

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 RESPONSE TO RESPONDENT'S MOTION TO CONSOLIDATE WITH CASE NO. PCB 11-43**, a copy of which is herewith served upon you.

Respectfully submitted,

KCBX TERMINALS COMPANY,
Petitioner,

Dated: April 5, 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 RESPONSE TO RESPONDENT'S MOTION TO CONSOLIDATE WITH CASE NO. PCB 11-43 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 April 5, 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 April 5, 2011.

/s/ Katherine D. Hodge
Katherine D. Hodge

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**PETITIONER'S RESPONSE TO RESPONDENT'S
MOTION TO CONSOLIDATE WITH CASE NO. PCB 11-43**

NOW COMES Petitioner, KCBX TERMINALS COMPANY ("KCBX"), a North Dakota corporation, by and through its attorneys, HODGE DWYER & DRIVER, and for its Response to the Illinois Environmental Protection Agency's ("Illinois EPA") Motion to Consolidate with Case No. PCB 11-43 ("Motion"), states as follows:

1. KCBX currently has two air permit appeals pending before the Illinois Pollution Control Board ("Board"): the instant case and the case of KCBX Terminals Company v. IEPA, PCB 11-43 ("Case No. PCB 11-43").

2. In the instant case, KCBX challenges language included in the "Construction Permit – Revised" ("Revised Construction Permit") issued to KCBX by Illinois EPA on May 25, 2010, for KCBX's bulk solids materials terminal located in Chicago, Illinois ("Facility"). Specifically, KCBX challenges conditions in the Revised Construction Permit related to limitations and recordkeeping associated with the "moisture content" of bulk solids materials received, handled and stored at the Facility. KCBX is seeking certain modifications in order to effectuate Illinois EPA's stated intent, i.e., that KCBX be allowed to "receive" fluid petroleum coke, and to clarify that the

proposed activity will not cause a violation of the Illinois Environmental Protection Act or the regulations promulgated thereunder.

3. In KCBX's second permit appeal, Case No. PCB 11-43, which is also related to the operations of the Facility, KCBX challenges conditions in the Renewed Federally Enforceable State Operating Permit ("Renewed FESOP") issued to KCBX by Illinois EPA on December 29, 2010. Specifically, in Case No. PCB 11-43, KCBX challenges various conditions of the Renewed FESOP, including conditions related to limitations and recordkeeping associated with the "moisture content" of bulk solids materials received, handled, and stored at the Facility.

4. The issues regarding the "moisture content" language in both the Revised Construction Permit and the Renewed FESOP are essentially the same.

5. On March 29, 2011, Illinois EPA filed its Motion seeking consolidation of the instant case and Case No. PCB 11-43, and asking the Board to order the hearing of both cases to be held on June 1, 2011.

6. KCBX has no objection to the consolidation of the instant case and Case No. PCB 11-43, provided only that the consolidation results in no delay to the Discovery Schedule previously agreed to by the parties in Case No. PCB 11-43 (and which is contained in the March 8, 2011 Hearing Officer Order in that case) and/or to the schedule to complete the record as contained in the March 2, 2011 Hearing Officer Order in that case. If, however, the schedules previously agreed to in Case No. PCB 11-43 will be delayed in any way as a result of the consolidation, KCBX objects to such consolidation.

WHEREFORE, Petitioner, KCBX TERMINALS COMPANY, respectfully prays that the Board grant the Respondent's Motion to Consolidate with Case No. PCB 11-43, provided only that the Board determines such consolidation will not result in delay to the schedules previously agreed to in Case No. PCB 11-43, and that the Board grant all other relief just and proper in the premises.

Respectfully submitted,

KCBX TERMINALS COMPANY
Petitioner,

Dated: April 5, 2011

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

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KCBX:003/Fil/Response to Motion to Consolidate