

12 A The legislative office took the call.

13 MR. DWYER: Okay. I just need about three minutes
14 to take a short break.

15 (Short recess was taken.)

16 MR. DWYER: Okay. Let's go back on the record.

17 Q Julie, we talked through the documents that
18 you indicated that you reviewed and relied upon in
19 preparing the opinion that was presented.

20 MS. FARMER: And just to clarify have we gone
21 through all of the documents? I want to make sure.

22 MR. DWYER: You are right. Let's get this
23 finished. There is one more document that you have or
24 two.

1 Q What is the next document in the record that
2 you've tabbed as a document or documents you relied
3 upon in preparing your opinion.
4 THE DEPOENT: Okay. So it's all of the -- I want
5 to make sure -- it's the complaint. So assuming that
6 they are running straight through then R222 through
7 R537.
8 Q Okay. And Julie --
9 A Are these numbered correctly?
10 MS. PAMENTER: Yes.
11 THE DEPOENT: It's that number (indicates)?
12 MS. PAMENTER: Uh-huh.
13 THE DEPOENT: All right.
14 MR. DWYER: So tell me again that page range that
15 it includes?
16 A It's R222 through R537.
17 Q And is it your understanding that those are
18 copies of -- well, of what I will characterize as
19 citizen complaints?
20 A Correct.
21 Q And, Julie, before today had you reviewed
22 those documents?
23 A Yes.
24 Q Okay. And directing your attention to those

1 documents, does it appear that many of them have been
2 redacted and that is meaning information was removed
3 from the copy that's in the record?
4 A Yes.
5 Q Okay. When you first reviewed them were the
6 documents or citizen complaints you reviewed -- were
7 they redacted?
8 A No.
9 Q Okay. And do you know whether or not a none
10 redacted version was ever provided to KCBX, if you know?
11 A I don't know, but your -- your Wells response
12 suggests that you received a redacted version.
13 Q Okay.
14 MS. PAMENTER: And, for the record, there is a
15 pending matter I believe at the Illinois Attorney
16 General's Office that KCBX Terminals Company either
17 filed or requested to be reviewed with respect to the
18 redaction of documents of the citizen complaints form
19 that I believe is still pending. So --
20 MR. DWYER: And that's fine. So these are
21 documents that you reviewed?
22 THE DEPOENT: (Nods affirmatively.)
23 Q And, Julie, again, when did you review these
24 citizen complaints before today?

1 A Oh, I -- as soon as they started coming in. I
2 was receiving copies of them from Brad Frost.
3 Q Would it be fair to say that you received them
4 in piecemeal fashion as the agency received them?
5 A Yes. Although, they tended to come more in
6 packages, but yes, along the way I saw these.
7 Q And do you remember from whom you received
8 them?
9 A Brad Frost.
10 Q And is there one more document, Julie, or is
11 that the last document that you reviewed or relied on?
12 A I think it's the last one. I just tabbed the
13 beginning and the end.
14 Q Okay. So then if we go back -- if you would
15 look back -- I know it's ancient history. If you would
16 go back to Exhibit 18. And, in particular, to your
17 opinion which is on the third page. We have talked
18 through the -- the basis for your opinion with respect
19 to Section 9 A, which is listed therein.
20 What I want to ask you is your opinion also
21 states that you -- your opinion is that KCBX did not
22 present sufficient information to the agency -- and I'm
23 parsing here -- in its application to establish that the
24 facility would not cause a violation. And I just want

1 to ask you for the regulations that are cited --
2 201.152, 201.160(a) and 212.301 and 212.321 -- other
3 than the documents that you've already identified and
4 discussed that you reviewed or relied upon in making
5 your opinion with respect to Section 9 A, would your
6 answer -- would you identify the same documents as the
7 basis for your opinion with respect to those sections of
8 the regulations?
9 (Pause.)
10 MR. DWYER: Maybe that's badly worded. Let me
11 strike that.
12 If I were to ask you, Julie, what documents did you
13 review and rely upon in tendering your opinion that KCBX
14 did not present sufficient information in its
15 application to demonstrate that it would not cause a
16 violation of 35 Illinois Administrative Code 201.152,
17 would you identify the same documents that we've already
18 discussed or any different documents?
19 THE DEPOENT: I believe it would be these
20 (indicates).
21 Q The same documents?
22 A Yes.
23 Q And, again, would your answer be the same with
24 respect to your opinion regarding 201.160(a)?

1 A I believe so. I'm trying to remember.
 2 MR. GRANT: I have copies if she needs them.
 3 MR. DWYER: Oh. Okay.
 4 MR. GRANT: If you need them.
 5 THE DEPONENT: I'm pretty sure. I -- I need to
 6 review the application.
 7 (At which time, said
 8 exhibit was reviewed
 9 by the deponent.)
 10 THE DEPONENT: Yes.
 11 MR. DWYER: And again, with respect to your opinion
 12 related to 35 Illinois Administrative Code 212.301 --
 13 other than the documents we've discussed, did you rely
 14 upon any other documents?
 15 A No.
 16 Q And, again, would your answer be the same with
 17 respect to 35 Illinois Administrative Code, Section
 18 212.321?
 19 A Yes.
 20 Q And tell me what other documents --
 21 A Oh, I --
 22 Q Your answer would be the same?
 23 A Yes.
 24 Q Okay. My apologies then. I'm confused.

1 Sorry.
 2 Julie, as we sit here today, here is my
 3 question to you. Who made the decision to issue the
 4 permit denial that's the document that begins at Page 1
 5 of the record?
 6 A I think the who is a number of individuals.
 7 Q Okay. And so who were the individuals
 8 involved in making that decision?
 9 A The individuals involved were Mike Dragovich,
 10 Bob Bemoteit and Ray Pilapil and myself.
 11 Q What role did Mike Dragovich play in that?
 12 A He was charged with reviewing the application
 13 of material as he normally would to ensure that it --
 14 that he had what he needed there. And that it -- he
 15 would look at it more from a calculational perspective,
 16 a traditional type perspective.
 17 Q Did you have any discussions with Mike
 18 Dragovich about the decision to issue the permit denial?
 19 A No.
 20 Q And now, with respect to Mr. Bemoteit, what
 21 was his role in -- in the decision to issue the permit
 22 denial?
 23 MS. FARMENTER: Did you say Mike Bemoteit?
 24 THE DEPONENT: I thought that he said Mr.

1 MR. DWYER: Let me rephrase that to be clear.
 2 Q Julie, with respect to Mr. Bemoteit, what was
 3 Mr. Bemoteit's role in making the decision to issue the
 4 permit denial?
 5 A Oh, he was -- I believe, at the point that the
 6 application was received, he was the acting permit
 7 section manager. Which he remained for a period of
 8 time. And he -- from receipt of the application through
 9 the decisional time frame, he was Mike's -- well, he was
 10 Mike Dragovich's supervisor. Although, there was an
 11 invading period of time when somebody else was serving
 12 in that role when he was serving as the acting permit
 13 section manager. He is the person with whom I had my
 14 conversations.
 15 Q And then it was the three of you. Was there
 16 anyone else?
 17 A Ray Pilapil is the person who signed the
 18 denial as the acting section manager, the acting permit
 19 section manager.
 20 Q And did you have any discussions with Mr.
 21 Pilapil about the decision to issue the permit denial?
 22 A I do not believe that I did, no.
 23 Q Do you know if Mr. Bemoteit did or Mr.
 24 Dragovich did?

1 A I believe that Bob would have had some
 2 semblance of conversation, albeit limited, to at least
 3 secure Ray's signature on the denial document.
 4 Q But do you know if Bob had any substantive
 5 discussions about the conditions -- I'm sorry -- not
 6 conditions -- but the issues or basis including the
 7 permit denial letter with Mr. Pilapil?
 8 A I do not believe that he did.
 9 Q Okay. Julie, when did this group or if not
 10 this group, when did the agency I will say collectively
 11 make its decision to issue a permit denial?
 12 A The decision to deny was not made much before
 13 the date of the -- the date that the -- that the
 14 document bears. The date that the denial actually
 15 occurred.
 16 Q The January 17th date? If you can -- well,
 17 let's take a look at the record. It's the first
 18 document, Julie. It's the record at Page 1. Okay. So
 19 the decision was made at or near --
 20 A Uh-huh.
 21 Q -- the January 17th date?
 22 A Right.
 23 Q Okay. Before making that decision, did you or
 24 anyone at the agency confer with any other governmental

1 officials outside of the agency about that decision?
 2 A No.
 3 Q So just to be clear did the agency, to your
 4 knowledge, have any discussions with the City of Chicago
 5 about the decision to issue a permit denial?
 6 A No.
 7 Q Okay. Did the agency or anyone with the
 8 agency have any conversation or discussions about
 9 issuing the permit denial with the Governor's office
 10 or anyone working in the Governor's office?
 11 A Oh, I would -- I would guess that in keeping
 12 them apprised of all things Pet Coke related they
 13 probably mentioned that the denial was going to issue.
 14 Or, if they didn't apprise them before it issued, then
 15 they would have -- on the heels of the decision, they
 16 would have indicated that this pending application was
 17 denied.
 18 Q Okay. And who would have communicated that
 19 information to the Governor's office?
 20 A Our director would have in the course of
 21 ordinary discussions that she has with the Governor's
 22 office.
 23 Q Was this permit a part of ordinary discussions
 24 involved with the Governor's office?

1 A The permit itself was not. Pet Coke had
 2 become a topic of -- of some discussion. And certainly
 3 the Governor's office had been made aware of the
 4 incident referral relative thereto to the AG's Office
 5 filing of a complaint. Just significant developments
 6 regarding this as well as other facilities. It really
 7 was just anything Pet Coke related that we would keep
 8 then apprised of developments.
 9 Q Well, let me ask you this then. Prior to the
 10 -- to the issuance of the permit denial on January 17th,
 11 were you aware of any decisions by the agency to not
 12 issue any permits to petroleum storage facilities?
 13 A No.
 14 Q Okay. So, to your knowledge, there was no
 15 determination by the Director or anyone else at the
 16 agency that you would suspend or hold or in any way
 17 delay issuing permits for such a facility, petroleum
 18 storage facility?
 19 A I believe the situation was that we were to
 20 keep -- we were to remain informed of the receipt of any
 21 applications from bulk terminal handling coal or coke.
 22 And that we were to -- to -- to be very deliberate in
 23 any determinations made on the applications. And you
 24 know --

1 Q Okay. Well, let me just ask you this. I
 2 won't dance around it anymore. To your knowledge, did
 3 the Governor's office request that the agency issue a
 4 permit denial for the permit that or the application
 5 that we have talked about today?
 6 A No.
 7 Q I want to go back to just one other topic,
 8 Julie. We talked about the inspections where Mr. Kotas
 9 talked about what I will call the existing Fugitive Dust
 10 Plan back in September. And then we talked about one of
 11 the documents you relied upon in preparing your opinion.
 12 You had reviewed the -- what I'll call the revised
 13 Fugitive Dust Plan that was submitted in November. Is
 14 there any reason why the agency didn't just ask KOBX for
 15 the information -- for the additional policies,
 16 procedures or equipment that you felt needed to be in
 17 their application or the documents that they submitted
 18 before issuing the permit denial?
 19 A Oh, I don't have a particular answer to that.
 20 Q So the answer is you don't know?
 21 A No.
 22 Q Okay. And, in your experience, would it be
 23 unusual for the agency to ask an applicant for
 24 additional information if it felt that it needed it

1 before making a decision on an application?
 2 A Can we go back? What was your prior question
 3 to me?
 4 MR. DWYER: You think that I can remember that?
 5 Can we go back to the prior question and have you
 6 read that back?
 7 (At which time, said
 8 question was read back
 9 by the Court Reporter.)
 10 (Pause.)
 11 MR. DWYER: Do you want me to rephrase that for
 12 you?
 13 THE DEPENDENT: No. I understand it. I heard what
 14 you asked and I responded and said no.
 15 MS. FAMENIER: Actually, you said you didn't know.
 16 THE DEPENDENT: Well, I didn't know.
 17 And what I would say is this is what caused me to
 18 reflect upon this question further is what I -- I know
 19 how they did go back to this. And so one of the apps
 20 came in the form of the Wells letter. So I think your
 21 question was why didn't we. And I said I don't know
 22 because I think that you and I were thinking in a
 23 different context. Since -- but this was in the form
 24 of a Wells letter.

1 Q Okay.

2 A So why something besides the Wells letter
3 wasn't done? That I don't know. But I do know that we
4 did ask for information that we thought was speaking to
5 the point of concern in the context of the Wells letter.

6 Q Okay. And I think that we did discuss this
7 earlier. I won't rehash it. But I think that your
8 testimony was that there is no specific request for
9 additional information in the Wells letter?

10 A Well, the information responsive to particular
11 things that we cited.

12 Q Okay. Okay. After the Wells letter -- let
13 me just ask you this, Julie. Is there any reason why
14 between December 11 and January -- between December the
15 11th of 2013 and January the 7th of 2014 that the agency
16 didn't say you, the agency didn't understand the Wells
17 letter, this is what I want?

18 MS. EMMENIER: I just want to clarify because the
19 response came in on -- I believe on January the 13th of
20 2014. So do you mean between December the 10th and
21 January the 13th?

22 MR. DWYER: I mean between that entire period.

23 THE DEPONENT: And what was the entire period that
24 we are talking about?

1 conversant on what those were. And when the -- the --
2 my recollection's that there was -- that there was at
3 least one request and one response to a communication
4 from him. There could have been more and I was just not
5 focusing on that part of things.

6 Q Is it possible, Julie, that you are talking
7 about a request at the August 27, 2013 meeting that took
8 place between the agency and KCBX? Let me back up.

9 Are you aware of a meeting that was held on
10 August the 27th of 2013 between representatives of the
11 agency and KCBX regarding the permit application?

12 A If that's the meeting that was early on and
13 there were a couple of attorneys there, yes.

14 Q Okay. And do you have any knowledge of
15 whether or not the agency requested any information at
16 that meeting?

17 A I don't. I wasn't focused on that sort of
18 thing at that point in time. So no.

19 MR. DWYER: Okay. All right.

(Short recess was taken.)

21 MR. DWYER: All right. We talked a lot today about
22 the documents you looked at and I -- you can correct me
23 if I'm wrong, but my sense was that the agency's
24 concerns in large part related to the issue of the

1 Q December the 10th, the date of the Wells
2 letter and January the 17th.

3 A Between that period of time?

4 Q Right?

5 A Why didn't we pick up the phone and call?

6 Q (Nods affirmatively.)

7 A Now that is something that would be unusual
8 when we are in that Wells letter mode of operation.

9 Q Okay. Prior to issuing the Wells letter, did
10 the agency have any opportunity to ask the applicant for
11 any information that it didn't feel it had in order to
12 make its decision on the permit?

13 A Yes.

14 Q And other than the Wells letter, did the
15 agency make any effort to seek that information from the
16 applicant?

17 A I believe that -- in terms of the concern for
18 9 A -- in terms of concerns outside of the application,
19 he -- it -- that was -- the first conversation was in
20 the context of Wells, the Wells letter. Which is what
21 we would normally do. In the context of informational
22 needs that we're staring at from the four corners of the
23 application, I believe that Mike Dragovich may have had
24 some exchanges with the company. I am not totally

1 control or management of fugitive dust at the site.
2 Just tell me if that is a fair statement.

3 MS. EMMENIER: The agency as opposed to her
4 individually?

5 MR. DWYER: Yeah. I'm talking about the agency.

6 MS. EMMENIER: With respect to the permit
7 application?

8 MR. DWYER: With respect to the permit application.

9 MS. EMMENIER: Got it.

10 THE DEPONENT: That was the lion's share of the
11 issue.

12 MR. DWYER: And that's what I want to understand.
13 What other issues were there?

14 A I believe that were some informational
15 deficiencies.

16 Q Okay. And if we look at the permit denial
17 letter quickly, I just want to make sure that we are
18 talking about the same things, Julie. If we look at --
19 let's look on Page 1 of the record --

20 A Uh-huh.

21 Q When you say -- we're looking at the denial
22 letter now. And, when you say informational
23 deficiencies, are you -- do you mean the items listed
24 in the permit denial letter, Paragraph 1 b.?

1 A Yes.

2 Q Okay. And are there other informational

3 deficiencies besides that -- besides what's identified

4 there?

5 A Oh, definitely the informational deficiency is

6 specified in 1 b. of the permit denial? I believe four

7 -- Paragraph 4 or Item 4, Number 4.4 of the permit

8 denial as well.

9 Q And you know specifically what information

10 didn't -- wasn't provided?

11 A That I don't know. That's an area into which

12 I did not go. That would be an area for Bob Bernoteit

13 or Mike Dragovich.

14 Now Item 5 lists another deficiency, but

15 not necessarily of the type -- well, of the type that

16 Mike or Bob could historically deal with.

17 Q I'm sorry. Did you say can or could not?

18 A Could or would. Citing type issues. Waste

19 type of issues. Though Mike was not dealing with

20 5 a. But Bob was aware of what the concern was in 5.

21 So it's an informational deficiency and it's not

22 necessarily directly 9 A related.

23 Q Okay. And is that it?

24 A Uh-huh.

1 make any typographical changes if you would like to.

2 It's your preference.

3 THE DEPONENT: Whatever you would like to do.

4 MS. FARMER: We're waiving.

5 Further deponent saith not.

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1 MR. DWYER: I don't have anything else.

2 MS. FARMER: I just have two quick questions to

3 clarify two things.

4 CROSS EXAMINATION

5 BY MS. FARMER:

6 Q You had a discussion with Mr. Dwyer with

7 respect to California regulations and some fugitive dust

8 plans at other sites. Do you recall that discussion?

9 A Yes.

10 Q Do you know why those documents are not

11 included in the administrative record?

12 A We did not rely upon them in making the denial

13 determination.

14 Q And then my other question is was Joe Kotas

15 involved in the decision to deny the July 23rd, 2013

16 permit application, the actual decision to deny the

17 permit?

18 A No.

19 MS. FARMER: That's it.

20 MR. DWYER: Nothing further.

21 MR. DWYER: Julie, thank you very much.

22 You guys can handle signature.

23 MS. FARMER: We have been typically waiving.

24 You have the ability to read the transcript and

1 CERTIFICATE OF REPORTER

2

3 I, CYNTHIA M. SMITH, an Illinois Certified

4 Shorthand Reporter and Notary Public, do hereby certify

5 that the deponent whose testimony appears in the

6 foregoing deposition transcript was duly sworn by me;

7 that the testimony of said deponent was taken by me to

8 the best of my ability, and thereafter reduced to

9 typewriting under my direction; that I am neither

10 counsel for, related to, nor employed by any of the

11 parties to the action in which this deposition was

12 taken; and further, that I am not a relative or employee

13 of any attorney of counsel employed by the parties

14 hereto; nor financially or otherwise interested in the

15 outcome of this action.

16 IN WITNESS WHEREOF I have hereunto set my hand

17 and seal this 18th day of April, 2014.

18

19 *Cynthia M. Smith*

20 Certified Shorthand Reporter
and Notary Public
(CSR # 084-003540)

21

22 My Commission expires:

23 June 27, 2014

24



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