

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

KCBX TERMINALS COMPANY)

Petitioner,)

v.)

ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY)

Respondent.)

PCB No. 10-110

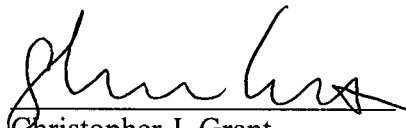
(Permit Appeal-Air)

NOTICE OF ELECTRONIC FILING

PLEASE TAKE NOTICE that on the 26th day of July, 2010, Respondent Illinois Environmental Protection Agency filed its Request for Extension of Time, and Response in Opposition to Motion to Stay, by electronic filing. True and accurate copies of the documents so filed are attached hereto and herewith served upon you.

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

By LISA MADIGAN
Attorney General of the
State of Illinois



Christopher J. Grant
Assistant Attorney General
Environmental Bureau
69 W. Washington Street
Suite 1800
Chicago Illinois, 60602
(312)814-5388

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

KCBX TERMINALS COMPANY,)	
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Petitioner,)	
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v.)	PCB No. 10-110
)	(Permit Appeal-Air)
ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY)	
)	
Respondent.)	

MOTION FOR EXTENSION OF TIME TO FILE RESPONSE,

Now comes Respondent, ILLINOIS ENVIRONMENTAL PROTECTION AGENCY ("Illinois EPA"), by LISA MADIGAN, Attorney General of the State of Illinois, and respectfully requests that the Board allow it to file its Response in Opposition to Petitioner's, KCBX TERMINALS COMPANY's ("KCBX's") Motion to Stay the Effectiveness of Contested Permit Conditions ("Motion to Stay") *instante*. In support of its request, Respondent states, as follows.

1. Petitioner KCBX Terminals Company filed the instant appeal, along with its Motion to Stay, on June 29, 2010, and served Illinois EPA in Springfield, Illinois by first class mail. Pursuant to Section 101.300(c) of the Board's Procedural Rules, service on the Agency should be deemed effective on July 6, 2010.

2. Illinois EPA subsequently referred the matter to the Attorney General's Office in Chicago, but the undersigned did not receive the referral until July 22, 2010. An appearance was filed the same day.

3. Upon review, the Agency and the Attorney General's office determined that a stay of the contested permit conditions could result in violations of the Act, and that a Response in

Opposition would be required.

4. Respondent's Response is being filed along with this request for extension.

Respondent respectfully requests that the Board accept the filing *instanter*.

5. Acceptance of the Response beyond the 14 day period will not prejudice the Petitioner. However, Respondent will be prejudiced if it is not allowed to present its opposition to the Board prior to a stay of the contested permit conditions.

WHEREFORE, Respondent ILLINOIS ENVIRONMENTAL PROTECTION AGENCY respectfully requests that the Board allow it to file its Response in Opposition to Motion to Stay *instanter*.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

by LISA MADIGAN
Attorney General of the
State of Illinois



Christopher J. Grant
Assistant Attorney General
Environmental Bureau
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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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ILLINOIS EPA'S RESPONSE IN OPPOSITION TO MOTION TO STAY

Now comes Respondent, ILLINOIS ENVIRONMENTAL PROTECTION AGENCY ("Illinois EPA"), by LISA MADIGAN, Attorney General of the State of Illinois, and responds in opposition to Petitioners, KCBX TERMINALS COMPANY's ("KCBX's") Motion to Stay the Effectiveness of Contested Permit Conditions ("Motion to Stay"). In support of its Response, Illinois EPA states, as follows.

1. This is the second Permit Appeal filed by Petitioner for essentially the same activity, that is the construction and interim operation of two bulk material portable conveyors at its Chicago facility. The conveyors are particulate emission sources, and require control.

2. In this case, Petitioner claims that it is seeking to "effectuate Illinois EPA's intent" (*See, e.g., Petition for Review*, paragraph 11, *Motion to Stay*, paragraph 1). This claim is unique in the experience of the undersigned: essentially the Petitioner is asking the Board to allow a regulated entity to write its own permit conditions on the basis that that this was what Illinois EPA "intended". However, with the exception of one minor typographical error in the Permit

(which could easily have been modified without the intercession of the Board), Illinois EPA's 'intent' is clear from the provisions of the Permit. To the extent that KCBX is attempting to dictate Illinois EPA's 'intent', its Petition is improper, and should be dismissed.

3. The arguments presented in KCBX's Petition are confusing, and it is difficult to understand the basis for the relief it is seeking. However, it appears that KCBX is attempting to insert a novel definition of the term "received" into its Permit, while contrasting this definition with the term "handling"¹. Whether intended or not, a stay would also allow KCBX to avoid controlling particulate emissions from the *processing* of the fluid coke material at its facility, which would constitute a violation of the Act.

4. A stay of Permit Conditions 6.a, 7.a, and 11.a would allow KCBX to avoid using water sprays to control particulate emissions [6.a], avoid compliance with established emission limits [7.a], and avoid its recordkeeping responsibilities [11.a]. These requirements have nothing to do with KCBX's claimed misapplication of the term "received", and have been included in Site Permits (in one form or another) for years. Thus, KCBX's stay request is unnecessary and overbroad. If a stay was granted by the Board, it would likely lead to violations of the act.

5. Illinois EPA has repeatedly advised KCBX that it has no objection to "receipt" of rail cars of the "fluid coke", by which the Agency means the delivery and acceptance of the rail cars at the KCBX facility. However, KCBX has advised the Agency that *unloading* of the fluid coke rail cars will include the contemporaneous blending of the fluid coke with other materials in the conveyers, resulting in a new, separate product. Such processing cannot reasonably be interpreted as mere "receipt". Clearly, it constitutes "handling", which requires additional

¹ Neither term is defined in the Act or the pertinent regulations, and therefore these terms should be given their plain and ordinary meaning.

emission controls. KCBX's claims that it is prevented from "receiving" fluid coke, and that is suffering 'irreparable harm' are without merit.

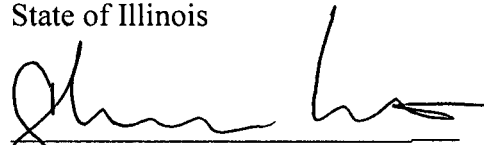
6. Because stay of the Permit conditions at issue could result in the failure to control regulated particulate emissions, requiring KCBX to comply with the conditions of the Permit at issue during the pendency of this matter is necessary to prevent possible violations of the Act. Petitioner KCBX's Motion to Stay must be denied.

WHEREFORE, Respondent ILLINOIS ENVIRONMENTAL PROTECTION AGENCY respectfully requests that the Board deny Petitioner KCBX TERMINALS COMPANY's Motion to Stay the Effectiveness of Contested Permit Conditions.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

by LISA MADIGAN
Attorney General of the
State of Illinois



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Assistant Attorney General
Environmental Bureau
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CERTIFICATE OF SERVICE

I, CHRISTOPHER GRANT, an attorney, do certify that I caused to be served this 26th day of July, 2010, the foregoing Request for Extension of Time, Response in Opposition to Motion to Stay, and Notice of Filing, upon the persons listed below by electronic filing, and by placing same in an envelope bearing sufficient postage with the United States Postal Service located at 100 W. Randolph, Chicago, Illinois.

A handwritten signature in black ink, appearing to read 'Christopher Grant', is written over a horizontal line.

CHRISTOPHER GRANT

Mr. John Therriault
Assistant Clerk
Illinois Pollution Control Board
100 W. Randolph
Chicago, Illinois 60601
(By Electronic Filing)

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