

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

KCBX TERMINALS COMPANY, )  
)  
Petitioner, )  
)  
v. ) PCB 11-43  
) (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 RESPONSE IN OPPOSITION TO RESPONDENT'S MOTION FOR ADDITIONAL TIME TO RESPOND TO DISCOVERY**, a copy of which is herewith served upon you.

Respectfully submitted,

KCBX TERMINALS COMPANY,  
Petitioner,

Dated: March 22, 2011

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

Edward W. Dwyer  
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 RESPONSE IN OPPOSITION TO RESPONDENT'S MOTION FOR ADDITIONAL TIME TO RESPOND TO DISCOVERY 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 March 22, 2011 and upon:

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

Christopher Grant, Esq.  
Illinois Attorney General's Office  
69 West Washington Street  
Suite 1800  
Chicago, Illinois 60602

by depositing said documents in the United States Mail, postage prepaid, in Springfield, Illinois on March 22, 2011.

/s/ Katherine D. Hodge  
Katherine D. Hodge

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

KCBX TERMINALS COMPANY,	)	
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Petitioner,	)	
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v.	)	PCB 11-43
	)	(Air Permit Appeal)
ILLINOIS ENVIRONMENTAL	)	
PROTECTION AGENCY,	)	
	)	
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**PETITIONER'S RESPONSE IN OPPOSITION TO RESPONDENT'S MOTION FOR ADDITIONAL TIME TO RESPOND TO DISCOVERY**

NOW COMES Petitioner, KCBX TERMINALS COMPANY ("KCBX"), a North Dakota corporation, by and through its attorneys, HODGE DWYER & DRIVER, and for its Response in Opposition to the Illinois Environmental Protection Agency's ("Illinois EPA") Motion for Additional Time to Respond to Discovery ("Motion"), states as follows:

1. On February 1, 2011, KCBX initiated this proceeding by filing with the Illinois Pollution Control Board ("Board") its Petition for Review ("Petition") regarding the Renewed Federally Enforceable State Operating Permit ("Renewed FESOP") issued to KCBX by Illinois EPA on December 29, 2010.
2. KCBX has indicated its desire to proceed to hearing in this matter.
3. On February 17, 2011, Illinois EPA filed a Request for Extension of Time to File Record, requesting a 30-day extension of the deadline to file the Record, or until April 4, 2011.

4. On February 24, 2011, KCBX agreed to Illinois EPA's Request for Extension of Time to File Record, and also agreed to a corresponding 30-day limited waiver of the Board's statutory decision deadline until July 1, 2011.

5. On March 4, 2011, the parties submitted to the Hearing Officer an agreed Discovery Schedule calling for discovery to be completed by April 19, 2011.

6. On March 9, 2011, KCBX served upon Illinois EPA written discovery requests, including Requests for Admission, Interrogatories and a Request for Production of Documents, responses to which are due 28 days from the date of service thereof.

7. On March 15, 2011, Illinois EPA filed its Motion with the Board, requesting an additional 30 days to respond to the written discovery requests.

8. In its Motion, Illinois EPA claims that the written discovery requests propounded on it by KCBX are "extensive and burdensome." Further, Illinois EPA claims the requests consist of a "massive amount of discovery," and that KCBX has insisted on an early hearing date in the matter, creating an "unnecessary hardship" on Illinois EPA. Further, Illinois EPA claims that KCBX is harassing Illinois EPA "with overwhelming discovery requests."

9. The Renewed FESOP at issue in this proceeding is 18 pages long and includes dozens of conditions. The bases for KCBX's appeal of the conditions of the Renewed FESOP include Illinois EPA's failure to explain certain conditions, its disregard for information provided to it by KCBX, and its misstatement of facts and regulatory applicability. There is nothing in KCBX's written discovery requests that is inconsistent with its Petition and the exhibits thereto, and Illinois EPA presumably is already

considering the issues raised in the written discovery requests as it reviews KCBX's Petition and the exhibits thereto.

10. The purpose of discovery is to clarify the issues and, hopefully, narrow the issues for hearing. KCBX's written discovery requests were propounded in order to achieve those intended purposes.

11. Further, KCBX prepared and served its written discovery requests consistent with the Board rules, the Illinois Code of Civil Procedure and the Illinois Supreme Court Rules. Specifically, the number of written discovery requests, the type of written discovery requests and the timeframe allowed for response to the same, are all provided by rule.

12. KCBX's written discovery requests are relevant and necessary. They are not "massive" in scope or breadth, do not create an "unnecessary hardship" on Illinois EPA, and are in no way "overwhelming." Further, it was not the intent of KCBX, in serving the written discovery requests, to harass Illinois EPA in any way. Illinois EPA and its counsel have substantial experience dealing with air permit appeals and discovery matters.

13. Moreover, KCBX has not insisted on an early hearing date in this matter, but instead, has agreed to a limited extension of the statutory 120-day decision deadline to allow additional time for the parties to prepare for hearing and to brief the issues remaining after hearing in advance of the Board's decision deadline.

14. Further, KCBX did not, as Illinois EPA asserts, send Illinois EPA "an extensive document production request." KCBX served one Request for Production of

Documents on Illinois EPA, seeking documents “not produced as part of the Record in this matter, which [Illinois EPA] reviewed, consulted and/or to which you refer to in your responses to Petitioner’s Interrogatories Nos. 1- 19, above.” Presumably there will be few, if any, such documents, because as in a permit appeal such as this, most or all of the documents at issue should be produced as part of the Administrative Record.

15. KCBX believes its written discovery requests are straightforward and seek information easily obtainable by Illinois EPA. KCBX, therefore, believes it will not be difficult for Illinois EPA to answer the written discovery requests within the timeframes set by the rules.

16. KCBX, therefore, opposes Illinois EPA’s request for an additional 30 days to respond to written discovery.

WHEREFORE Petitioner, KCBX TERMINALS COMPANY, respectfully prays that the Hearing Officer deny the Respondent’s Motion for Additional Time to Respond to Discovery, and provide it all other relief just and proper in the premises.

Respectfully submitted,

KCBX TERMINALS COMPANY,  
Petitioner,

Dated: March 22, 2011

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

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KCBX:003/Fil/FESOP Permit Appeal/Response to Motion for Additional Time to Respond to Discovery