

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

KCBX TERMINALS COMPANY)

Petitioner,)

v.)

ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY)

Respondent.)

PCB No. 10-110

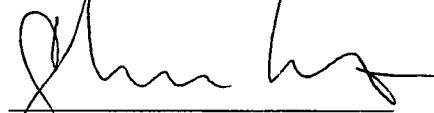
(Permit Appeal-Air)

NOTICE OF ELECTRONIC FILING

PLEASE TAKE NOTICE that on the 29th day of March, 2011, the Respondent filed its Motion to Consolidate with Case No. PCB 11-43, 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
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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

KCBX TERMINALS COMPANY,)	
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)	(Permit Appeal-Air)
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MOTION TO CONSOLIDATE WITH CASE NO. PCB 11-43

Now comes Respondent, ILLINOIS ENVIRONMENTAL PROTECTION AGENCY (“Illinois EPA”), by LISA MADIGAN, Attorney General of the State of Illinois, and moves the Illinois Pollution Control Board (“Board”) to consolidate this matter for hearing and decision with *KCBX Terminals Company v. Illinois EPA*, PCB 11-43. In support thereof, Respondent states as follows.

1. Petitioner KCBX Terminals Company (“KCBX”) currently has two permit appeals pending before the Board. In the instant case (i.e. PCB 10-110), KCBX challenges language in a revised construction permit requiring the use of moisture to control particulate emissions during the handling of materials. Specifically, KCBX’s appeal relates to its ability to receive and handle low moisture fluid petroleum coke at its terminal, located at 3259 E. 100th Street, Chicago, Cook County, Illinois (“Site”).

2. Petitioner’s second permit appeal is also related to its activities at the Site. Case No. PCB 11-43 challenges various FESOP permit conditions, *inter alia*, related to the receipt, handling and storage of various coal and petroleum coke products.

3. Petitioner has extended the decision deadline in both cases. The deadline for PCB

10-110 is currently July 9, 2011, while the deadline in PCB 11-43 is August 18, 2011. Hearing in PCB 11-43 is set for June 1, 2011.

4. The parties are currently in the midst of discovery in PCB 11-43, and Respondent has moved to extend the deadline until May 6, 2011. The parties have disclosed witnesses and depositions are scheduled for the April 14-15, 2011.

5. Section 101.406 of the Board Procedural Rules, 35 Ill. Adm. Code 101.406 provides:

Consolidation of Claims

The Board, upon the motion of any party or upon its own motion, may consolidate two or more proceedings for the purpose of hearing or decision or both. The Board will consolidate the proceedings if consolidation is in the interest of convenient, expeditious, and complete determination of claims, and if consolidation would not cause material prejudice to any party. The Board will not consolidate proceedings where the burdens of proof vary.

6. Consolidation of these two permit appeals is in the best interests of the Board and the parties. The sole issue in PCB 10-110 concerns KCBX's ability to receive and handle low moisture fluid petroleum coke. Almost identical conditions are also at issue in PCB 11-43. Specifically, KCBX challenges condition 9 of its Renewed FESOP, which also relates to receipt and handling of low moisture fluid petroleum coke. In its Petition for Review in that case, KCBX complains of problems resulting from moisture conditions in the relevant permits:

*c. **Moisture Language (Condition 9).** On several occasions, KCBX has attempted to describe to Illinois EPA its issues related to the moisture content of materials handled at the Facility and proposed language for the Renewed FESOP that would reflect the same. See Exhibit B. Nonetheless, Illinois EPA included moisture language in Condition 9 of the Renewed FESOP that is arbitrary and capricious, not required by or necessary for compliance with the Act or regulations promulgated thereunder, and limits business opportunities for KCBX. Additionally, the May 2008 Construction Permit, the October 2008 Revised Construction Permit and the May 2010 Revised Construction Permit issued to KCBX by Illinois EPA each contained different moisture requirements, thus causing confusion for KCBX. See Exhibits D, E and F.¹*

(emphasis supplied)

¹ KCBX Petition for Review, PCB 11-43, pp.6-7

The moisture content provisions of the "May 2010 Revised Construction Permit" referenced by KCBX are the sole issue raised in its appeal in PCB 10-110. Clearly, the moisture issues in the two permits should be considered together.

7. In both cases, the burdens of proof are the same. Pursuant to 415 ILCS 5/40 (2010) and 35 Ill. Adm. Code 105.112, the burden is on Petitioner. Also, consolidation of the two cases cannot result in any prejudice to the Petitioner. To the contrary, a consolidated hearing and post-hearing schedule will prevent the fluid petroleum coke issues in the two appeals from becoming confused, and will allow the Board to render a consistent and unambiguous decision.

8. Consolidation will not result in any delay in this case. The full record in PCB 10-110 has already been filed with the Board, and the record in PCB 11-43 will be filed by April 4, 2011. The issues in 10-110 are relatively simple, and closely related to the issues in the second case. Moreover, hearing the cases together will not require additional time. Based on the witnesses disclosed and the evidence in the record, Respondent believes that a consolidated hearing may easily be completed on June 1, 2010, as scheduled for PCB 11-43.

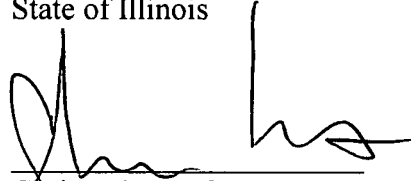
WHEREFORE, Respondent ILLINOIS ENVIRONMENTAL PROTECTION AGENCY respectfully requests that the Board issue an order:

- a. Consolidating cases No. PCB 10-110 and PCB 11-43;
- b. Ordering hearing of both cases to be held on June 1, 2011; and
- c. Ordering such other relief as the board deems appropriate and just.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

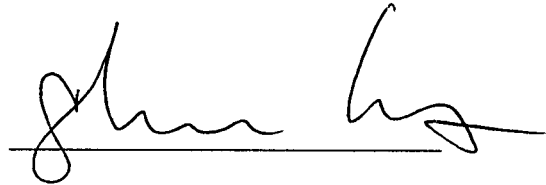
by LISA MADIGAN
Attorney General of the
State of Illinois

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

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CERTIFICATE OF SERVICE

I, CHRISTOPHER GRANT, an attorney, do certify that I caused to be served this 29th day of March, 2011, Respondent's Motion to Consolidate with Case No. PCB 11-43, 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', written over a horizontal line.

CHRISTOPHER GRANT

Mr. John Therriault
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(by Hand Delivery)

KCBX Terminals Company v. Illinois EPA, PCB 10-110