

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

KCBX TERMINALS COMPANY,)	
)	
Petitioner,)	
)	
v.)	PCB 10-110
)	PCB 11-43
ILLINOIS ENVIRONMENTAL)	(Permit Appeal – Air)
PROTECTION AGENCY,)	(Consolidated)
)	
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 **PETITIONER'S MOTION TO SUPPLEMENT THE RECORD**, a copy of which is herewith served upon you.

Respectfully submitted,

KCBX TERMINALS COMPANY,
Petitioner,

Dated: April 28, 2011

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

Katherine D. Hodge
Edward W. Dwyer
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 MOTION TO SUPPLEMENT THE RECORD 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 April 28, 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

Christopher R. Pressnall, Esq.
Illinois Environmental Protection Agency
Division of Legal Counsel
1021 North Grand Avenue East
Post Office Box 19276 - mail code #21
Springfield, Illinois 62794-9276

by depositing said documents in the United States Mail, postage prepaid, in Springfield, Illinois on April 28, 2011.

/s/ Katherine D. Hodge
Katherine D. Hodge

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PETITIONER'S MOTION TO SUPPLEMENT THE RECORD

NOW COMES Petitioner, KCBX TERMINALS COMPANY ("KCBX"), a North Dakota corporation, by and through its attorneys, HODGE DWYER & DRIVER ("HD&D"), and hereby moves to supplement the record before the Illinois Pollution Control Board ("Board") with certain documents the Illinois Environmental Protection Agency ("Illinois EPA") relied upon in making its determination regarding KCBX's application for the renewal of its Federally Enforceable State Operating Permit ("Renewed FESOP") for KCBX's bulk solids materials terminal located in Chicago, Illinois ("Facility"). In support of its Motion, KCBX states as follows:

1. On December 29, 2010, Illinois EPA issued the Renewed FESOP to KCBX for the Facility.
2. On February 1, 2011, KCBX initiated this proceeding by filing with the Board its Petition for Review ("Petition") regarding the Renewed FESOP. Together with the Petition, KCBX filed a Motion to Confirm Automatic Stay of Effectiveness of Federally Enforceable State Operating Permit or, in the Alternative, to Request Stay of Effectiveness.

3. On April 4, 2011, Illinois EPA filed its Record of Decision ("Record") with the Board.

4. During its review of the Record, KCBX discovered that several documents, which should have been included in the Record, were omitted therefrom. Therefore, KCBX is filing this Motion in order to add these documents to the Record.

5. The documents KCBX seeks to have included in the Record consist of the following:

- A FESOP issued by Illinois EPA to KCBX on June 22, 2000, attached hereto as Exhibit 1, Bates stamped K:000541-K:000550 (omitted from the Record);
- A November 29, 2004 Illinois EPA letter to KCBX regarding expiration and renewal of the FESOP, attached hereto as Exhibit 2, Bates stamped K:000551-K:000553 (omitted from the Record);
- An October 23, 2006 KCBX letter to Illinois EPA supplementing the FESOP Renewal Application of January 27, 2005, attached hereto as Exhibit 3, Bates stamped K:000554-K:000567 (omitted from the Record);
- A September 13, 2007 Illinois EPA letter regarding an August 29, 2007 inspection of the Facility, attached hereto as Exhibit 4, Bates stamped K:000568-K:000575 (omitted from the Record);
- An October 14, 2007 KCBX letter to Illinois EPA submitting a Joint Construction/Operating Permit Application, attached hereto as Exhibit 5, Bates stamped K:000576-K:000613 (omitted from the Record);
- A January 25, 2008 KCBX letter to Illinois EPA regarding its Request to Extend the Deadline to Prepare Construction Permit, attached hereto as Exhibit 6, Bates stamped K:000614 (omitted from the Record);
- A February 21, 2008 Short Elliott Hendrickson Inc. ("SEH") letter, on behalf of KCBX, to Illinois EPA regarding the Air Construction/Operation Permit Application and meeting follow-up, attached hereto as Exhibit 7, Bates stamped K:000615-K:000619 (omitted from the Record);
- A March 28, 2008 SEH letter, on behalf of KCBX, to Illinois EPA regarding the Air Construction/Operation Permit Application, and

Particulate Matter ("PM") emissions calculations, attached hereto as Exhibit 8, Bates stamped K:000620-K:000622 (the version of the letter contained in the Record is not signed and not on SEH letterhead);

- An April 4, 2008 e-mail from Tom Henning (SEH) to John Blazis (Illinois EPA) regarding PM with an aerodynamic diameter less than or equal to 10 micrometers ("PM₁₀") calculations, attached hereto as Exhibit 9, Bates stamped K:000623 (omitted from the Record);
- An April 9, 2008 KCBX facsimile to Illinois EPA regarding a Request to Extend the Deadline to Issue Joint Construction/Operating Permit, attached hereto as Exhibit 10, Bates stamped K:000624-K:000625 (omitted from the Record);
- A May 14, 2008 KCBX facsimile to Illinois EPA regarding a Request to Extend the Deadline to Issue a Joint Construction/Operating Permit, attached hereto as Exhibit 11, Bates stamped K:000626-K:000627 (omitted from the Record);
- A June 4, 2008 SEH letter, on behalf of KCBX, to Illinois EPA regarding the Construction Permit for Two Electric Conveyors, attached hereto as Exhibit 12, Bates stamped K:000628-K:000630 (omitted from the Record);
- A September 2, 2008 e-mail from Katherine Hodge (HD&D) to Chris Pressnall (Illinois EPA) regarding the draft permit with changes, attached hereto as Exhibit 13, Bates stamped K:000631 (omitted from the Record);
- A September 4, 2008 e-mail from Katherine Hodge (HD&D) to Chris Pressnall (Illinois EPA) regarding finalizing the permit, attached hereto as Exhibit 14, Bates stamped K:000632 (omitted from the Record);
- An October 1, 2008 e-mail from Katherine Hodge (HD&D) to Chris Pressnall (Illinois EPA) regarding the revised version of the Construction Permit, attached hereto as Exhibit 15, Bates stamped K:000633 (omitted from the Record);
- An October 7, 2008 e-mail from Katherine Hodge (HD&D) to Chris Pressnall (Illinois EPA) regarding conference call to discuss permit, attached hereto as Exhibit 16, Bates stamped K:000634 (omitted from the Record);
- An October 8, 2008 e-mail from Katherine Hodge (HD&D) to Chris Pressnall (Illinois EPA) regarding confirmation of conference call,

attached hereto as Exhibit 17, Bates stamped K:000635-K:000636
(omitted from the Record);

- An October 9, 2008 e-mail from Katherine Hodge (HD&D) to Chris Pressnall (Illinois EPA) regarding availability for conference call, attached hereto as Exhibit 18, Bates stamped K:000637 (omitted from the Record);
- An October 14, 2008 e-mail from Katherine Hodge (HD&D) to Chris Pressnall (Illinois EPA) regarding scheduling of meeting/conference call, attached hereto as Exhibit 19, Bates stamped K:000638-K:000639 (omitted from the Record);
- An October 15, 2008 e-mail from Katherine Hodge (HD&D) to Chris Pressnall (Illinois EPA) regarding the moisture language in the Construction Permit, attached hereto as Exhibit 20, Bates stamped K:000640 (omitted from the Record);
- An October 16, 2008 e-mail from Katherine Hodge (HD&D) to Chris Pressnall (Illinois EPA) regarding execution of the permit, attached hereto as Exhibit 21, Bates stamped K:000641-K:000642 (omitted from the Record);
- An October 16, 2008 e-mail from Katherine Hodge (HD&D) to Chris Pressnall (Illinois EPA) regarding FESOP modification, attached hereto as Exhibit 22, Bates stamped K:000643-K:000645 (omitted from the Record);
- An October 17, 2008 e-mail from Katherine Hodge (HD&D) to Chris Pressnall (Illinois EPA) regarding review of permit, attached hereto as Exhibit 23, Bates stamped K:000646 (omitted from the Record);
- An October 17, 2008 e-mail from Katherine Hodge (HD&D) to Chris Pressnall (Illinois EPA) regarding problems with permit, attached hereto as Exhibit 24, Bates stamped K:000647 (omitted from the Record);
- An October 17, 2008 e-mail from Katherine Hodge (HD&D) to Chris Pressnall (Illinois EPA) regarding signed permit, attached hereto as Exhibit 25, Bates stamped K:000648-K:000649 (omitted from the Record);
- A February 20, 2009 e-mail from Christopher Bailey (KCBX) to George Kennedy (Illinois EPA) forwarding information regarding diesel generators, attached hereto as Exhibit 26, Bates stamped K:000650 (omitted from the Record);

- A July 13, 2009 e-mail from Katherine Hodge (HD&D) to George Kennedy, Bob Bernoteit and Chris Pressnall (Illinois EPA) regarding scheduling meeting, attached hereto as Exhibit 27, Bates stamped K:000651 (omitted from the Record);
- A July 13, 2009 e-mail from Chris Pressnall (Illinois EPA) to Katherine Hodge (HD&D) regarding scheduling meeting, attached hereto as Exhibit 28, Bates stamped K:000652 (omitted from the Record);
- A July 13, 2009 e-mail from C. Pressnall (Illinois EPA) to Katherine Hodge (HD&D) regarding scheduling meetings, attached hereto as Exhibit 29, Bates stamped K:000652-K:000654 (omitted from the Record);
- A July 14, 2009 e-mail from Katherine Hodge (HD&D) to Bob Bernoteit, Chris Pressnall and George Kennedy (Illinois EPA) regarding confirmation of extension of time to submit written comments, attached hereto as Exhibit 30, Bates stamped K:000655-K:000657 (omitted from the Record);
- A July 14, 2009 e-mail from George Kennedy (Illinois EPA) to Katherine Hodge (HD&D) regarding confirmation of extension of time to submit written comments, attached hereto as Exhibit 31, Bates stamped K:000658-K:000659 (omitted from the Record);
- A July 16, 2009 e-mail from Katherine Hodge (HD&D) to George Kennedy (Illinois EPA) regarding telephone conference, attached hereto as Exhibit 32, Bates stamped K:000660-K:000661 (omitted from the Record);
- A July 23, 2009 e-mail from Katherine Hodge (HD&D) to Chris Pressnall regarding deviation reporting, attached hereto as Exhibit 33, Bates stamped K:000662 (omitted from the Record);
- An August 7, 2009 KCBX letter and attachments to Illinois EPA regarding the Preliminary Draft FESOP, attached hereto as Exhibit 34, Bates stamped K:000663-K:000721 (the version of the letter in the Record is not complete, and the attachments are out of order);
- An October 7, 2009 e-mail from Katherine Hodge (HD&D) to Chris Pressnall (Illinois EPA) regarding KCBX meeting, attached hereto as Exhibit 35, Bates stamped K:000722 (omitted from the Record);
- An October 15, 2009 e-mail from Katherine Hodge (HD&D) to Chris Pressnall (Illinois EPA) regarding Construction Permit issued on

October 17, 2008, attached hereto as Exhibit 36, Bates stamped K:000723-K:000735 (omitted from the Record);

- A November 10, 2009 e-mail from Katherine Hodge (HD&D) to Chris Pressnall (Illinois EPA) regarding a discussion regarding fluid coke, attached hereto as Exhibit 37, Bates stamped K:000736 (omitted from the Record);
- A May 4, 2010 KCBX letter to Illinois EPA regarding Revision to Fugitive Particulate Operating Program, attached hereto as Exhibit 38, Bates stamped K:000737-K:000751 (omitted from the Record);
- A May 7, 2010 KCBX letter to Illinois EPA regarding Construction Permit Application – Receipt and Handling of Fluid Coke/additional information regarding Fluid Coke receipt, attached hereto as Exhibit 39, Bates stamped K:000752-K:000754 (omitted from the Record);
- A June 4, 2010 e-mail from Katherine Hodge (HD&D) to Chris Pressnall (Illinois EPA) regarding moisture language in the Construction Permit, attached hereto as Exhibit 40, Bates stamped K:000755-K:000756 (omitted from the Record);
- A June 16, 2010 Illinois EPA Project Summary for an Application from KCBX for Renewal of FESOP, attached hereto as Exhibit 41, Bates stamped K:000757-K:000759 (omitted from the Record);
- A July 16, 2010 KCBX letter and attachments to Illinois EPA regarding comments on the FESOP, attached hereto as Exhibit 42, Bates stamped K:000760-K:000867 (the version of the letter in the Record includes attachments that are separated and out of order);
- A September 2, 2010 e-mail from Terry Steinert (KCBX) to George Kennedy (Illinois EPA) forwarding emissions calculations spreadsheets, attached hereto as Exhibit 43, Bates stamped K:000868-K:000873 (omitted from the Record);
- The Renewed FESOP issued by Illinois EPA to KCBX on December 29, 2010, attached hereto as Exhibit 44, Bates stamped K:000874-K:000897 (omitted from the Record); and
- A January 6, 2011 Illinois EPA letter to KCBX regarding the January 4, 2011 inspection at the Facility, attached hereto as Exhibit 45, Bates stamped K:000898-K:000907 (omitted from the Record).

6. Because the Record is incomplete, KCBX requests that it be supplemented with the exhibits attached hereto, in order to make available to the Board all documents relevant to this matter. For continuity in the Record, the attached exhibits have been consecutively numbered with the documents filed as the Record by Illinois EPA.

7. In addition, KCBX respectfully requests that Illinois EPA confirm whether there exists “[a]ny other information [Illinois EPA] relied upon in making its final decision,” which was not included in the Record. *See* 35 Ill. Admin. Code § 105.212.

WHEREFORE Petitioner, KCBX TERMINALS COMPANY, for the above-stated reasons, respectfully prays that the Board grant this Motion to Supplement the Record, and that the Board award KCBX TERMINALS COMPANY all other relief just and proper in the premises.

Respectfully submitted,

KCBX TERMINALS COMPANY
Petitioner,

Dated: April 28, 2011

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

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KCBX:003/Fil/PCB 10-110 and PCB 11-43 Consolidated/Motion to Supplement the Record