

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

KCBX TERMINALS COMPANY,)	
)	
Petitioner,)	
)	
v.)	PCB 10-110
)	(Air Permit Appeal)
ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Respondent.)	

NOTICE OF FILING

TO: Mr. John Therriault	Bradley P. Halloran, Esq.
Assistant Clerk	Hearing Officer
Illinois Pollution Control Board	Illinois Pollution Control Board
James R. Thompson Center	James R. Thompson Center
100 West Randolph, Suite 11-500	100 West Randolph, Suite 11-500
Chicago, Illinois 60601	Chicago, Illinois 60601
(VIA ELECTRONIC MAIL)	(VIA FIRST CLASS MAIL)

PLEASE TAKE NOTICE that I have today filed with the Office of the Clerk of the Illinois Pollution Control Board **PETITIONER'S REPLY TO ILLINOIS ENVIRONMENTAL PROTECTION AGENCY'S RESPONSE IN OPPOSITION TO MOTION TO STAY**, a copy of which is herewith served upon you.

Respectfully submitted,

KCBX TERMINALS COMPANY,
Petitioner,

Dated: February 17, 2011

By: /s/ Katherine D. Hodge
One of Its Attorneys

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

CERTIFICATE OF SERVICE

I, Katherine D. Hodge, the undersigned, hereby certify that I have served the attached PETITIONER'S REPLY TO ILLINOIS ENVIRONMENTAL PROTECTION AGENCY'S RESPONSE IN OPPOSITION TO MOTION TO STAY upon:

John T. Therriault
Assistant Clerk of the Board
Illinois Pollution Control Board
James R. Thompson Center
100 West Randolph Street
Suite 11-500
Chicago, Illinois 60601

via electronic mail on February 17, 2011; and upon:

Christopher J. Grant, Esq.
Office of the Illinois Attorney General
69 West Washington Street,
Suite 1800
Chicago, Illinois 60602

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

by depositing said documents in the United States Mail, postage prepaid, in Springfield, Illinois on February 17, 2011.

/s/ Katherine D. Hodge
Katherine D. Hodge

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

KCBX TERMINALS COMPANY,)	
)	
Petitioner,)	
)	
v.)	PCB 10-110
)	(Air Permit Appeal)
ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Respondent.)	

**PETITIONER'S REPLY TO ILLINOIS
ENVIRONMENTAL PROTECTION AGENCY'S
RESPONSE IN OPPOSITION TO MOTION TO STAY**

NOW COMES Petitioner, KCBX TERMINALS COMPANY ("KCBX"), a North Dakota corporation, by and through its attorneys, HODGE DWYER & DRIVER, and hereby replies to the Response in Opposition to Motion to Stay ("Response") filed by LISA MADIGAN, Attorney General of the State of Illinois ("Attorney General"), on behalf of Respondent, ILLINOIS ENVIRONMENTAL PROTECTION AGENCY ("Illinois EPA"). In support of its Reply, KCBX states as follows:

1. On May 25, 2010, Illinois EPA issued to KCBX a "Construction Permit – Revised" ("Revised Construction Permit") for KCBX's bulk solids materials terminal located at 3259 East 100th Street, Chicago, Illinois (Facility ID No. 031600AHI) ("Facility").

2. On June 29, 2010, KCBX filed with the Illinois Pollution Control Board ("Board") a Petition for Review ("Petition") regarding the Revised Construction Permit. Within the Petition, KCBX stated that "Illinois EPA included conditions in the Revised Construction Permit that must be modified in order to effectuate Illinois EPA's intent . . . and to clarify that the proposed activity will not cause a violation of the [Illinois

Environmental Protection] Act or the regulations promulgated thereunder.” Petition at ¶11.

3. Along with the Petition, KCBX also filed a Motion to Stay the Effectiveness of Contested Permit Conditions (“Motion to Stay”), which requested the Board grant a Stay of Effectiveness of Special Conditions 6a., 6a.ii., 7a., 11a.i., and 11a.iv. of the Revised Construction Permit.

4. On July 26, 2010, the Attorney General, on behalf of Illinois EPA, filed the Response.

5. The Response states in part: “[t]his 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.” Response at ¶1.

6. To clarify, on February 3, 2011, KCBX applied for a separate construction permit from Illinois EPA to address the receipt of fluid coke at the Facility. *See* Agency Record at 00001-00025. It was Illinois EPA which apparently chose to treat KCBX’s application as a revision of the existing construction permit for the two conveyors.

7. Furthermore, KCBX initiated this proceeding for review of the Revised Construction Permit and initiated the prior proceeding for review of the “Construction Permit Grant – Operating Permit Denial – NSPS Source” issued on May 23, 2008 (*See KCBX Terminals Company v. Illinois EPA*, PCB No. 08-103). In both situations, Illinois EPA issued permits that did not accurately reflect the communications between KCBX and Illinois EPA leading up to the issuance of the permits, and that did not accurately reflect the actual operations of the Facility.

8. KCBX, as the permit applicant in both cases, had the right to petition the Board for review of Illinois EPA's final decisions. *See* 415 ILCS 5/40(a)(1) and 35 Ill. Admin. Code § 105.204.

9. The Response also states: "[t]he conveyors are particulate emission sources, and require control." Response at ¶1.

10. KCBX understands that the conveyors subject to the Revised Construction Permit are sources of particulate matter emissions, and fully intends to operate the equipment in full compliance with all applicable state and federal environmental laws and regulations.

11. Additionally, the scope of the Response was not limited to addressing KCBX's Motion to Stay, but instead, was far broader in that the Response included arguments regarding the adequacy of KCBX's Petition. Response at ¶¶2-3. These arguments would have been more appropriate for a Motion to Strike, which Illinois EPA did not file; they are not appropriate for a response to a Motion to Stay. Therefore, KCBX respectfully requests that the Board find these arguments improper and disregard them as such. If the Board determines that it will not disregard these arguments, KCBX respectfully requests that the Board grant it an opportunity to respond in full to Illinois EPA's arguments regarding the adequacy of the Petition.

12. Further, the Response states: "[w]hether 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." Response at ¶3.

13. KCBX is not avoiding, and has no intent to avoid, controlling the particulate matter emissions from the processing of fluid coke material at the Facility. KCBX has not yet started receiving fluid coke material at the Facility. See Agency Record at 00001-00025. As stated in the Petition, KCBX requests the contested conditions in the Revised Construction Permit be revised so that KCBX may begin to receive such material. Petition at ¶11.

14. The Response also asserts that: “[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].” Response at ¶4.

15. If the conditions at issue in this proceeding are stayed, the interim operation of the conveyors will be governed by the “Construction Permit – Revised” that was issued to KCBX on October 17, 2008 (“October 2008 Revised Construction Permit”), as a result of the previous permit appeal before the Board, PCB No. 08-103. While Condition 6a. in the October 2008 Revised Construction Permit includes a moisture limit of 1.5%, and the Revised Construction Permit includes a moisture limit of 1.3%, KCBX operates the conveyors in compliance with the more stringent limit of 1.5%. Additionally, Condition 6a.ii. in the Revised Construction Permit should, but for a minor typographical error on the part of Illinois EPA, include the same language as the October 2008 Revised Construction Permit. Furthermore, Conditions 7a. and 11a.i. are the same in both permits. Condition 11a.iv., however, is included in the Revised Construction Permit, but is not included in the October 2008 Revised Construction

Permit. Therefore, during this proceeding, KCBX will continue to comply with the recordkeeping requirements contained in the October 2008 Revised Construction Permit. Additionally, as stated above, KCBX has not yet started receiving fluid coke at the Facility, and KCBX requests the contested conditions in the Revised Construction Permit be revised so that KCBX may do so.

16. During this proceeding, in addition to complying with the October 2008 Revised Construction Permit as mentioned above, KCBX will continue to operate the conveyors and the entire Facility in accordance with all applicable state and federal environmental laws and regulations.

17. Just as stated in the Motion to Stay, a stay is necessary in this proceeding to protect KCBX's right to appeal permit conditions. That is, KCBX's appeal would be rendered meaningless if it must comply with these conditions while the appeal is pending.

WHEREFORE, Petitioner, KCBX TERMINALS COMPANY, again moves the Illinois Pollution Control Board to grant a Stay of Effectiveness of Conditions 6a., 6a.ii.,

7a., 11a.i., and 11a.iv. of KCBX's May 25, 2010 Revised Construction Permit until the Board's final action in this matter.

Respectfully submitted,

KCBX TERMINALS COMPANY
Petitioner,

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

Dated: February 17, 2011

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

KCBX:003/Fil/Reply to Illinois EPA's Response in Opposition to Motion to Stay (Final)