

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

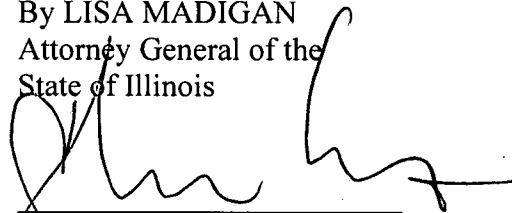
KCBX TERMINALS COMPANY	)	
	)	
Petitioner,	)	PCB No. 10-110
	)	PCB No. 11-43
	)	(Consolidated)
	)	
v.	)	(Permit Appeal-Air)
	)	
	)	
ILLINOIS ENVIRONMENTAL	)	
PROTECTION AGENCY	)	
	)	
Respondent.	)	

**NOTICE OF ELECTRONIC FILING**

PLEASE TAKE NOTICE that on May 6, 2011, the Respondent filed its Reply: Interlocutory Appeal, 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  
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State of Illinois



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Petitioner,	)	
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**RESPONDENT'S REPLY: INTERLOCUTORY APPEAL**

Now comes Respondent, ILLINOIS ENVIRONMENTAL PROTECTION AGENCY ("Illinois EPA"), by LISA MADIGAN, Attorney General of the State of Illinois, and respectfully requests that the Board consider a short reply to KCBX's Response in this Interlocutory Appeal.

**I. PURPOSE OF THIS APPEAL**

Respondent is not seeking to engage in a 'he said, she said' argument with Petitioner KCBX Terminals Company ("KCBX") on these issues. Rather the Agency is concerned that misuse of the discovery process can distort the real issues in permit appeals. Respondent believes that the Board should strike the excessive Requests to Admit in this case as a way of preventing abuse in this, and future permit appeal cases<sup>1</sup>.

**II. REPLY TO KCBX RESPONSE**

Petitioner's Demands for Early Hearing

KCBX claims that it "...agreed to two extensions of the statutory 120 day decision

<sup>1</sup> Illinois EPA is not requesting that the Board initiate a rulemaking, as suggested by KCBX. The Hearing Officer, and on appeal the Board, has authority under 35 Ill. Adm. Code 101.616(d) to limit discovery to prevent abuse and harassment. Further, Illinois EPA believes that the Board has the inherent authority to recognize amendments to the Supreme Court Rules without going through a formal rulemaking procedure.

deadline.”<sup>2</sup> However, KCBX fails to mention that, at the initial status on February 28, 2011, it advised Mr. Halloran that it would grant no deadline extensions. In response to this statement, the Hearing Officer tentatively set hearing for March 24, 2011, and scheduled a second status for March 1. Only when faced with a hearing 23 days hence did KCBX agree to extend the decision deadline by a mere 48 days<sup>3</sup>.

Excessive Discovery

Within the short time frame provided, KCBX has placed an unreasonable discovery burden on Illinois EPA. Despite having provided extensive Requests to Admit, Interrogatories, document requests, and having noticed four depositions, KCBX refused to agree to even a short delay in responding to discovery<sup>4</sup>.

Illinois EPA has agreed to a stay of the Renewed FESOP permit conditions. Whatever KCBX’s motives are in accelerating discovery and demanding an unreasonably early hearing, they have nothing to do with a possible interruption of its business.

A petitioner in a permit appeal has the statutory right to demand a decision by the Board within 180 days, and therefore the right to demand a hearing date that will accommodate this schedule. However, it does not have the right to impose unreasonable discovery obligations on the Agency, nor to use discovery for the purpose of harassment. Respondent requests that the Board reverse the Hearing Officer’s ruling on excessive Requests to Admit, strike all requests, and Agency responses thereto, in excess of 30, and take such other action as the Board deems appropriate.

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<sup>2</sup> Response, p. 2

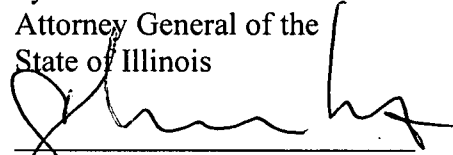
<sup>3</sup> The second extension granted was simply to extend the deadline in PCB 10-110 (which had been consolidated with this case) to August 18, 2011.

<sup>4</sup> See: KCBX Response in Opposition to request for extension, 3/22/11

Respectfully submitted,

ILLINOIS ENVIRONMENTAL  
PROTECTION AGENCY

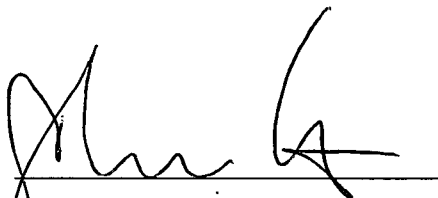
by LISA MADIGAN  
Attorney General of the  
State of Illinois

A handwritten signature in black ink, appearing to read "Christopher J. Grant", 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 6<sup>th</sup> day of May, 2011, Respondent's Reply: Interlocutory Appeal upon the persons listed below, by email and first class mail.



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*KCBX Terminals Company v. Illinois EPA, PCB 10-110/11-43 (Consolidated)*