

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

KCBX TERMINALS COMPANY)

Petitioner,)

v.)

ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY)

Respondent.)

PCB No. 11-43

(Permit Appeal-Air)

NOTICE OF ELECTRONIC FILING

PLEASE TAKE NOTICE that on the 25th day of March, 2011, the Respondent filed its Motion to Quash Subpoena, by electronic filing. A true and accurate copy of the document so filed is 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. 11-43
)	(Permit Appeal-Air)
ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY)	
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MOTION TO QUASH SUBPOENA

Now comes Respondent, ILLINOIS ENVIRONMENTAL PROTECTION AGENCY (“Illinois EPA”), by LISA MADIGAN, Attorney General of the State of Illinois, and requests that the Hearing Officer quash the discovery deposition subpoena of George Kennedy. In support of its request, Respondent states, as follows:

1. Petitioner KCBX Terminals Company (“KCBX”) filed this permit appeal with the Board on February 1, 2011, and has demanded an early hearing. Despite the expedited schedule, Petitioner has served an overwhelming number of discovery requests upon Illinois EPA. On March 15, 2011, Respondent filed a motion to extend the deadline for responding to Petitioner’s written discovery, which consists, inter alia, of nineteen pages of requests to admit facts. Unsurprisingly, Petitioner has responded by objecting to any extension.

2. KCBX has named former Illinois EPA Permit Engineer George Kennedy as a witness in its case. Mr. Kennedy retired from the Agency in December, 2010, but has been retained by the Agency on a part time basis. However this retention will expire by the end of April, 2011. Moreover, Mr. Kennedy will be out of the country on the date of hearing, June 1, 2011.

3. On March 24, 2011, KCBX served the undersigned with two deposition subpoenas

for Mr. Kennedy (See: Exhibit A), both for April 14, 2011. The subpoenas seek to compel Mr. Kennedy to appear for a 3 hour 'discovery' deposition at 9:00 a.m., and then return for a second 3 hour 'evidence' deposition at 1:00 p.m.

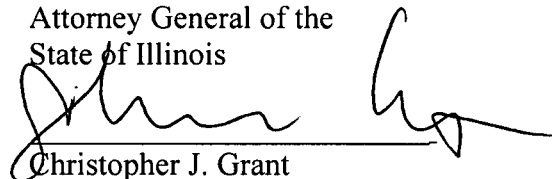
4. KCBX had requested that the undersigned waive the 3 hour deposition limit contained in Section 101.622(f) of the Board Procedural Rules. Because the factual issues in this case are not complicated, and to prevent harassment and abuse of Illinois EPA employees, Respondent has rejected this request. Petitioner's attempt to 'double up' on Mr. Kennedy by subpoenaing him for two depositions on the same day is nothing but an attempt to circumvent the Board's deposition limitation.

5. Mr. Kennedy will be out of the country on June 1, 2011, thus satisfying the criteria for admissibility contained in Supreme Court Rule 212(b). Therefore Respondent does not object to an evidence deposition of Mr. Kennedy. However, taking an evidence deposition and a discovery deposition in the same day is nothing but harassment. Respondent therefore requests that the Hearing Officer limit Petitioner to one deposition of no more than three hours duration.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

by LISA MADIGAN
Attorney General of the
State of Illinois



Christopher J. Grant
Assistant Attorney General
Environmental Bureau
69 West Washington Street
Suite 1800
Chicago, Illinois 60602

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)	(Air Permit Appeal)
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SUBPOENA DUCES TECUM

TO:

Mr. George Kennedy
c/o Christopher Grant, Esq.
Illinois Attorney General's Office
69 West Washington Street
Suite 1800
Chicago, Illinois 60602

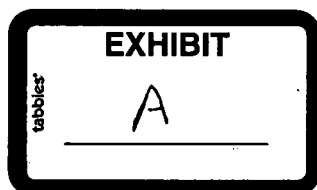
Pursuant to Section 5(e) of the Environmental Protection Act (415 ILCS 5/5(e) (2006)) and 35 Ill. Adm. Code 101, Subpart F, you are ordered to attend and give testimony at the discovery deposition in the above-captioned matter at 9:00 a.m. on April 14, 2011, at the offices of HODGE DWYER & DRIVER, 3150 Roland Avenue, Springfield, Illinois.

Failure to comply with this subpoena will subject you to sanctions under 35 Ill. Adm. Code 101.622(g) and 101.802.

ENTER:



John T. Therriault, Assistant Clerk
Pollution Control Board
Date: March 3, 2011



BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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SUBPOENA DUCES TECUM

TO:

Mr. George Kennedy
c/o Christopher Grant, Esq.
Illinois Attorney General's Office
69 West Washington Street
Suite 1800
Chicago, Illinois 60602

Pursuant to Section 5(e) of the Environmental Protection Act (415 ILCS 5/5(e) (2006)) and 35 Ill. Adm. Code 101, Subpart F, you are ordered to attend and give testimony at the evidence deposition in the above-captioned matter at 1:00 p.m. on April 14, 2011, at the offices of HODGE DWYER & DRIVER, 3150 Roland Avenue, Springfield, Illinois.

Failure to comply with this subpoena will subject you to sanctions under 35 Ill. Adm. Code 101.622(g) and 101.802.

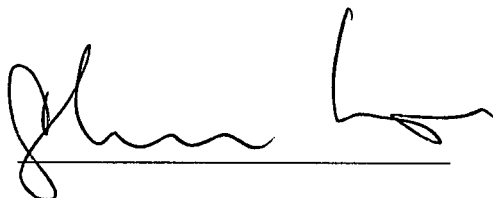
ENTER:



John T. Therriault, Assistant Clerk
Pollution Control Board
Date: March 3, 2011

CERTIFICATE OF SERVICE

I, CHRISTOPHER GRANT, an attorney, do certify that I caused to be served this 25th day of March, 2011, Respondent's Motion to Quash Subpoena, and Notice of Filing, upon the persons listed below by electronic filing, hand delivery, and first class mail.

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)

Ms. Katherine D. Hodge
Ms. Lauren C. Lurkins
Hodge Dwyer & Driver
3150 Roland Avenue
P.O. Box 5776
Springfield, Illinois 62705-5776
(by first class mail)

Mr. Bradley P. Halloran
Hearing Officer
Illinois Pollution Control Board
100 W. Randolph
Chicago, Illinois 60601
(by Hand Delivery)

KCBX Terminals Company v. Illinois EPA, PCB 11-43