

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
<b>(VIA ELECTRONIC MAIL)</b>	<b>(VIA FIRST CLASS MAIL)</b>

**(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 ADMIT TRANSCRIPT AS EVIDENCE AT HEARING**, a copy of which is herewith served upon you.

Respectfully submitted,

KCBX TERMINALS COMPANY,  
Petitioner,

Dated: May 10, 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 ADMIT TRANSCRIPT AS EVIDENCE AT HEARING 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 May 10, 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 May 10, 2011.

/s/ Katherine D. Hodge

Katherine D. Hodge

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.	)	

**PETITIONER'S MOTION TO ADMIT  
TRANSCRIPT AS EVIDENCE AT HEARING**

NOW COMES Petitioner, KCBX TERMINALS COMPANY ("KCBX"), a North Dakota corporation, by and through its attorneys, HODGE DWYER & DRIVER, and pursuant to 35 Ill. Admin. Code § 101.616 and Illinois Supreme Court Rule 212(b), as well as the Hearing Officer's direction with regard to the filing of pre-hearing motions, moves the Hearing Officer to admit the transcript of the evidence deposition of George Kennedy, and the exhibits thereto, as evidence at the hearing scheduled in the above-captioned consolidated matter, and in doing so, states as follows:

1. On December 29, 2010, the Illinois Environmental Protection Agency ("Illinois EPA") issued a Renewed Federally Enforceable State Operating Permit ("Renewed FESOP") to KCBX for KCBX's bulk solids materials terminal located in Chicago, Illinois.

2. On February 1, 2011, KCBX initiated this proceeding by filing with the Illinois Pollution Control Board ("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 14, 2011, Mr. George Kennedy participated in a properly noticed evidence deposition in the above-captioned consolidated matter, the transcript of which is attached hereto as Exhibit 1.

4. During his evidence deposition, Mr. Kennedy stated that he would be out of the country on the date of the hearing scheduled in the above-captioned consolidated matter. Exhibit 1 at 11.

5. Section 101.616 of the Board's procedural rules states the following, in relevant part:

For purposes of discovery, the Board may look to the Code of Civil Procedure and the Supreme Court Rules for guidance where the Board's procedural rules are silent.

35 Ill. Admin. Code § 101.616.

6. The Board's procedural rules are silent as to the use of evidence depositions, but Illinois Supreme Court Rule 212(b) states the following, in relevant part:

All or any part of other evidence depositions may be used for any purpose for which a discovery deposition may be used, and may be used by any party for any purpose if the court finds that at the time of the trial:

\* \* \*

(2) the deponent is out of the country . . .

Ill. S. Ct. Rule 212(b).

7. In contrast, Illinois Supreme Court Rule 212(a) states the following regarding the use of discovery depositions:

Discovery depositions taken under the provisions of this rule may be used only:

- (1) for the purpose of impeaching the testimony of the deponent as a witness in the same manner and to the same extent as any inconsistent statement made by a witness;
- (2) as an admission made by a party or by an officer or agent of a party in the same manner and to the same extent as any other admission made by that person;
- (3) if otherwise admissible as an exception to the hearsay rule;
- (4) for any purpose for which an affidavit may be used; or
- (5) upon reasonable notice to all parties, as evidence at trial or hearing against a party who appeared at the deposition or was given proper notice thereof, if the court finds that the deponent is neither a controlled expert witness nor a party, the deponent's evidence deposition has not been taken, and the deponent is unable to attend or testify because of death or infirmity, and if the court, based on its sound discretion, further finds such evidence at trial or hearing will do substantial justice between or among the parties.

Ill. S. Ct. Rule 212(a).

8. Further, Section 101.626 of the Board's procedural rules states the following, in relevant part:

In accordance with Section 10-40 of the IAPA, the hearing officer will admit evidence that is admissible under the rules of evidence as applied in the civil courts of Illinois, except as otherwise provided in this Part:

- a) Evidence. The hearing officer may admit evidence that is material, relevant, and would be relied upon by prudent persons in the conduct of serious affairs, unless the evidence is privileged.

35 Ill. Admin. Code § 101.626.

9. Mr. Kennedy was the Illinois EPA Permit Engineer primarily responsible for drafting KCBX's Renewed FESOP, and thus, his testimony is "material, relevant and

would be relied upon by prudent persons” in reviewing Illinois EPA’s actions as the permit authority generally and, in particular, its handling of the application, submittals and ultimately the issuance of the Renewed FESOP. And, because Mr. Kennedy will be out of the country at the time of the hearing scheduled in the above-captioned consolidated matter, he is unavailable, and it is necessary for the transcript from Mr. Kennedy’s evidence deposition, and the exhibits thereto, to be admitted as evidence at hearing pursuant to Illinois Supreme Court Rule 212(b).

WHEREFORE Petitioner, KCBX TERMINALS COMPANY, for the above-stated reasons, respectfully moves the Hearing Officer to grant this Motion to Admit Transcript as Evidence at Hearing, and award KCBX TERMINALS COMPANY all other relief just and proper in the premises.

Respectfully submitted,

KCBX TERMINALS COMPANY  
Petitioner,

Dated: May 10, 2011

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

Katherine D. Hodge  
Edward W. Dwyer  
Lauren C. Lurkins  
HODGE DWYER & DRIVER  
3150 Roland Avenue  
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KCBX:003/Fil/PCB 10-110 and PCB 11-43 Consolidated/Motion to Admit as Evidence



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**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

**KCBX TERMINALS COMPANY  
VS.  
ILLINOIS ENVIRONMENTAL PROTECTION AGENCY**

**Case No. PCB 11-43**

**EVIDENTIARY DEPOSITION OF GEORGE KENNEDY**

**APRIL 14, 2011**

**COPY**



**NATIONWIDE SCHEDULING**

OFFICES: MISSOURI Springfield Jefferson City Kansas City Columbia Rolla Cape Girardeau ■ KANSAS Overland Park ■ ILLINOIS Springfield

**HEADQUARTERS: 711 NORTH ELEVENTH STREET, ST. LOUIS, MISSOURI 63101**

**800.280.3376**

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1 BEFORE THE ILLINOIS POLLUTION CONTROL BOARD  
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 3  
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 5  
 6 KCBX TERMINALS COMPANY  
 7 vs.  
 8 ILLINOIS ENVIRONMENTAL PROTECTION AGENCY  
 9  
 10 Case No. PCB 11-43  
 11  
 12  
 13 EVIDENTIARY DEPOSITION OF GEORGE KENNEDY  
 14  
 15 TAKEN ON BEHALF OF THE PETITIONER  
 16  
 17 APRIL 14, 2011  
 18  
 19  
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 21  
 22  
 23  
 24

Page 3

1 BEFORE THE ILLINOIS POLLUTION CONTROL BOARD  
 2 KCBX TERMINALS COMPANY, )  
 3 )  
 4 Petitioner, )  
 5 )  
 6 vs. ) Case No. PCB 11-43  
 7 ) (Air Permit Appeal)  
 8 ILLINOIS ENVIRONMENTAL )  
 9 PROTECTION AGENCY, )  
 10 )  
 11 Respondent. )  
 12  
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 24

EVIDENTIARY DEPOSITION of GEORGE KENNEDY,  
 produced, sworn and examined on behalf of the  
 Petitioner on April 14, 2011, scheduled for the  
 hour of 1:30 P.M., at 3150 Roland Avenue,  
 Springfield, Illinois, before DONNA M. DODD, an  
 Illinois Certified Shorthand Reporter and Notary  
 Public.

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1 APPEARANCES:  
 2 EDWARD W. DWYER  
 3 KATHERINE D. HODGE  
 4 LAUREN C. LURKINS  
 5 Hodge, Dwyer & Driver  
 6 Attorneys at Law  
 7 3150 Roland Avenue  
 8 P.O. Box 5776  
 9 Springfield, Illinois 62705  
 10 (217) 523-4900  
 11 edwyer@hddattorneys.com  
 12 Appeared on behalf of Petitioner,  
 13  
 14 CHRISTOPHER J. GRANT  
 15 Assistant Attorney General  
 16 Environmental Bureau  
 17 69 West Washington Street, Suite 1800  
 18 Chicago, Illinois 60602  
 19 (312) 814-5388  
 20 cgrant@atg.state.il.us  
 21 Appeared on behalf of Respondent.  
 22  
 23 CHRISTOPHER R. PRESSNALL  
 24 Illinois Environmental Protection Agency  
 Assistant Counsel  
 Division of Legal Counsel  
 1021 North Grand Avenue East, P.O. Box 19276  
 Springfield, Illinois 62702  
 (217) 782-5544  
 Chris.Pressnall@epa.state.il.us  
 Appeared on behalf of Respondent.  
 COURT REPORTER:  
 Donna M. Dodd, CSR  
 Illinois CSR # 084-003912  
 Midwest Litigation Services  
 15 South Old State Capitol Plaza  
 Springfield, Illinois 62701  
 217-523-8244  
 1-800-280-3376  
 ALSO PRESENT:  
 Mr. Terry Steinert



Page 5

1 IT IS HEREBY STIPULATED AND AGREED by and  
 2 between Counsel for the Petitioner and Counsel for  
 3 the Respondent that this deposition may be taken in  
 4 shorthand by DONNA M. DODD, an Illinois Certified  
 5 Shorthand Reporter and Notary Public, and  
 6 afterwards transcribed into typewriting, and the  
 7 signature of the Witness is reserved by agreement.  
 8  
 9 o-O-o  
 10  
 11 (Deposition start time 1:38 P.M.)  
 12 (The witness was sworn in by  
 13 the Court Reporter.)  
 14 GEORGE KENNEDY,  
 15 called as a witness herein, at the instance of the  
 16 Petitioner, having been duly sworn upon his oath,  
 17 testified as follows:  
 18 DIRECT EXAMINATION  
 19 BY MR. DWYER:  
 20 **Q. Let the record reflect this is the**  
 21 **Evidence Deposition of Mr. George Kennedy taken**  
 22 **pursuant to notice of the parties, and in**  
 23 **accordance with the Rules of Pollution Control**  
 24 **Board, the Illinois Court of Civil Procedure, and**

Page 6

1 **the Rules of the Illinois Supreme Court.**  
 2 MR. GRANT: Can we can go off the record  
 3 real quick?  
 4 MR. DWYER: Sure.  
 5 (Whereupon there was an off the  
 6 record discussion.)  
 7 BY MR. DWYER:  
 8 **Q. I'm just going to again ask folks to real**  
 9 **quick identify themselves. My name is Ed Dwyer.**  
 10 **I'm an attorney for KCBX Terminals, the Petitioner**  
 11 **here.**  
 12 MS. LURKINS: Lauren Lurkins, Hodge, Dwyer  
 13 & Driver, and also an attorney for KCBX.  
 14 MS. HODGE: Kathy Hodge, Hodge, Dwyer &  
 15 Driver for the Petitioner.  
 16 MR. STEINERT: Terry Steinert with Koch  
 17 Carbon.  
 18 MR. PRESSNALL: Chris Pressnall with the  
 19 Illinois EPA, appointed Special Assistant Attorney  
 20 General.  
 21 MR. GRANT: I'm Chris Grant with the  
 22 Illinois Attorney General's Office.  
 23 BY MR. DWYER:  
 24 **Q. Again, similar to this morning, Mr.**

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1 **Kennedy, if I ask a question you don't understand,**  
 2 **please ask me to repeat it or rephrase it. As much**  
 3 **as you can, try to remember to answer audibly so**  
 4 **that the court reporter can take down your answer,**  
 5 **whether it's yes or no or more than that.**  
 6 **If you need to take a break, please**  
 7 **let me know, otherwise we'll try to get through**  
 8 **this as sufficiently as we can.**  
 9 **Very quickly, state your full name for**  
 10 **the record?**  
 11 A. George Marshall Kennedy.  
 12 **Q. Okay. And, Mr. Kennedy, have you ever**  
 13 **given a deposition before?**  
 14 A. No.  
 15 **Q. Okay.**  
 16 MR. GRANT: You mean, with the exception  
 17 of this morning?  
 18 THE DEPONENT: Oh.  
 19 BY MR. DWYER:  
 20 **Q. With the exception of this morning, Mr.**  
 21 **Kennedy, had you ever sat for a deposition like**  
 22 **this before?**  
 23 A. No.  
 24 **Q. Are you currently employed, Mr. Kennedy?**

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1 A. Part-time.  
 2 **Q. Okay. And who is your employer?**  
 3 A. Alice Campbell.  
 4 **Q. Okay. And in the course of your**  
 5 **employment for Alice Campbell, have they assigned**  
 6 **you to work somewhere other than at their office?**  
 7 A. Yes.  
 8 **Q. Okay. And where is that?**  
 9 A. With the Springfield -- I'm sorry, the  
 10 Illinois Environmental Protection Agency here in  
 11 Springfield.  
 12 **Q. And had you, prior to your part-time**  
 13 **employment there, worked at the IEPA?**  
 14 A. Yes.  
 15 **Q. Okay. And can you tell me just**  
 16 **approximately the dates of your employment with**  
 17 **IEPA prior to your part-time employment?**  
 18 A. September 2004 to December 2010. There  
 19 was also a period of about six months back in '71 I  
 20 think it was.  
 21 **Q. And during that six months were you**  
 22 **employed at Illinois EPA?**  
 23 A. Yes.  
 24 **Q. Okay. And was that a full-time position?**

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1 A. Yes.

2 **Q. And can you tell me what the nature of**

3 **your job was at that time?**

4 A. I was a Field Engineer.

5 **Q. Okay. And then if you would, do you have**

6 **a high school education?**

7 A. Yes.

8 **Q. And when did you graduate from high**

9 **school?**

10 A. 1962.

11 **Q. All right. And have you attended college?**

12 A. Yes.

13 **Q. And can you tell me where and if you**

14 **graduated?**

15 A. Yes. I attended Southeastern Illinois

16 College in Harrisburg, Illinois, graduating in

17 1964; attended Southern Illinois University -- I'm

18 sorry, I graduated in 1967; and University of

19 Illinois in Champaign/Urbana, I graduated in, I

20 think it was January of 1971.

21 **Q. And for your undergraduate degree did you**

22 **take a major?**

23 A. Yes.

24 **Q. Okay. And what was the major?**

Page 10

1 A. Engineering.

2 **Q. And was your work at University of**

3 **Illinois graduate work?**

4 A. Yes.

5 **Q. And in what field?**

6 A. Mechanical Engineers.

7 **Q. Okay. And are you a Registered**

8 **Professional Engineer?**

9 A. Yes.

10 **Q. Okay. Now, in preparing for your**

11 **deposition now and earlier today, Mr. Kennedy, did**

12 **you review any documents?**

13 A. Yes.

14 **Q. Okay. And can you tell me what? Describe**

15 **those documents for me, please.**

16 A. I looked over the permit, looked over some

17 notes, and the construction permit for the

18 conveyer.

19 **Q. Okay. And can you tell me, to the best of**

20 **your recollection, when did you review those**

21 **documents? Was it a week ago? Was it a day ago?**

22 A. Probably about a week ago.

23 **Q. Okay. And, again, I'm asking you, did you**

24 **have any conversations with Mr. Pressnall or Mr.**

Page 11

1 **Grant in preparation for the deposition?**

2 A. In preparation for the deposition, no.

3 **Q. Did you have any meetings were either Mr.**

4 **Pressnall or Mr. Grant in preparation for the**

5 **deposition?**

6 A. No.

7 **Q. Have you met with either of them prior to**

8 **the depositions today?**

9 A. No. Oh, wait a minute. Wait a minute.

10 I'm sorry, what was the question again?

11 **Q. Have you met with Mr. Grant or Mr.**

12 **Pressnall in preparation for the deposition?**

13 A. No.

14 **Q. Have you had any meetings or telephone**

15 **conferences with either Mr. Grant or Mr. Pressnall**

16 **in preparation for the deposition?**

17 A. No.

18 **Q. Okay. Have you had any discussions with**

19 **anyone else in preparation for sitting for your**

20 **depositions today?**

21 A. No.

22 **Q. And then I want to make sure I understand.**

23 **You are currently scheduled to be out of the**

24 **country on June 1st, 2011?**

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1 A. Correct.

2 **Q. Okay. Now, Mr. Kennedy, can you tell me**

3 **just briefly the nature of your duties and**

4 **responsibilities during the time you were a**

5 **full-time employee at the Illinois EPA from 2004**

6 **until the end of 2010?**

7 A. I was a Permit Engineer, which involved

8 preparation of permits for the Air Pollution -- I'm

9 sorry, for the Bureau of Air.

10 **Q. Okay. And would that include preparing**

11 **FESOP permits?**

12 A. Yes, it would.

13 **Q. And when you say preparing, can you just**

14 **tell me how you would define preparing the permit?**

15 A. You want me to start at the beginning of

16 like whenever I'm assigned them?

17 **Q. Yeah. Let's go ahead and do that to the**

18 **extent you can. I mean, go ahead.**

19 A. Okay. We would be given a file and

20 assigned this permit to work on. You would review

21 the file to see if it had -- or, you would give a

22 cursory review of the -- the file to see if there's

23 information that you still needed.

24 **Q. Okay. Let me just stop you there and try**

Page 13

1 **and be as efficient as we can. What would you**  
 2 **normally expect to be in that file when you receive**  
 3 **it?**  
 4 A. You would expect a cover letter. You  
 5 would expect the applicable forms to be filled out.  
 6 You would expect some backup showing, shall we say  
 7 some calculations, things such as that.  
 8 **Q. And what would the calculations be for,**  
 9 **for what purpose?**  
 10 A. For emissions.  
 11 **Q. Okay. Okay. Once you review this file to**  
 12 **see if that information is in there, what's the**  
 13 **next step?**  
 14 A. If you made a determination that there was  
 15 some information that you needed, you could either  
 16 call and ask for this information from the person  
 17 who had applied for the permit, or if it was, shall  
 18 we say, something that is a little bit more  
 19 critical or voluminous or something to that effect  
 20 or harder to get your hands on, you might send a  
 21 letter of request -- I'm sorry, a Notice of  
 22 Incompleteness and that letter would ask for the  
 23 information.  
 24 **Q. Okay. And --**

Page 14

1 A. And then -- I'm sorry. Then after that  
 2 step then you would basically put the file back and  
 3 either wait for the information or wait until you  
 4 get time to work on it.  
 5 **Q. Okay. And assuming it's a situation like**  
 6 **you describe, where you had to request further**  
 7 **information from the facility or the applicant and**  
 8 **you received a response, then what happens?**  
 9 A. Then you would put the information with  
 10 the file and you'd put it back until you got a  
 11 chance to work on it.  
 12 **Q. Once you have an opportunity to go back to**  
 13 **working on that permit file, what would happen**  
 14 **then?**  
 15 A. You would review the information that was  
 16 supplied at that point in time and starting -- and  
 17 going through point by point looking for, you know,  
 18 what you need to put into the permit, such things  
 19 as the various pieces of equipment that would be  
 20 needed to be put into the permit, the emissions  
 21 that would need to be put into the permit, the  
 22 possibility of -- I'm sorry, what type of regs  
 23 would need to be put into the permit.  
 24 **Q. I'm sorry, what type of regs?**

Page 15

1 A. Yeah.  
 2 **Q. What type of regulations?**  
 3 A. Yes, what type of regulations or what  
 4 regulations.  
 5 **Q. Once you'd gotten through that, I mean,**  
 6 **and let me stop you. Does that process happen**  
 7 **normally quickly?**  
 8 A. No.  
 9 **Q. Okay. Can you give me a rough idea, does**  
 10 **it take months? Is that often the case?**  
 11 A. It can, and it does happen quite often  
 12 that it takes a period of time.  
 13 **Q. All right. And ultimately what is -- what**  
 14 **is sort of the end of that process, George?**  
 15 A. The end of that process would be, which we  
 16 would put together a draft permit and send it to  
 17 the supervisor for his comments.  
 18 **Q. Okay. And then is it possible that it**  
 19 **would then be accepted as is or might you get**  
 20 **comments back requiring revision?**  
 21 A. Either is possible.  
 22 **Q. And then once you've gone through that**  
 23 **step, what happens then?**  
 24 A. It would go to word processing. Word

Page 16

1 processing would get you a hard copy, then you  
 2 would send a copy of the draft to the person -- or,  
 3 I'm sorry, to the Permittee to make comments on.  
 4 **Q. And is that the public comment period?**  
 5 A. No.  
 6 **Q. That's just strictly for the permit**  
 7 **applicant's review?**  
 8 A. It's strictly for them at that point in  
 9 time.  
 10 **Q. Okay. And do you normally get comments**  
 11 **back after that, from the permit applicant?**  
 12 A. Normally? I don't know if I'd say  
 13 normally. It's occasionally you'll get them back,  
 14 occasionally you don't.  
 15 **Q. Again, then once you move through that**  
 16 **phase of the permitting process, then what's the**  
 17 **next step?**  
 18 A. Once we get through that phase of it, then  
 19 we would send the permit out for public comment.  
 20 **Q. And then a period of time would elapse**  
 21 **while the public could comment?**  
 22 A. Uh-huh, 30 days.  
 23 **Q. And at the close of that, tell me what**  
 24 **happens then.**

Page 17

1 A. The permit would be issued.

2 **Q. Okay. Now, in the course of that process**

3 **of, you know, reviewing the permit and preparing**

4 **the final permit, is it fair to say that there is**

5 **oftentimes an exchange of information between the**

6 **agency and/or the permit applicant?**

7 A. There can be communication between.

8 **Q. Now, let's talk more specifically about**

9 **the KCBX Terminals facility, which is the facility**

10 **and the permit issued to that facility the reasons**

11 **we're here today. Can you tell me as we sit here,**

12 **what do you know about the nature of the business**

13 **at the KCBX terminal in Chicago which was issued**

14 **the FESOP permit December 29, 2010? Just tell me**

15 **what you know about the, you know, the operation of**

16 **the business.**

17 A. Basically it sounds like they store I

18 guess -- I'm not sure if it was coal or not. They

19 have some storage piles, a couple of generators,

20 and some fuel combustion units, and some conveyers.

21 **Q. Based upon what you know about the**

22 **facility, do you believe that the facility is**

23 **required to have a FESOP permit?**

24 A. Yes.

Page 18

1 **Q. Okay. Do you recall, George, when you**

2 **first were assigned to work on the FESOP permit for**

3 **this facility, for the KCBX facility?**

4 A. I do not recall when I was first assigned

5 it.

6 **Q. Okay. In the process of working on the**

7 **permit, do you, George, actually draft conditions**

8 **that go into the permit?**

9 A. I can. I do, yes.

10 **Q. Well, let's talk in particular with**

11 **respect to Exhibit K-2, which I think you should**

12 **have a copy of it in front of you. Directing your**

13 **attention to that, does that appear to be a copy of**

14 **the FESOP permit that was issued by the agency to**

15 **KCBX dated December 29, 2010?**

16 A. It appears to be.

17 **Q. Okay. And were you involved in preparing**

18 **that permit?**

19 A. Yes, I was involved.

20 **Q. And in the course of being involved did**

21 **that include drafting or revising conditions in**

22 **that permit?**

23 A. It did.

24 **Q. Okay. And in the course of doing that you**

Page 19

1 **would -- would you review certain information in**

2 **your permit file?**

3 A. Yes.

4 **Q. Okay. In particular, would you have**

5 **reviewed the permit application that KCBX**

6 **submitted?**

7 A. Yes.

8 **Q. Okay. Would you have reviewed any other**

9 **permits that the facility had at the time you were**

10 **working on the FESOP permit?**

11 A. Yes.

12 **Q. Okay. Do you recall what, if any, permits**

13 **you would have reviewed during that process?**

14 A. The one I recall was the one having to do

15 with the conveyers.

16 **Q. All right. Now, again, is it possible you**

17 **would have reviewed other permits that the facility**

18 **had?**

19 A. It's possible.

20 **Q. Okay. But as we sit here today you don't**

21 **recall any other specific permit?**

22 A. I don't recall it.

23 **Q. Who else would have worked with you on the**

24 **FESOP permit for the KCBX facility?**

Page 20

1 A. I would have been working with my

2 supervisor.

3 **Q. And is that Bob Bernoteit?**

4 A. Yes, it is.

5 **Q. Okay. And I'm going to ask you, who -- in**

6 **your opinion, who had the primary responsibility**

7 **for work on the KCBX FESOP permit?**

8 A. I would say he probably had more, shall we

9 say, decision power than I had.

10 **Q. Okay. Let me ask it this way. If I were**

11 **to ask you who spent more time drafting this**

12 **permit, yourself or Mr. Bernoteit, what would you**

13 **say?**

14 A. I probably spent more time with it.

15 **Q. But just so I understand, your -- your**

16 **understanding would be that Mr. Bernoteit would**

17 **have more final decision-making authority over the**

18 **permit? Tell me if that's correct.**

19 A. Yes.

20 **Q. Did anybody besides yourself and Mr.**

21 **Bernoteit work on drafting this permit?**

22 A. I don't recall anybody else. I can't

23 think of anybody else.

24 **Q. Okay. And I know we talked about this**

Page 21

1 earlier this morning, but I need to ask you again.  
 2 How -- can you explain to me how the -- you would  
 3 keep track of any and all other permits that the  
 4 facility might have?  
 5 A. That the facility might have?  
 6 Q. Yes.  
 7 A. The EPA would keep track of them through  
 8 the, what's called ICEMAN, which is a computer data  
 9 system.  
 10 Q. And let me ask you, George, just stop you  
 11 there. Do you know, is ICEMAN, is that an acronym?  
 12 A. That I don't know.  
 13 Q. Okay. So you don't know if that stands  
 14 for a number of words?  
 15 A. It probably does, but I don't know what  
 16 they are.  
 17 Q. Can you just describe for me what the  
 18 ICEMAN program is or, you know, whatever it is?  
 19 A. It's a computer database, which would  
 20 basically list the facilities that we have permits  
 21 out on or that have applied for them and then  
 22 would, in many cases, have copies of the permits.  
 23 And I think there's other information out there  
 24 too, but I'm, you know, how much other information,

Page 22

1 I don't recall.  
 2 Q. And how would you -- how would you access  
 3 that database, George?  
 4 A. Basically you would go into it with  
 5 through what's called the ID number, and then you  
 6 would pick up from the ID number, from that you can  
 7 go and find the permit number, and from that that  
 8 will give you the permit number, and then you can  
 9 find the permits there.  
 10 Q. Okay. And, again, when you find this  
 11 information in the program, is the actual -- is  
 12 there a copy of the actual permit that you can view  
 13 electronically?  
 14 A. Most times I would say yes.  
 15 Q. But not always?  
 16 A. Correct.  
 17 Q. Okay. In this case, talking about the  
 18 KCBX FESOP permit, I think you indicated earlier  
 19 that you had reviewed at least a construction  
 20 permit for the conveyers at the facility?  
 21 A. Uh-huh.  
 22 Q. And would you have accessed that through  
 23 the ICE database or ICE system?  
 24 A. You can.

Page 23

1 Q. Okay. But did you?  
 2 A. I don't remember whether that was my  
 3 access point or not. I just remember I had, you  
 4 know, I got a hold of it.  
 5 Q. And it is the construction permit for the  
 6 conveyers previously issued to the facility?  
 7 A. Yes.  
 8 Q. Now, Mr. Kennedy, if you would take a look  
 9 at Exhibit K-4 that I think is in front of you.  
 10 A. Yes.  
 11 Q. And do you know, can you tell me what that  
 12 is?  
 13 A. It appears to be a renewal application for  
 14 the FESOP.  
 15 Q. Okay. And have you seen that document  
 16 before today?  
 17 A. Sure I have.  
 18 Q. And do you -- can you tell me whether you  
 19 had seen that document prior to December 2010?  
 20 A. Yes.  
 21 Q. Okay. And now more specifically, did you  
 22 review this document in preparing the FESOP permit?  
 23 A. Yes, it would have been reviewed.  
 24 Q. And is there any information in here,

Page 24

1 calculations or descriptions of equipment, that you  
 2 would have relied upon in preparing the FESOP  
 3 permit?  
 4 A. The document would have been reviewed in  
 5 preparation for the FESOP.  
 6 Q. Okay. But is there any information in it  
 7 that you would have used to draft the conditions?  
 8 A. I can't say that. It's basically we would  
 9 have reviewed this document and utilized what we  
 10 needed to put into the permit.  
 11 Q. Okay. But, again, you might not have used  
 12 everything in it?  
 13 A. Correct.  
 14 Q. But you may have used portions of it?  
 15 A. Correct.  
 16 Q. Okay. And then I want to direct your  
 17 attention to Exhibit K-5, which you should have a  
 18 copy in front of you. And, you know, can you tell  
 19 me what you understand that document to be?  
 20 A. It looks like it's an Application for  
 21 Construction for some conveyers.  
 22 Q. Okay. And, again, do you recall seeing  
 23 that document prior to today?  
 24 A. No, I can't recall it.

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1 **Q. So is it possible that you would have seen**  
2 **this, that you've seen this document prior to**  
3 **today?**  
4 A. It's possible.  
5 **Q. Okay. And is it possible that you had**  
6 **seen this document prior to December 2010?**  
7 A. It's possible.  
8 **Q. Okay. And is it possible that you may**  
9 **have reviewed it in preparing the FESOP permit?**  
10 A. Yes.  
11 **Q. And is it possible that there's**  
12 **information contained in here that you may have**  
13 **relied upon in drafting conditions in the FESOP**  
14 **permit?**  
15 MR. GRANT: I'm going to object at this  
16 point on the basis that anything is possible, and,  
17 you know, he's answered your question that he  
18 doesn't remember reviewing it. That's it.  
19 MR. DWYER: Well, I think I'm entitled to  
20 ask him. So --  
21 MR. GRANT: But you're not entitled to  
22 testify.  
23 MR. DWYER: Pardon?  
24 MR. GRANT: You're not entitled to testify

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1 by asking him questions in saying is it possible.  
2 MR. DWYER: I can ask him if something is  
3 possible and you can object.  
4 MR. GRANT: You've asked him and I've  
5 objected.  
6 MR. DWYER: Okay. Let's go off the  
7 record.  
8 (Whereupon there was an off the  
9 record discussion.)  
10 BY MR. DWYER:  
11 **Q. We can go back on the record now. I think**  
12 **you should also have, Mr. Kennedy, in front of you**  
13 **a Deposition Exhibit K-6. Can you tell me what you**  
14 **understand that document to be?**  
15 A. I would say that this is a draft that KCBX  
16 had prepared and sent to Mr. Bakowski.  
17 **Q. Okay. Do you recall having seen that**  
18 **document prior to today?**  
19 A. I would say I have seen it.  
20 **Q. Okay. And do you recall whether you had**  
21 **seen that document prior to December of 2010?**  
22 A. Yes.  
23 **Q. Okay.**  
24 A. I've seen it.

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1 **Q. And did you review this document in**  
2 **preparing the FESOP permit issued in December of**  
3 **2010?**  
4 A. Yes, it was reviewed.  
5 **Q. Okay. Did you rely upon any of the**  
6 **information in this document in preparing the**  
7 **conditions in the permit?**  
8 A. It was considered.  
9 **Q. Okay. Tell me what you mean when you say**  
10 **considered.**  
11 A. It means we looked through it. If we  
12 found stuff that we thought was appropriate, we  
13 would work with it.  
14 **Q. And what do you mean by work with it?**  
15 A. Possibly putting it into the permit or use  
16 the information there to derive something else that  
17 would go into the permit.  
18 **Q. Okay. If we look at the next document,**  
19 **it's marked Deposition Exhibit Number K-7. If you**  
20 **would please look at that, George, and tell me if**  
21 **you've ever seen that before today?**  
22 A. Yes, I'm sure I have.  
23 **Q. And can you tell me what you understand**  
24 **that document to be?**

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1 A. This would be the transmittal to KCBX of  
2 the draft.  
3 **Q. And were you involved in preparing that**  
4 **draft document?**  
5 A. Yes.  
6 **Q. The next document that I'd like you to**  
7 **look at is Exhibit K-8, and can you tell me --**  
8 MR. GRANT: Excuse me, I don't think I  
9 have it.  
10 BY MR. DWYER:  
11 **Q. Can you tell me what that document is, Mr.**  
12 **Kennedy, if you know?**  
13 A. It appears to be -- it looks like a plan,  
14 fugitive plan.  
15 **Q. Okay. And can you tell me whether you've**  
16 **seen that document prior to today?**  
17 A. I quite possibly have.  
18 **Q. But you're not sure?**  
19 A. Right.  
20 **Q. Okay. Is that -- does the cover letter,**  
21 **the first page of that document, is it addressed to**  
22 **you?**  
23 A. Yes, it is.  
24 **Q. Okay. And then if we'd look at the next**

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1 document, it's Exhibit K-9, and it's a letter dated  
2 May 4th, 2010 with an attachment to it. Can you  
3 tell me if you've seen that document prior to  
4 today?  
5 A. It's quite possible.  
6 Q. Okay. And would you agree that that cover  
7 letter is addressed to you?  
8 A. Yes.  
9 Q. Okay. And if you would, please, look at  
10 the last page of that exhibit. Can you tell me  
11 what you understand the photocopied document on  
12 there to be?  
13 A. It looks like a certified receipt.  
14 Q. And does the certified receipt indicate it  
15 was received by Illinois EPA?  
16 A. It would so indicate.  
17 Q. Okay. The next document, Mr. Kennedy, is  
18 Exhibit K-10, and if you would look at that and  
19 tell me if you've seen that document prior to  
20 today, if you recall?  
21 A. Yeah, I've seen it.  
22 Q. And can you tell me whether or not you  
23 reviewed that document or have seen that document  
24 prior to December 2010?

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1 A. Yes, I have.  
2 Q. And can you tell me, did you review this  
3 document as part of your preparation of the FESOP  
4 permit?  
5 A. Yes.  
6 Q. Okay. And when I ask you that, let me be  
7 clear. Did you rely upon, if you can recall, any  
8 of the information in Exhibit K-10 in preparing the  
9 conditions in the permit?  
10 A. It was considered. It was reviewed and  
11 considered.  
12 Q. Okay. And just so I understand, that  
13 means that there -- tell me what -- why don't you  
14 tell me what you understand that means, it was  
15 considered?  
16 A. It means we read through the document,  
17 took a look at what was in the document, and would  
18 consider whether or not to take this information  
19 and go further with it as far as possibly putting  
20 it into the permit.  
21 Q. So is it possible that there was  
22 information in this permit that may have been  
23 incorporated into -- I'm sorry, in this exhibit,  
24 that may have been incorporated into the conditions

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1 in the FESOP permit?  
2 A. It's possible.  
3 Q. Okay. The next document I'd ask you to  
4 look at, I think you have it in front of you,  
5 George, is Exhibit K-11.  
6 A. Uh-huh.  
7 Q. Can you tell me what you understand that  
8 document to be?  
9 A. This would be the document in which it was  
10 put together to go out for public comment on a  
11 draft FESOP.  
12 Q. Okay. And is that a document that you  
13 prepared?  
14 A. The first page of this would be no.  
15 Q. All right. And how about the pages after  
16 that? How about the second page of that exhibit?  
17 A. The second page, yeah, I would have been  
18 involved in that one.  
19 Q. And then after that is the remaining  
20 portion a draft permit?  
21 A. Yes.  
22 Q. And were you involved in preparing that  
23 document?  
24 A. Yes.

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1 Q. Do you recall, George, as you sit here,  
2 was anyone other than you involved in preparing  
3 that draft permit?  
4 A. The draft permit?  
5 Q. Yes.  
6 A. My supervisor of course would have been  
7 involved, word processing people would be involved  
8 in a certain sense.  
9 Q. But, I mean, in terms of the substantive  
10 language in it?  
11 A. Oh, it'd basically be myself and Bob.  
12 Q. All right. And then the next document,  
13 Mr. Kennedy, is marked Exhibit, Deposition Exhibit  
14 K-12, and that's a multiple page exhibit. Can you  
15 tell me -- it's dated July 16, 2010. Do you recall  
16 having seen that document prior to today?  
17 A. Yes.  
18 Q. And could you tell me, had you seen that  
19 document prior to December 2010?  
20 A. Yes.  
21 Q. And did you review that document in the  
22 process of preparing a FESOP permit?  
23 A. Yes.  
24 Q. And, again, is it a document that, using

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1 **the term I think you've used, was considered in**  
2 **preparing the FESOP permit?**  
3 A. Yes, it was considered.  
4 **Q. And then I think the next exhibit is**  
5 **Exhibit K-13, and do you recognize that document,**  
6 **George?**  
7 A. It looks familiar, yes.  
8 **Q. And can you tell me, you know, what you**  
9 **understand that document to be again? It's a**  
10 **multiple page exhibit.**  
11 A. It appears to be some calculations that  
12 were furnished by Terry Steinert. I can't  
13 pronounce it.  
14 **Q. Steinert.**  
15 A. Steinert. Thank you.  
16 MR. GRANT: The guy right over there. I  
17 was looking to see if you'd look up when he  
18 mispronounced your name.  
19 MR. STEINERT: Sorry.  
20 BY MR. DWYER:  
21 **Q. George, is that a -- that exhibit composed**  
22 **of an e-mail, one page e-mail, and then a sequence**  
23 **of pages with a spreadsheet and calculations on it?**  
24 A. Yes.

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1 **Q. Okay. Do you recall seeing that document**  
2 **prior to today?**  
3 A. Yes.  
4 **Q. Okay. And do you recall seeing that**  
5 **document prior to December 2010?**  
6 A. Yes.  
7 **Q. And did you review that document in the**  
8 **course of preparing the FESOP permit?**  
9 A. It was reviewed, yes.  
10 **Q. Okay. And let me ask you, using your term**  
11 **considered, was the information in Exhibit K-13**  
12 **considered by you in preparing the conditions in**  
13 **the permit?**  
14 A. Yes, it was considered.  
15 **Q. And the next document, George, I'd ask you**  
16 **to look at is Exhibit K-14.**  
17 A. Uh-huh.  
18 **Q. And does that appear to be a letter dated**  
19 **October 13, 2010?**  
20 A. Yes.  
21 **Q. Is that directed to Mr. Ed Bakowski?**  
22 A. Yes.  
23 **Q. And is it signed by a Mr. Simmons from**  
24 **KCBX Terminals?**

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1 A. Yes.  
2 **Q. And have you seen that document prior to**  
3 **today?**  
4 A. I believe so. I'm not -- I believe so.  
5 **Q. Okay. And, again, did you review that**  
6 **document in the course of preparing the FESOP**  
7 **permit?**  
8 A. Yes.  
9 **Q. And, again, using the term I think you**  
10 **used, considered, was the information in it**  
11 **considered in preparing the conditions in the FESOP**  
12 **permit?**  
13 A. Yes.  
14 **Q. George, now I'm going to ask you to look**  
15 **at two documents together I guess or side by side.**  
16 **The first one is Exhibit K-2, and then the second**  
17 **one is an exhibit we earlier talked about, Exhibit**  
18 **k-10.**  
19 **Now, I'm going to direct your**  
20 **attention, with respect to Exhibit K-2, if you**  
21 **would look at, it's not the last page of the**  
22 **exhibit, but it is the last page -- it is the**  
23 **Attachment A to the permit, and it's titled**  
24 **Emissions Summary. Do you have that in front of**

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1 **you, K-2?**  
2 A. Yes.  
3 **Q. And then Exhibit K-10, if you would look,**  
4 **it's back toward the end of the draft permit that**  
5 **is attached to Exhibit K-10, and I would, again,**  
6 **ask you to see if you could find the Attachment A,**  
7 **Emissions Summary.**  
8 A. Yes.  
9 **Q. Okay. And --**  
10 MR. GRANT: Give me one second.  
11 BY MR. DWYER:  
12 **Q. Now, George, let me ask you, I would like**  
13 **you to look at the Attachment A that is -- that is**  
14 **part of Exhibit K-2, and then also look at the**  
15 **Attachment A that is part of Exhibit K-10, and,**  
16 **first, would you tell me, what do you understand**  
17 **Attachment A, Emissions Summary, attached to**  
18 **Exhibit K-2 to be?**  
19 A. It would be a summary of the emission  
20 limits for the facility.  
21 **Q. Okay. And can you tell me what the --**  
22 **what are the -- what are the pollutants for which**  
23 **emission limitations were established in Attachment**  
24 **A to K-2?**



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1 A. Carbon monoxide, nitrous oxide,  
 2 particulate matters, and then particulate matters  
 3 less than ten, PM 10.  
 4 **Q. That's fine.**  
 5 A. Okay. SO<sub>2</sub>, and VOM.  
 6 **Q. And those -- each of those pollutants has**  
 7 **a numerical limit in the permit, is that correct?**  
 8 A. Yes.  
 9 **Q. Okay. And can you just tell me, read what**  
 10 **are the -- the tons per year limits for each of**  
 11 **those pollutants, and this is in Attachment A to**  
 12 **Exhibit K-2, which is the FESOP permit.**  
 13 A. Okay. The CO limit is 92 tons per year;  
 14 the NO<sub>x</sub> is 92 tons per year; the PM is 88 tons per  
 15 year; PM<sub>10</sub> is 88 tons per year, the SO<sub>2</sub> is 21.9  
 16 tons per year; and the VOM is 40.1 tons per year.  
 17 **Q. And then if we'd switch to the other**  
 18 **exhibit, George, which is K-10 and the Attachment A**  
 19 **Emissions Summary that's part of that exhibit, is**  
 20 **that document roughly identical to the Attachment A**  
 21 **in Exhibit K-2?**  
 22 A. It's identical with the exception of PM.  
 23 **Q. Okay. And tell me, what is the**  
 24 **difference? Is there a numerical -- is there a**

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1 **different limit for PM emissions in the draft**  
 2 **Attachment A?**  
 3 A. Okay. In Exhibit K-10 Attachment A has  
 4 250 tons per year.  
 5 **Q. Okay. Now, would you agree, with the**  
 6 **exception of the particulate matter emission limit,**  
 7 **the limits in the current FESOP permit and the**  
 8 **limits in this draft permit that's part of Exhibit**  
 9 **K-10 are identical?**  
 10 A. Yes.  
 11 **Q. Okay. And do you think that's a**  
 12 **coincidence, George?**  
 13 A. No.  
 14 **Q. Okay. With respect to those limits that**  
 15 **are on Attachment A, which is part of the FESOP**  
 16 **permit, George, can you tell me as we sit here how**  
 17 **those limits were determined or developed?**  
 18 A. I can't recall.  
 19 **Q. Okay. Do you recall as we sit here what**  
 20 **documents that you reviewed in developing those**  
 21 **emission limits for those pollutants on Attachment**  
 22 **A?**  
 23 A. The only one I can remember much about is  
 24 the PM.

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1 **Q. Okay. And with respect to the PM, can you**  
 2 **tell me what you would have reviewed or relied upon**  
 3 **to develop that limit?**  
 4 A. There was some calculations that were  
 5 furnished by Terry earlier in which we -- or, I had  
 6 done some calculations for the PM.  
 7 **Q. Okay. And I think we talked about this**  
 8 **earlier today, but let me ask you now. Do you, as**  
 9 **we sit here, know where those calculations that you**  
 10 **did on the particulate matter, do you know where**  
 11 **those are right now?**  
 12 A. Outside of saying I know there's some in  
 13 the office, I'm not sure if they're in the record  
 14 if that's what you're getting at.  
 15 **Q. Well, I was going to ask that next, but as**  
 16 **we sit here, do you know whether or not they may be**  
 17 **in a file at the Illinois EPA?**  
 18 A. They should be in the file for this  
 19 project.  
 20 **Q. Okay. Other than those calculations can**  
 21 **you recall any other -- did you do such**  
 22 **calculations for any of the other pollutants that**  
 23 **are listed in Attachment A --**  
 24 A. No.

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1 **Q. -- to the FESOP permit?**  
 2 A. I don't recall them.  
 3 **Q. Okay. With respect to those emission**  
 4 **limits, and staying with Exhibit K-2, George, with**  
 5 **respect to the emission limits that are listed in**  
 6 **Attachment A, did you -- did you make the final**  
 7 **determination as to whether those limits would be**  
 8 **in the permit on your own?**  
 9 A. No, not on my own.  
 10 **Q. Okay. Who would have made that final**  
 11 **determination as to setting those limits in the**  
 12 **permit?**  
 13 A. I would have to say Bob would have the  
 14 final.  
 15 **Q. And do you recall as you sit here today**  
 16 **having any conversations with Mr. Bernoteit? You**  
 17 **mean Mr. Bernoteit when you say Bob, correct?**  
 18 A. I'm sorry, yes.  
 19 **Q. Do you recall having any discussions with**  
 20 **him prior to issuing the permit regarding that**  
 21 **issue?**  
 22 A. I know there was discussions. I can't put  
 23 my -- I can't remember exactly, you know, all of  
 24 this, you know, where all of these fit in.

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1 **Q. All right. Now, I'll ask you, if you**  
2 **would now, George, to go back to Exhibit K-13, and**  
3 **I think I want to go over old ground. But I**  
4 **thought earlier you testified that you did review**  
5 **the e-mail and the attached spreadsheet in**  
6 **preparing the FESOP permit?**  
7 A. Correct.  
8 **Q. And I think what you said is you**  
9 **considered the information?**  
10 A. Right.  
11 **Q. Now, if you'd look at this, because the**  
12 **question I have for you is, do you agree that the**  
13 **calculations that are contained in Exhibit K-13,**  
14 **would you agree that this information provides you**  
15 **emission calculations for the potential to emit**  
16 **various pollutants from the internal combustion**  
17 **engines and miscellaneous fuel combustion equipment**  
18 **at the facility, and I'd ask you to take a look at**  
19 **what is there before you answer.**  
20 A. They represent to me the potential to  
21 emit.  
22 **Q. Okay. I'm sorry?**  
23 A. They are presented as being representative  
24 of the potential to emit.

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1 **Q. Okay. And tell me -- you need to explain**  
2 **to me, what do you mean when you say they are**  
3 **represented to be?**  
4 A. We may or may not agree with them.  
5 **Q. Okay. Did you review these calculations?**  
6 A. Yes.  
7 **Q. Okay. Did you agree with them when you**  
8 **reviewed them?**  
9 A. No.  
10 **Q. Okay. And can you tell me which ones you**  
11 **didn't agree with?**  
12 A. Particularly the ones of the PM.  
13 **Q. And are these -- and when we talk about**  
14 **that, can you tell me which page you're referring**  
15 **to, George? There are a number of pages. I just**  
16 **want to make sure we're talking about the same**  
17 **information.**  
18 A. These were all done with controlled  
19 emissions. They should have been done with  
20 uncontrolled emissions.  
21 **Q. Okay. Let me ask you to direct your**  
22 **attention to the second page of the exhibit. I**  
23 **just want to make sure. If we look at that,**  
24 **there's a -- I'll refer to it as there's a**

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1 **spreadsheet on the left side of that page and then**  
2 **there's a spreadsheet or a table to the right, and**  
3 **I'm going to direct your attention to the table on**  
4 **the right, which has a heading, Potential to Emit.**  
5 **Do you see that?**  
6 A. Yes.  
7 **Q. And are there -- are there calculations**  
8 **for PM emissions in that table?**  
9 A. There's a spreadsheet here.  
10 **Q. Okay. But would you agree that there are**  
11 **summaries of calculations of potential to emit?**  
12 A. It says it's potential to emit.  
13 **Q. Okay. Just so I understand, isn't there a**  
14 **column there that contains calculations for the**  
15 **potential to emit PM in tons per year?**  
16 A. There's a column for PM10.  
17 **Q. Okay. And so now I want to get back to**  
18 **your statement that these calculations weren't --**  
19 **weren't acceptable or proper. Tell me what the**  
20 **problem was with the emissions calculation**  
21 **information in this exhibit.**  
22 A. Basically I would say it had to do with  
23 the factors that were used in here, the K factor.  
24 **Q. Okay. And it looks like you've turned the**

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1 **page to the third page of the exhibit.**  
2 A. Right.  
3 **Q. But let me -- and we'll go there.**  
4 A. Okay.  
5 **Q. But with respect to the chart on Page 2 on**  
6 **the right side, was there a problem with this**  
7 **information, you felt that it was not**  
8 **representative or reliable?**  
9 A. I don't remember if that -- on this page,  
10 I don't remember.  
11 **Q. Okay. So then let's go to Page 3. I**  
12 **think you were indicating that the problem you had**  
13 **with the calculation on this page had to do with?**  
14 A. I'm sorry. The problem I had on this page  
15 was the emission factors that were utilized for  
16 those for control -- with control usage.  
17 **Q. And so it should have been done using**  
18 **uncontrolled emissions?**  
19 A. That's -- yes.  
20 **Q. Okay. And is that required for doing**  
21 **these types of emissions calculations?**  
22 A. At the point in time that I was working on  
23 these, they would have been.  
24 **Q. Okay. And has that changed?**

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1 A. I don't believe so.  
2 **Q. Okay. I just want to understand. You**  
3 **said at the time that you were reviewing these, in**  
4 **the process of preparing the permit, you believed**  
5 **that the calculations were required to be done with**  
6 **uncontrolled emissions?**  
7 A. Uh-huh.  
8 **Q. Okay. And is that a regulatory**  
9 **requirement?**  
10 A. It is whenever you're -- I'm sorry, it's  
11 within the state regulations having to do with  
12 some -- the applicability of certain regulations  
13 with fugitives.  
14 **Q. Okay. And just so I understand, when**  
15 **you're determining applicability for purposes of**  
16 **fugitive emissions, the calculations need to be**  
17 **done with uncontrolled emissions?**  
18 A. Yes.  
19 **Q. And from -- it's your understanding that's**  
20 **a regulatory requirement?**  
21 A. Yes.  
22 **Q. Okay. And then, you know, that was on**  
23 **Page 3 regarding the PM calculations. Is there**  
24 **anything else in here besides that issue on the PM**

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1 **calculations that you determined was improper and**  
2 **deficient in how the calculations were prepared?**  
3 A. Are you referring to, like, all three  
4 pages or all of these pages or --  
5 **Q. Well, it appears to me that Page 3, 4, 5,**  
6 **and 6 deal with the PM calculations. Is that a**  
7 **fair statement?**  
8 A. Right. Those should have been done I  
9 think with uncontrolled, yes, uncontrolled.  
10 **Q. Okay. I want to direct your attention**  
11 **back to Page 2 though. I just want to confirm**  
12 **that, as we sit here, you can't -- I just want to**  
13 **understand, did you find some deficiency or problem**  
14 **with the calculations that were included in the**  
15 **potential to emit tables on the right side?**  
16 A. I can't remember those.  
17 **Q. Well, as we sit here, George, do you**  
18 **recall offhand which regulation would require the**  
19 **use of the uncontrolled emissions for the**  
20 **calculation?**  
21 A. Not offhand.  
22 **Q. Okay.**  
23 A. You'll get to it.  
24 MR. DWYER: I'm going to -- I need about

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1 three minutes.  
2 (Whereupon there was a recess  
3 taken.)  
4 BY MR. DWYER:  
5 **Q. George, let's clear up one thing. Earlier**  
6 **in your deposition I had asked you a couple of**  
7 **questions about whether or not you had any**  
8 **discussions with Mr. Grant or Mr. Pressnall, your**  
9 **attorneys here, in preparation for the deposition,**  
10 **and I think you had indicated, correct me if I'm**  
11 **wrong, I thought you said no, but let me just ask**  
12 **you again just to clarify.**  
13 **Did you have any conversations or**  
14 **meetings with Mr. Grant or Mr. Pressnall in**  
15 **preparation for the depositions here today?**  
16 A. We had meetings and talked a little bit  
17 only in the sense of, like, tell the truth, don't  
18 get nervous.  
19 **Q. Just sort about the format of the**  
20 **deposition?**  
21 A. Correct.  
22 **Q. Okay. But not necessarily substantive**  
23 **issues about the matters at issue in the permit?**  
24 A. Correct.

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1 **Q. That's fine.**  
2 **Okay. Let me draw your attention back**  
3 **to Exhibit K-2 again, which is the FESOP permit,**  
4 **and, in particular, George, if you would look at**  
5 **Page 11 and it's Condition 10b.**  
6 A. 10b.  
7 MR. GRANT: On Page 11, the b is.  
8 BY MR. DWYER:  
9 **Q. I mean, let me ask you just a couple of**  
10 **questions, George. Can you explain to me what you**  
11 **understand this condition to cover?**  
12 A. Appears to be the emission limits  
13 associated with a couple of diesel powered  
14 generators, some small mobile engines, portable  
15 heaters.  
16 **Q. And then does it establish limits for some**  
17 **of the pollutants we talked about earlier, carbon**  
18 **monoxide, nitrogen oxide, sulfur dioxide, and**  
19 **volatile organic material?**  
20 A. Yes.  
21 **Q. And there is a chart in there and it looks**  
22 **like there are emission limits that are calculated**  
23 **in tons per month, and then also in tons per year,**  
24 **is that correct?**

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1 A. Yes.

2 **Q. Okay. Can you tell me, again, how -- how**

3 **were those limits developed? What information did**

4 **you rely upon or use in developing those limits in**

5 **Condition 10b?**

6 A. I can't remember.

7 **Q. Okay. Would it have been information that**

8 **was supplied to you by KCBX?**

9 A. I would say it mostly was.

10 **Q. And do you recall whether you might**

11 **have -- I mean, did you do any of your own internal**

12 **calculations to develop those limits?**

13 A. I don't remember any of these ones --

14 **Q. Okay.**

15 A. -- calculating. I'm sorry, I don't

16 remember calculating any of these limits.

17 **Q. Do you know what the source would have**

18 **been for them?**

19 A. I can't remember.

20 **Q. Okay. George, we're going to show you a**

21 **copy of another exhibit. It's marked Exhibit K-16,**

22 **and just -- I'd like you to look at that, and once**

23 **you've looked at it briefly, I just have two**

24 **questions about it.**

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1 A. Okay.

2 **Q. Can you tell me what, you know, what that**

3 **document appears to be to you?**

4 A. I would say it's definition of regulatory

5 pollutants for particulate matter for purposes of

6 Title V.

7 **Q. Okay. And is there an author or a person**

8 **that appears to have at least sent it?**

9 A. Yes.

10 **Q. And who is that?**

11 A. Lydia Wegman.

12 **Q. And do you -- do you recognize that name**

13 **at all, George?**

14 A. No.

15 **Q. Okay. And it's a multiple page document.**

16 **Can you tell me, having looked through it, do you**

17 **recall having seen this document before?**

18 A. No.

19 **Q. Okay.**

20 A. I don't recall it.

21 **Q. Okay. Then now I'd like to go --**

22 MR. GRANT: Can we break for a second?

23 MR. DWYER: Oh, absolutely. Sure.

24

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1 (Whereupon there was a recess

2 taken.)

3 BY MR. DWYER:

4 **Q. George, let's go back to Exhibit K-16 that**

5 **I just showed you. Just to clarify, have you**

6 **seen -- had you seen that document prior to today?**

7 A. Prior to today, no.

8 **Q. Okay.**

9 A. I do not recall seeing it prior to today.

10 **Q. Okay. That's fine. What I'm going to do**

11 **now, George, is talk about the fugitive emissions**

12 **conditions in the FESOP permit, and, in particular,**

13 **if you'd draw your attention to Exhibit K-2 again.**

14 **And, in particular, let me ask you if you would**

15 **review these conditions and we can do it one by one**

16 **again, and what I'd like to ask you about is**

17 **whether or not it's your understanding that these**

18 **conditions concern fugitive emissions.**

19 A. Okay.

20 **Q. So if we look at Condition 1a in the FESOP**

21 **permit, which is Exhibit K-2, can you tell me**

22 **whether or not you understand that condition to**

23 **relate to fugitive emissions?**

24 A. No.

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1 **Q. Okay. You don't believe it does?**

2 A. I don't know.

3 **Q. You don't know.**

4 **Okay. What about Condition 2c?**

5 A. It relates to fugitive.

6 **Q. Okay. And then the same question, George,**

7 **for Condition 2d?**

8 A. It does.

9 **Q. And then Condition 2i?**

10 MR. GRANT: Excuse me, just one second.

11 (Whereupon there was an off the

12 record discussion.)

13 **Q. Okay. So the question pending, George,**

14 **is, I'm asking you whether you understand Condition**

15 **2i to govern fugitive emissions in the permit?**

16 A. Yes.

17 **Q. All right.**

18 A. It does.

19 **Q. And then the same question with respect to**

20 **Condition 2m?**

21 A. Yes, it does.

22 **Q. And then the same question with respect to**

23 **Condition 2n, as in Nick?**

24 A. It does.

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1 **Q. And, again, the same question with respect**  
2 **to Condition 2o?**  
3 A. It does.  
4 **Q. Okay. And then if we go to Condition 7b,**  
5 **the same question, does that condition in the**  
6 **permit relate to fugitive emissions?**  
7 A. Yes.  
8 **Q. Okay. And then the same question for**  
9 **Condition 8c?**  
10 A. Yes.  
11 **Q. And the same question, George, for**  
12 **Condition 8d, as in David?**  
13 A. Yes.  
14 **Q. And, again, the same question for**  
15 **Condition 8e?**  
16 A. Yes, it is.  
17 **Q. All right. And then, finally, the same**  
18 **question, whether or not Condition 13b ii? I'm**  
19 **sorry, I stand corrected. The question is whether**  
20 **or not Condition 13b i pertains to fugitive**  
21 **emissions for purposes of permit?**  
22 A. Yes.  
23 **Q. Okay. Now, let's talk a little bit about**  
24 **the regulatory provisions regarding fugitives**

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1 **again. I'd ask you now, George, to take a look at**  
2 **Exhibit K-17.**  
3 A. Okay.  
4 **Q. And are you familiar with that regulation**  
5 **on K-17? It's -- I submit to you that it's a copy**  
6 **of 35 Illinois Administrative Code Section**  
7 **211.2490. Does that sound correct?**  
8 A. Yes.  
9 **Q. And would you agree that that regulation**  
10 **contains the definition of fugitive particulate**  
11 **matter?**  
12 A. It does.  
13 **Q. And do you believe that that regulation**  
14 **would apply to the emission units, some of the**  
15 **emission units at the KCBX facility?**  
16 A. Yes.  
17 **Q. Okay. And then I'd ask you also if you'd**  
18 **look at Exhibit K-18.**  
19 A. Yes.  
20 **Q. And I'd represent to you that Exhibit**  
21 **K-18, again, is a multiple page exhibit that**  
22 **contains copies of other Illinois Pollution Control**  
23 **Board Regulations, specifically Regulations**  
24 **212.302, 212.304, 212.305, 212.306, 212.307,**

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1 **212.308, and 212.316. And have you had a chance to**  
2 **look at those, George?**  
3 A. No. I just made sure they were there.  
4 **Q. Okay. Well, we can go through, and,**  
5 **again, I'm going to ask you, with respect to those**  
6 **regulations would you agree that, you know,**  
7 **pursuant to -- do you believe that according to**  
8 **Section 212.302 of the Board's regulations that**  
9 **this sequence of regulations that I read to you and**  
10 **that are comprised in Exhibit K-18, do you believe**  
11 **those apply to the KCBX facility?**  
12 A. Yes.  
13 **Q. Okay. And then more specifically with**  
14 **respect to Regulation Section 212.304, do you**  
15 **understand that to cover storage piles?**  
16 A. Yes.  
17 **Q. And based upon your knowledge of the KCBX**  
18 **facility, do you consider that the particulate**  
19 **emissions associated with the storage piles at the**  
20 **KCBX facility are fugitive?**  
21 A. Yes.  
22 **Q. Okay. And then similarly, looking at**  
23 **Section 212.305 of the regulations in Exhibit K-18,**  
24 **does that regulation cover conveyer loading**

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1 **operations?**  
2 A. Yes.  
3 **Q. And do you believe that the particulate**  
4 **matter emissions that are associated with conveyer**  
5 **loading operations at the KCBX facility to be**  
6 **fugitive?**  
7 A. Yes, they would be fugitive.  
8 **Q. Okay. And then, again, if we look at that**  
9 **same regulation, do you consider the PM emissions**  
10 **associated with the traffic areas at the KCBX**  
11 **facility to be fugitive?**  
12 MR. GRANT: You mean the next regulation?  
13 You said the same regulation. You mean the next  
14 one. You mean 306, right?  
15 MR. DWYER: Actually, I think I meant the  
16 same regulation.  
17 MR. GRANT: Because you were on 212.305.  
18 MR. DWYER: Yes. I'm sorry, I stand  
19 corrected.  
20 With respect to -- I'm sorry, George.  
21 With respect to Section 212.306 of the Board's  
22 regulations, does that regulation cover traffic  
23 areas?  
24 THE DEPONENT: Yes.

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1 **Q. Okay. And do you consider the particulate**  
 2 **matter emissions associated with the traffic areas**  
 3 **at the KCBX facility to be fugitive?**  
 4 A. They would be. They would be considered  
 5 fugitive.  
 6 **Q. Okay. And then for the next regulation,**  
 7 **which is Section 212.308, would you agree that that**  
 8 **covers -- that regulation regulates screening**  
 9 **operations?**  
 10 A. Screening, yes.  
 11 **Q. And do you consider the particulate matter**  
 12 **emissions associated with the screening operations**  
 13 **at the KCBX facility to be fugitive?**  
 14 A. Those would be considered fugitive.  
 15 **Q. Okay. Again, looking at the Regulation**  
 16 **212.308, would you agree that that covers conveyer**  
 17 **transfer points?**  
 18 A. Yes.  
 19 **Q. And would you agree that the emissions**  
 20 **associated with conveyer transfer points at the**  
 21 **KCBX facility to be fugitive?**  
 22 A. They would.  
 23 **Q. Okay. And then, again, looking at the**  
 24 **same Regulation 212.308, would you agree that that**

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1 **covers a fine product truck and railcar loading**  
 2 **operations?**  
 3 A. Yes.  
 4 **Q. And do you consider the particulate matter**  
 5 **emissions associated with the fine product truck**  
 6 **and railcar loading operations at the KCBX facility**  
 7 **to be fugitive?**  
 8 A. They would be.  
 9 **Q. Okay. And then if you would direct your**  
 10 **attention, George, to the last portion of that**  
 11 **exhibit, which is a copy -- I submit that it's a**  
 12 **copy of 35 Illinois Administrative Code 212.316.**  
 13 A. Okay.  
 14 **Q. And, you know, based upon your experience**  
 15 **in reviewing the permit, do you believe that -- do**  
 16 **you have an opinion whether the KCBX facility would**  
 17 **be regulated under this Regulation 212.316?**  
 18 A. Yes, it would be.  
 19 **Q. And then sort of given all of that,**  
 20 **George, when you were preparing the FESOP for the**  
 21 **KCBX facility, can you tell me whether you treated**  
 22 **all of the emissions, fugitive emissions we just**  
 23 **discussed, did you treat them as fugitive in**  
 24 **preparing the conditions in the permit that govern**

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1 **fugitive emissions?**  
 2 A. I don't remember.  
 3 **Q. Okay. So it's possible that you may have?**  
 4 A. Yes.  
 5 **Q. Okay. George, the next exhibit I'd like**  
 6 **to talk with you about is Exhibit K-15. You should**  
 7 **have a copy of it. Let me know if you don't.**  
 8 MR. GRANT: Just one second. Let me find  
 9 it.  
 10 BY MR. DWYER:  
 11 **Q. George, and then, again, I'd represent to**  
 12 **you that that is a copy of Section 39.5 from the**  
 13 **Illinois Environmental Protection Act. Does that**  
 14 **look correct to you?**  
 15 A. Uh-huh, yes.  
 16 **Q. And then let me direct your attention**  
 17 **then, within that document, to Page 7, and are you**  
 18 **familiar with that language in Subsection C ii?**  
 19 MR. GRANT: Right here?  
 20 MR. DWYER: Yeah, this paragraph. It's --  
 21 I mean, the statutory citation is Section 39.5  
 22 Number 2c.ii.  
 23 THE WITNESS: Okay.  
 24 **Q. Just tell me what you understand this**

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1 **provision in the Act to mean.**  
 2 A. A major stationary source of air  
 3 pollutants either directly emits or has the  
 4 potential to emit 100 tons of any air pollutant.  
 5 And for purposes of fugitive emissions, that they  
 6 wouldn't be counted except under certain  
 7 circumstances.  
 8 **Q. Okay. And when you were, again,**  
 9 **developing the permit conditions for the FESOP,**  
 10 **George, did you rely upon this provision in the**  
 11 **Act?**  
 12 A. I would say we looked at it.  
 13 **Q. Okay. Do you recall specifically looking**  
 14 **at it in particular with respect to the fugitive**  
 15 **emissions calculations?**  
 16 A. I can't say that I did.  
 17 **Q. All right. Now, let me ask you to now**  
 18 **look at Exhibit K-19. I think somewhere up there**  
 19 **there should be a copy of it.**  
 20 A. Yes.  
 21 **Q. I'll represent to you that that's, again,**  
 22 **a multi-page exhibit, and the cover of which is a**  
 23 **letter dated March 6, 2003 addressed to a Janet**  
 24 **McCabe. Would you agree with that?**

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1 A. Yes.

2 **Q. And on the second page of it, does it**  
 3 **indicate purportedly it was from a Cheryl L.**  
 4 **Newton?**

5 A. Yes.

6 **Q. And then attached to it there's a document**  
 7 **that's titled Analysis, is that correct?**

8 A. Yes.

9 **Q. Okay. Before today, George, have you seen**  
 10 **this document?**

11 A. I don't recall seeing it.

12 **Q. Okay. And your answer would be the same**  
 13 **if I asked you whether you recall having seen it**  
 14 **prior to December of 2010?**

15 A. Yes.

16 **Q. Okay. Do you recall whether you would**  
 17 **have relied upon this document in preparing the**  
 18 **FESOP permit?**

19 A. I don't know.

20 **Q. Okay. Thank you.**

21 **Okay. George, now let's go back to**  
 22 **the permit, FESOP permit, which is Exhibit K-2, and**  
 23 **if we can, I'd like to talk about the moisture**  
 24 **language again, and, in particular, I think that's**

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1 **Condition 9a, and then would you also, George, if**  
 2 **you can, try and find Exhibit K-21. Now, with**  
 3 **respect to Exhibit K-21, George, do you recall**  
 4 **having seen that document prior to today?**

5 A. I may have seen it.

6 **Q. Okay. And can you tell me briefly what**  
 7 **you understand Exhibit K-21 to be?**

8 A. Some language associated with moisture  
 9 contents.

10 **Q. Okay. And do you remember or can you tell**  
 11 **me from looking at the letter the reason for it**  
 12 **being submitted to the agency?**

13 A. It looks like in order to allow a trial  
 14 receipt of three railcars for fluid petroleum coke.

15 MR. GRANT: Can I interrupt at this point?  
 16 We're not consolidate yet, although I think we're  
 17 sort of expecting it. But I just want to point out  
 18 for the record that this wouldn't be necessarily  
 19 relevant to the FESOP appeal if it doesn't get  
 20 consolidated.

21 MR. DWYER: Yeah. I think the only thing  
 22 we'd say about that, Chris, is, part of our point  
 23 in talking to George about it is that we talked  
 24 earlier --

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1 MR. GRANT: Oh, I don't have an objection  
 2 to it. I just wanted to distinguish between two  
 3 permits.

4 MR. DWYER: I would agree.

5 MR. GRANT: Without even objecting, just  
 6 to note for the record that we're dealing with the  
 7 construction permit application --

8 MR. DWYER: Yeah, that's fine.

9 MR. GRANT: -- and not the FESOP, the  
 10 subject matter of this case, unless the case is  
 11 consolidated, so that's all I'm saying.

12 MR. DWYER: Well, that's fine.  
 13 George, let me ask you this.

14 MR. GRANT: Did you get an answer to your  
 15 question? I didn't mean to stop that.

16 MR. DWYER: No, I don't think so.

17 MR. GRANT: I think he answered it, but  
 18 that's when I jumped in.

19 THE DEPONENT: I'm not even sure what --

20 MR. GRANT: I think you were asking about  
 21 the purpose -- he asked you if you knew what the  
 22 purpose of the letter or what was communicated in  
 23 the letter.

24 THE DEPONENT: Yeah. I basically said I

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1 thought it had to do with the trial, case of some  
 2 material was in there.

3 BY MR. DWYER:

4 **Q. Right. And just to clarify, in the Re:**  
 5 **block on the letter, George, does it indicate that**  
 6 **it has to do with any type of permit application?**

7 A. I'm sorry, the what?

8 MR. GRANT: This right here.

9 BY MR. DWYER:

10 **Q. The regarding block up there, just below**  
 11 **the addressee.**

12 A. Oh. It says construction permit  
 13 application.

14 **Q. Okay. And is there -- does it appear to**  
 15 **you that there is a construction permit application**  
 16 **attached to it?**

17 A. Yes.

18 **Q. Okay.**

19 A. Construction application attached to it.

20 **Q. And let me ask you, George, in developing**  
 21 **or drafting the language for Condition 9(a) in the**  
 22 **FESOP permit, did you -- do you recall whether you**  
 23 **reviewed this February 3, 2010 letter, which is an**  
 24 **application, which is designated as Exhibit K-21?**

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1 A. I would say it was probably reviewed.  
 2 **Q. Okay. And then I sort of want to clarify,**  
 3 **again. Would that mean that you considered the**  
 4 **information in it in preparing Condition 9(a) or**  
 5 **not?**  
 6 A. It most likely did, but I can't say that I  
 7 exactly remember, you know, going through this.  
 8 **Q. Okay. I would ask you to read through it**  
 9 **and just -- I just want to ask you a question about**  
 10 **it. Particularly the first -- let's just, if you**  
 11 **would look at the first three pages. I don't want**  
 12 **to put words in your mouth, George, but can you**  
 13 **tell me what you understand KCBX was seeking with**  
 14 **respect to the 1.3 percent moisture?**  
 15 A. It sounds like you were wanting to receive  
 16 bulk materials that was 1.3 percent.  
 17 **Q. Okay. And would you agree that we were**  
 18 **suggesting that that -- the permit should include a**  
 19 **condition, including 1.3 percent of moisture by**  
 20 **weight as a threshold level of concern?**  
 21 A. Yes. Threshold, yes.  
 22 **Q. Okay. And would you, and if we look at**  
 23 **the permit, in particular in Condition 9a, it**  
 24 **appears to us, and that's why I'm asking you to**

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1 **tell me, that the agency opted instead to use a 3**  
 2 **percent moisture by weight as the threshold level.**  
 3 A. Uh-huh.  
 4 **Q. Okay. And I guess the question I have**  
 5 **then is, can you tell me how the agency determined,**  
 6 **or what -- you know, what did you rely upon in**  
 7 **determining that 3 percent was the appropriate or**  
 8 **necessary percent of moisture by weight to use?**  
 9 A. I don't remember that.  
 10 **Q. Okay. Do you remember having any**  
 11 **conversations or discussions with Mr. Bernoteit**  
 12 **about that?**  
 13 A. There were conversations.  
 14 **Q. Okay. Let me show you another document.**  
 15 **I think you already have a copy of it. It's**  
 16 **Exhibit K-22, and that's a May 7th letter to Mr.**  
 17 **Bakowski at IEPA from Jim Simmons at KCBX. And,**  
 18 **again, let me note for the record that the document**  
 19 **purports to relate to the construction permit**  
 20 **application, not the FESOP. And my question to**  
 21 **you, George, is, do you recall having seen this**  
 22 **document before today?**  
 23 A. I probably have seen it. I can't exactly  
 24 remember.

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1 **Q. And do you recall whether you might have**  
 2 **reviewed it prior to issuing the FESOP permit in**  
 3 **December 2010?**  
 4 A. It quite possibly was -- I'm sorry, I  
 5 interrupted you.  
 6 **Q. No. That's okay.**  
 7 A. It quite possibly was reviewed in  
 8 preparation for the FESOP.  
 9 **Q. Okay. Now, again, using the language I**  
 10 **think we've talked about before, can you tell me**  
 11 **whether or not the information provided in it was**  
 12 **considered in preparing in particular Condition**  
 13 **9(a) in the FESOP permit?**  
 14 A. It would have been considered.  
 15 **Q. But not necessarily adopted or**  
 16 **incorporated?**  
 17 A. Correct.  
 18 **Q. Okay. Now, we talked about this earlier**  
 19 **this morning. I want to talk with you again about**  
 20 **it. If we look at Condition 9, the first sentence**  
 21 **in particular, can you tell me what you understand**  
 22 **the phrase material handling to mean or tell me**  
 23 **what activities you intended it to include.**  
 24 A. Well, what intended it to include, I don't

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1 remember.  
 2 **Q. As we sit here today let me ask you this.**  
 3 **Do you consider that phrase material handling to**  
 4 **include offloading of product that arrived at the**  
 5 **KCBX facility?**  
 6 A. I would consider it to be the offloading,  
 7 yes.  
 8 **Q. Well, I want to make sure I understand.**  
 9 **Would you consider that to mean offloading or**  
 10 **material handling to include the activity of**  
 11 **offloading?**  
 12 A. Material handling to include offloading.  
 13 **Q. Okay. If you read the whole -- that**  
 14 **paragraph, George, let me ask you. Did the**  
 15 **Illinois EPA intend under that language in the**  
 16 **permit that KCBX would not be allowed to receive**  
 17 **material with less than 1.3 percent moisture by**  
 18 **weight?**  
 19 A. I would say that they were not supposed to  
 20 receive less than 1.3 by weight.  
 21 **Q. So you read the condition to mean that**  
 22 **they could not accept material that was 1.3 percent**  
 23 **moisture by weight or less -- or less than -- I'm**  
 24 **sorry, less than 1.3 percent?**



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1 A. Wait a minute now. No, they could receive  
2 it with less, but they couldn't handle it with  
3 less.  
4 **Q. Okay. I'm sorry, they --**  
5 A. You could -- you could receive it with  
6 less.  
7 **Q. But you couldn't handle it?**  
8 A. Right.  
9 **Q. Okay. And you I think stated earlier that**  
10 **you considered, included offloading of material**  
11 **within the phrase material handling?**  
12 A. Uh-huh.  
13 **Q. Okay. How would they -- how would they**  
14 **offload it if they couldn't accept it at 1.3**  
15 **percent or less?**  
16 A. I would say once it's offloaded then you  
17 started handling it. I'm sorry, I'm not sure.  
18 **Q. Well, let me ask you this. I'm going to**  
19 **ask you, would agree with me if I said that the**  
20 **condition is a little less than clear?**  
21 A. It could be.  
22 **Q. Well, do you think that the condition is**  
23 **susceptible of more than one interpretation or**  
24 **application?**

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1 A. It could be, yes.  
2 **Q. And just to confirm as we talked about**  
3 **earlier, you don't recall what the agency relied**  
4 **upon for including the 3 percent limit by weight in**  
5 **Subsection 9a.i and in 9a?**  
6 A. No, I don't.  
7 **Q. George, we're providing you a copy of yet**  
8 **another exhibit marked K-23, and I'll represent to**  
9 **you that that's a copy of a FESOP permit previously**  
10 **issued for this facility on April 8th, 2004.**  
11 A. Uh-huh.  
12 **Q. Do you recall ever seeing this document**  
13 **before?**  
14 A. It looks to be the previous permit.  
15 **Q. Okay. Now, I would ask you, if you would,**  
16 **look at Page 5 of that permit, and, in particular,**  
17 **Condition 10.**  
18 A. Uh-huh.  
19 **Q. And particularly I guess 10b.iii.**  
20 A. Okay.  
21 **Q. And can you tell me how that is different**  
22 **from the FESOP condition that's contained in the**  
23 **December 29, 2010 permit?**  
24 A. You're referring to iii?

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1 **Q. That's correct. And just to clarify, do**  
2 **you understand that condition 10b.iii in Exhibit**  
3 **K-23, is that condition in there for the purposes**  
4 **of determining compliance with the moisture limit?**  
5 A. It appears to. It says it's for  
6 compliance.  
7 **Q. And is there a reason why that wasn't**  
8 **included in the FESOP that had been issued December**  
9 **2010?**  
10 A. I can't say. I don't know.  
11 **Q. Do you recall reviewing that condition**  
12 **before issuing the FESOP permit?**  
13 A. No.  
14 **Q. Do you recall having any discussions with**  
15 **Mr. Bernoteit about that condition regarding the**  
16 **moisture limit?**  
17 A. No.  
18 **Q. If we go back to condition -- if we go**  
19 **back to the permit, FESOP permit, which is Exhibit**  
20 **K-2, and if we look at the terms for meeting the**  
21 **moisture content requirement in 9a, can you tell me**  
22 **how -- how would KCBX determine compliance with the**  
23 **moisture requirement under this language? How**  
24 **would it go about factoring the moisture of the**

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1 **material coming in when it performs testing on the**  
2 **material?**  
3 A. It looks like you can do it by recording,  
4 by making your recordings.  
5 **Q. And --**  
6 A. Recording the moisture content.  
7 **Q. But at what juncture would they do that?**  
8 **At arrival? At a juncture after that if the**  
9 **moisture content has been changed?**  
10 A. I would say it would be on arrival and  
11 whenever it changes.  
12 **Q. And, I mean, would you agree that could**  
13 **result in an inaccurate counting if you're double**  
14 **counting the same volume with different moisture**  
15 **concentrations at different times? And I'm asking**  
16 **that because we're trying to understand how -- how**  
17 **we would comply with the condition.**  
18 A. Well, the way I would say it would be is,  
19 you take the recording of what you receive. If  
20 it's under -- if it's under 3 percent -- hang on a  
21 second. I'm not sure how you'd do it.  
22 MR. DWYER: Okay. Can we take a five  
23 minute break?  
24 MR. GRANT: Yeah.

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1 (Whereupon there was a recess  
 2 taken.)  
 3 BY MR. DWYER:  
 4 **Q. Let's go back on the record. George,**  
 5 **let's now stay with the permit, Exhibit K-2. Now**  
 6 **I'd like to talk to you about some other**  
 7 **conditions, and the first one I'd like to talk to**  
 8 **you about is Condition 5. It's on Page 6.**  
 9 A. Uh-huh.  
 10 **Q. Can you tell me, George, if you know, what**  
 11 **is the basis for including the language in**  
 12 **Condition 5 in the permit?**  
 13 A. As I recall, it would have been basically  
 14 because we were putting the two electric conveyers  
 15 into the permit.  
 16 **Q. Okay. Now, it's our understanding, and**  
 17 **please correct me if I'm wrong, that Condition 5**  
 18 **provides, that because we have two electric**  
 19 **conveyers and they're not subject to NSPS Subpart**  
 20 **Y, because they won't be used to convey coal to the**  
 21 **machinery at the coal prep plant, is that correct?**  
 22 A. That is what I can recall.  
 23 **Q. So just, again, so we understand, is that**  
 24 **the agency's belief, that NSPS Subpart Y is**

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1 **agency approximately August 7th, 2009.**  
 2 A. Uh-huh.  
 3 **Q. Do you recall reviewing that document when**  
 4 **you were preparing the permit conditions?**  
 5 A. Yes, it was looked at.  
 6 **Q. Okay. And if you look at Page 2 of that,**  
 7 **George, it references in the subheading issues**  
 8 **discussed during a July 23rd, 2009 telephone**  
 9 **conference. Do you recall whether you were part of**  
 10 **such a telephone conference?**  
 11 A. I can't remember.  
 12 **Q. Okay. So possibly, but you don't recall**  
 13 **as we sit here?**  
 14 A. Right.  
 15 **Q. Okay. And looking at the letter, does**  
 16 **it -- is it fair to say that on Page 2 in that**  
 17 **middle paragraph, there is a discussion about the**  
 18 **issue of NSPS Subpart Y applicability?**  
 19 A. You're addressing it, yes.  
 20 **Q. And -- but you don't recall whether or not**  
 21 **any of that language on Page 2 was considered in**  
 22 **preparing the conditions in the permit, such as**  
 23 **Condition 5?**  
 24 A. I don't recall.

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1 **applicable to the coal prep plant, and by coal prep**  
 2 **plant, I mean, specifically, the coal screener at**  
 3 **the facility?**  
 4 A. That I don't know.  
 5 **Q. Then can you tell me, is there a reason**  
 6 **why the FESOP permit issued in December of 2010**  
 7 **doesn't include a reference to the applicability of**  
 8 **NSPS Subpart Y to the coal screener?**  
 9 A. No.  
 10 **Q. And do you recall working on that**  
 11 **condition in the permit or having any discussions**  
 12 **with Bob, Mr. Bernoteit about that?**  
 13 A. No.  
 14 **Q. Okay. Do you think that there should be a**  
 15 **provision in the permit that addresses the coal**  
 16 **screener as being --**  
 17 A. I don't know.  
 18 **Q. You don't know?**  
 19 A. No.  
 20 **Q. Okay. And let me just quickly, if you**  
 21 **would, take a look at Exhibit K-10.**  
 22 A. Okay.  
 23 **Q. And if you'd like to look at it, I'd**  
 24 **suggest to you that that was submitted to the**

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1 **Q. Okay. Then if we move now, George, let's**  
 2 **look at Conditions 10c and 14a.vi.**  
 3 MR. GRANT: One at a time you mean?  
 4 MR. DWYER: Yeah. We'll do them one at a  
 5 time.  
 6 MR. GRANT: And just for the record,  
 7 you're in K-2, right?  
 8 MR. DWYER: I'm sorry. We're in K-2,  
 9 which is the FESOP permit again, and we're looking  
 10 at Condition 10c.  
 11 With respect to that condition,  
 12 George, can you tell me what the basis for that  
 13 condition is or, you know, how you determine that  
 14 condition was necessary? And let me be more  
 15 specific. George, can you tell me what the basis  
 16 for the requirement that compliance be determined  
 17 on a weekly basis was?  
 18 A. The weekly basis? I thought that had  
 19 been -- the weekly basis I think was possibly an  
 20 error.  
 21 **Q. Okay. And do you have an understanding**  
 22 **about what -- what the correct basis -- time frames**  
 23 **or frequency should be?**  
 24 A. From what I recall, it should have been

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1 monthly and yearly.  
 2 **Q. Okay. And then if we look, George, at**  
 3 **Condition 14a.vi.**  
 4 A. Small which now?  
 5 **Q. It's the very last subcondition on 14a.**  
 6 A. Okay.  
 7 **Q. It governs the frequency of compliance,**  
 8 **and it provides for weekly and annual emissions for**  
 9 **the regulated pollutants from the source with**  
 10 **supporting act.**  
 11 MR. GRANT: I'm lost.  
 12 MR. DWYER: Okay. It's 14 -- I'm sorry,  
 13 it's Page 15, and it's this very last condition.  
 14 MR. GRANT: I see it. I see it. It's  
 15 down in the next section. I think you've got the  
 16 old FESOP.  
 17 BY MR. DWYER:  
 18 **Q. You're looking at the old one. I'm sorry.**  
 19 **It's K-2, George, Page 15.**  
 20 A. You may want to back up a question then,  
 21 because I was basing it on something else.  
 22 MR. GRANT: I was looking at -- at the  
 23 correct one for the last question.  
 24 THE DEPONENT: Yeah.

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1 MR. GRANT: And I think you were the same,  
 2 where you answered it the way you intended to.  
 3 THE DEPONENT: Okay.  
 4 BY MR. DWYER:  
 5 **Q. So with respect to that condition at**  
 6 **14a.vi, again, can you tell me the basis for the**  
 7 **weekly requirement?**  
 8 A. Oh, vi.  
 9 **Q. Oh, I'm sorry, George. V, as in Victor,**  
 10 **I, as in Indiana.**  
 11 A. That was the one I was saying I think that  
 12 was a mistake on the weekly, and it should have  
 13 been monthly and annual.  
 14 **Q. Okay. But then let's -- let's go back to**  
 15 **10c then, just so I'm sure. Was your -- was your**  
 16 **answer different with respect to the frequency in**  
 17 **10c?**  
 18 A. Yes.  
 19 **Q. Okay. Can you tell me what the basis for**  
 20 **the requirement for weekly as opposed to some other**  
 21 **period? I just want to be clear. Were you saying**  
 22 **that that also should have been monthly?**  
 23 A. Yes, both of them should have been  
 24 monthly.

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1 **Q. Okay. I'm sorry. I thought I**  
 2 **misunderstood your answer. And then if we can then**  
 3 **move, George, back all the way up to the front**  
 4 **again of Exhibit K-2, which is the FESOP permit,**  
 5 **and condition -- and we are looking now at**  
 6 **Condition 1c.**  
 7 A. Uh-huh.  
 8 **Q. And that provides that the permit**  
 9 **supersedes all operating permits for the location.**  
 10 **Can you tell me, what is the basis for requiring**  
 11 **Condition 1c in the permit?**  
 12 A. It's basically so they don't start  
 13 operating under the old operating permit.  
 14 **Q. Okay. But do you think that the**  
 15 **condition -- why doesn't Condition 1c reference**  
 16 **operating authorities that have been granted under**  
 17 **construction permits, for example, the 2010**  
 18 **construction permit?**  
 19 A. That I don't know.  
 20 **Q. Okay. But would you agree that arguably**  
 21 **this language 1c would supersede, according to its**  
 22 **terms, the 2010 construction permit?**  
 23 A. No, because it's a construction permit.  
 24 **Q. Okay. And that's -- that's sort of our**

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1 **question is, why wouldn't 1c not reference that the**  
 2 **facility has some operating authorities that are**  
 3 **granted under the 2010 construction permit?**  
 4 MR. GRANT: Don't look at me. I can't  
 5 tell you. If you don't know, that's fine.  
 6 THE DEPONENT: I don't know.  
 7 BY MR. DWYER:  
 8 **Q. Okay. Do you recall drafting that**  
 9 **Condition 1c?**  
 10 A. It's common, very common. I mean, exactly  
 11 putting it into this permit, no, but I know it goes  
 12 into, like, I would say all of them.  
 13 **Q. So is that a routine that, almost a**  
 14 **template or boilerplate condition?**  
 15 A. Item B and C are like in all of them.  
 16 Item B, that would be changed slightly in the sense  
 17 that maybe we didn't have to go out for public  
 18 notice. It would say something to the effect of,  
 19 prior to conditional issuance.  
 20 **Q. Right. But in terms of 1c, you know,**  
 21 **wouldn't you agree that that seems to suggest that**  
 22 **any -- any authority under the construction permit**  
 23 **would be superseded by the conditions of the FESOP?**  
 24 A. You're talking -- this refers to operating

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1 permits, not construction permits.  
2 **Q. Right. And let me ask you this. Is it**  
3 **your understanding that the KCBX facility doesn't**  
4 **have any operating authority under the 2010**  
5 **construction permit?**  
6 A. They are allowed -- just a second. I  
7 would have to look at the permit itself, but under  
8 normal circumstances the construction permit would  
9 allow a certain amount of operation.  
10 **Q. Okay. Let me ask you this, George. Do**  
11 **you recall looking at the 2010 construction permit**  
12 **in the process of preparing the FESOP permit?**  
13 A. It would have been looked at.  
14 **Q. Okay. But certainly if there was language**  
15 **in there authorizing some degree of operation under**  
16 **the construction permit, if not addressed**  
17 **specifically here, this permit would supersede any**  
18 **authority and/or rights the facility would have**  
19 **under that permit?**  
20 A. This would supersede the operations of the  
21 construction permit.  
22 **Q. And would any of the limits contained in**  
23 **the FESOP permit, would those supersede any**  
24 **emission limits in the construction permit?**

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1 A. Yes, they would.  
2 **Q. Okay. So -- so the facility would be**  
3 **bound to comply with the limits contained in the**  
4 **FESOP and to disregard or ignore any of the limits**  
5 **in the construction permit?**  
6 A. Yes.  
7 **Q. Okay. So if it has both the construction**  
8 **permit from 2010 and the FESOP permit issued**  
9 **December 2010, it doesn't have two limits to comply**  
10 **with, it only has one set of limits to comply with,**  
11 **and they would be in the FESOP?**  
12 A. Correct.  
13 **Q. Okay. Let's now go to the first paragraph**  
14 **of the permit and that, you know, if you look at --**  
15 **you know, I'd like you to look at that,**  
16 **particularly where it discusses the equipment. The**  
17 **very first paragraph, this permit is hereby**  
18 **granted.**  
19 A. Uh-huh.  
20 **Q. Okay. There's a reference to the size of**  
21 **the horsepower of the generators there?**  
22 A. Uh-huh.  
23 **Q. Okay. And, to the best of your knowledge,**  
24 **is that accurate?**

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1 A. I would say it was at the time.  
2 **Q. At the time. So do you understand it to**  
3 **not be accurate now?**  
4 A. I'm going to have to say that I have seen  
5 something has popped up to say that it was  
6 different but I can't recall what it was or where.  
7 **Q. Let me ask you to take a look at**  
8 **Deposition Exhibit K-26. Just take a look and see**  
9 **if that refreshes your memory or you recall that**  
10 **document.**  
11 A. Okay.  
12 **Q. Do you recall receiving that? It's an**  
13 **e-mail and it says it's dated Friday, February 20,**  
14 **2009?**  
15 A. I probably received it, most likely did,  
16 but I don't remember it.  
17 **Q. And just to be clear, does that e-mail**  
18 **contain descriptions of the size and the horsepower**  
19 **for the two diesel generators at the facility?**  
20 A. Yes.  
21 **Q. And are the sizes or the horsepower**  
22 **ratings in the e-mail, which is K-26, are they**  
23 **different than the sizes and description in the**  
24 **first paragraph of the permit?**

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1 A. Yes.  
2 **Q. Okay. Do you recall, George, why the**  
3 **rating or size of the two diesel-powered generators**  
4 **in the permit is different than the information**  
5 **that was provided by the facility?**  
6 A. No.  
7 **Q. Do you think it's just a typographical**  
8 **error?**  
9 A. Most likely.  
10 **Q. Okay. Let's now, if we can, George, let's**  
11 **look at again the permit condition 2o?**  
12 MR. GRANT: Exhibit K-2 again?  
13 MR. DWYER: Yes, Exhibit K-2. I'm sorry.  
14 THE DEPONENT: Uh-huh.  
15 BY MR. DWYER:  
16 **Q. Can you tell me, what is the basis for the**  
17 **emissions equations located in 2o?**  
18 MR. GRANT: Can you repeat your question?  
19 BY MR. DWYER:  
20 **Q. What is the basis for the emission**  
21 **calculation there for the fugitive particulate**  
22 **matter emissions? If you want to take a look.**  
23 MR. GRANT: I don't see the limitation.  
24 MR. DWYER: Well, it's --

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1 MR. GRANT: I don't see any calculation.  
2 MR. DWYER: The requirement that the  
3 emissions from a storage pile to exceed an opacity  
4 of 10 percent, to be measured four feet from the  
5 pile surface.  
6 MR. GRANT: Okay. So you mean the -- it's  
7 this 10 percent thing?  
8 MR. DWYER: Right.  
9 MR. GRANT: I think what he said is that  
10 this is the limitation, he means 10 percent of  
11 opacity.  
12 THE DEPONENT: Was there -- what was the  
13 question?  
14 BY MR. DWYER:  
15 **Q. Well, what is the basis for that**  
16 **requirement?**  
17 A. I can't recall.  
18 **Q. I'm sorry, one second, George. My**  
19 **mistake, George. George, let's move to 10a,**  
20 **Condition 10a.**  
21 A. 10a.  
22 **Q. And I'd just like you to take a look at**  
23 **that, and, if you can, can you tell me, you know,**  
24 **what did you rely upon to determine the emission**

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1 **factors for the condition in 10a?**  
2 A. Exactly what document, I don't know.  
3 **Q. Would you -- I mean, do you recall whether**  
4 **you relied upon any information provided by KCBX in**  
5 **developing --**  
6 A. It was -- that was supplied by KCBX, but I  
7 don't remember which ones.  
8 **Q. Okay. When you did this calculation, do**  
9 **you recall, George, whether you allowed KCBX an**  
10 **exclusion for stockpile emissions that's provided**  
11 **in 35 Illinois Administrative Code Section 212.323?**  
12 A. I don't remember.  
13 **Q. Okay. Is it possible that you considered**  
14 **that?**  
15 A. It's possible.  
16 **Q. But you don't recall why you might have**  
17 **determined that they would be entitled to that**  
18 **exemption for the calculation?**  
19 A. I don't know.  
20 **Q. Okay. And then if we go to 10b on the**  
21 **next page, is that a complete equation there,**  
22 **George? Is there a variable left out of that, the**  
23 **equation in 10b?**  
24 A. I'm not sure. It looks like --

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1 **Q. George, you know, let me just ask you**  
2 **this. Do you know where the equation in (b) came**  
3 **from? Do you know what its source is?**  
4 A: I would say it's probably from an AP-42.  
5 **Q. Okay. And I'm going to show you an**  
6 **exhibit marked K-28, and let me ask you, that**  
7 **purports to be a letter dated March 28, 2008 to**  
8 **John Blazis at IEPA from a Tom Henning at a**  
9 **consulting firm called SEH. Do you recall -- well,**  
10 **first of all, let me ask you, do you know who John**  
11 **Blazis is, George?**  
12 A. Yes.  
13 **Q. Okay. And is he employed at the Illinois**  
14 **EPA?**  
15 A. Yes.  
16 **Q. And at some point in time was he involved**  
17 **in working on this permit?**  
18 A. Yes.  
19 **Q. Okay. Was that -- did that predate your**  
20 **involvement?**  
21 A. Yes.  
22 **Q. Okay. Let me ask you, do you recall**  
23 **having seen this document before?**  
24 A. It's possible.

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1 **Q. Okay. And on the first page of that**  
2 **document it has what purports to be a particulate**  
3 **emission calculation.**  
4 A. Uh-huh.  
5 **Q. Do you recall having looked at this in**  
6 **preparing Condition 10b of the FESOP permit?**  
7 A. No, I don't recall.  
8 MR. DWYER: Okay. I'm going to go off the  
9 record for a second, George.  
10 (Whereupon there was a recess  
11 taken.)  
12 BY MR. DWYER:  
13 **Q. George, we're back on the record. Let's**  
14 **go back and talk briefly about Condition 10a, and**  
15 **also, I think I asked you this earlier, I just want**  
16 **to be clear. I asked you, you know, what the basis**  
17 **was or where the -- what was the source of your**  
18 **emissions calculations for the formula in 10a. Do**  
19 **you know where that came from?**  
20 **I thought you indicated that it came**  
21 **from AP-42, but I wanted to make sure.**  
22 A. Wait a second. We were not talking the  
23 same one.  
24 **Q. We're on Page 10 of the FESOP permit,**

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1 **which is Exhibit K-2, and we're talking about the**  
 2 **formula for calculation in Condition 10a.**  
 3 A. Yeah. The E equals T?  
 4 **Q. Correct, yeah.**  
 5 A. Okay. That I believe came from  
 6 something -- or, some material that was given to us  
 7 by KCBX. The one I was referring to, I think you  
 8 asked me about where another formula came from  
 9 which we were talking about. I thought you were  
 10 talking about 10b.  
 11 **Q. That's correct.**  
 12 A. And that's the one I had mentioned was  
 13 from AP-42.  
 14 **Q. Okay. So the best of your recollection as**  
 15 **we sit here, the formula that was included in**  
 16 **Condition 10a in the FESOP permit was based on**  
 17 **information provided by KCBX?**  
 18 A. Uh-huh.  
 19 **Q. Okay. Is it possible, George, that any**  
 20 **elements of the formula may have been left out when**  
 21 **it was put in here?**  
 22 A. It's possible.  
 23 **Q. Okay. So just to go back and finish that**  
 24 **10a, George, in terms of the -- if you look at the**

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1 **time you issued it did you feel that you had**  
 2 **sufficient information to issue the permit?**  
 3 A. I would have to say we thought at that  
 4 time that we had sufficient information for what  
 5 was in the permit.  
 6 **Q. Okay. I'm not sure I understand what that**  
 7 **means. Was there something that you could have put**  
 8 **in the permit that you didn't because you didn't**  
 9 **have sufficient information?**  
 10 A. I can't say that. I don't know. I don't  
 11 remember.  
 12 **Q. But what I'm just trying to understand,**  
 13 **George, is, did you feel like you had sufficient**  
 14 **information to issue the FESOP permit when it was**  
 15 **issued in December of 2010?**  
 16 A. Yes.  
 17 MR. DWYER: Okay. I don't have anything  
 18 else, George. Thank you very much for your  
 19 patience. I don't know if you want to do any  
 20 redirect (sic).  
 21 MR. GRANT: Just a couple.  
 22 MR. DWYER: Okay.  
 23  
 24

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1 **formula, do you recall, George, whether you or Bob**  
 2 **Bernoteit ever made a determination with respect to**  
 3 **the FESOP permit that the information you had was**  
 4 **incomplete?**  
 5 A. Whether it was incomplete or not?  
 6 **Q. Correct.**  
 7 A. I don't recall.  
 8 **Q. Okay. And as we've talked about for a**  
 9 **long time today, I just want to make sure I**  
 10 **understand. If the agency determined in the course**  
 11 **of reviewing a permit prior to issuing that there**  
 12 **was some significant data gap or absence of**  
 13 **information, I think what you said was you could**  
 14 **issue a notice of incompleteness?**  
 15 A. Yes.  
 16 **Q. Would you do anything short of that?**  
 17 A. Short of that?  
 18 **Q. For example, before issuing a notice of**  
 19 **incompleteness would you contact the facility or**  
 20 **its representative and say, hey, look, we're**  
 21 **missing X or Y, it's critical to final review?**  
 22 A. Yes. We quite often do that.  
 23 **Q. Okay. And with respect to the FESOP**  
 24 **permit that was issued in December of 2010, at the**

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1 CROSS EXAMINATION  
 2 BY MR. GRANT:  
 3 **Q. Let's go to Exhibit K-2, Condition 9, what**  
 4 **is it, Condition 9a on Page 9 of K-2.**  
 5 A. Okay.  
 6 **Q. I'm referring to the moisture content**  
 7 **language. Can you tell me who wrote that language?**  
 8 A. Basically it was Bob Bernoteit.  
 9 **Q. Okay. As far as the facility itself, in**  
 10 **other words, KCBX as a facility, have you ever been**  
 11 **there?**  
 12 A. No.  
 13 **Q. Okay. Do you have any personal knowledge**  
 14 **or of having seen personal knowledge of storage**  
 15 **piles or conveyers or roadways at the facility?**  
 16 A. At the facility, no.  
 17 **Q. Okay.**  
 18 MR. GRANT: Could we go off for a second?  
 19 MR. DWYER: Sure.  
 20 (Whereupon there was an off the  
 21 record discussion.)  
 22 MR. GRANT: That's it.  
 23 MR. DWYER: Well, I'm going to redirect on  
 24 that, that last question you had.

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1 REDIRECT EXAMINATION

2 BY MR. DWYER:

3 **Q. George, in the course of preparing permits**

4 **do you visit each facility for which you write a**

5 **permit?**

6 A. No.

7 **Q. Is it common that you have no direct or**

8 **personal knowledge about the facility other than**

9 **what you receive from the permit applicant?**

10 A. Yes.

11 MR. DWYER: Okay. That's all I have.

12 MR. GRANT: That's it. Nothing.

13 MS. HODGE: Wait.

14 MR. DWYER: Okay. We're done. What do

15 you want to do on signature, Chris?

16 MR. GRANT: I don't know that we had

17 anything that was so hypertechnical that we need to

18 review it for typos. What do you think, Chris? I

19 mean, is there a policy? Do you guys have a policy

20 for like reviewing it first?

21 MR. PRESSNALL: We have, out of a matter

22 course, have gotten the transcript and had people

23 do the errata sheets, but --

24 (Deposition ended at 4:18 P.M.)

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1 Midwest Litigation Services

2 15 South Old State Capitol Plaza

3 Springfield, Illinois 62701

4 Phone (217) 523-8244 \* Fax (217) 523-4282

5 April 27, 2011

6 Mr. Christopher R. Pressnall

7 Assistant Counsel

8 Division of Legal Counsel

9 1021 North Grand Avenue East

10 P.O. Box 19276

11 Springfield, Illinois 62702

12 (217) 782-5544

13 In Re: KCBX Terminals Co. vs. IEPA

14 Dear Mr. Pressnall:

15 Please find enclosed your copy of the deposition of

16 GEORGE KENNEDY taken on April 14, 2011, in the

17 above-referenced case. Also enclosed is the

18 original signature page and errata sheets.

19 Please have the witness read your copy of the

20 transcript, indicate any changes and/or corrections

21 desired on the errata sheets, and sign the

22 signature page before a notary public.

23 Please return the errata sheets and notarized

24 signature page to Mr. Edward Dwyer for filing prior

to trial date.

Thank you for your attention to this matter.

Sincerely,

DONNA M. DODD, CSR

Enclosures

cc: Mr. Edward Dwyer

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1 CERTIFICATE OF REPORTER

2 STATE OF ILLINOIS )

3 )

4 COUNTY OF SANGAMON )

5

6 I, DONNA M. DODD, a Certified Shorthand

7 Reporter (IL), and a Notary Public, within and for

8 the State of Illinois, do hereby certify that the

9 witness whose testimony appears in the foregoing

10 deposition was duly sworn by me; that the testimony

11 of said witness was taken by me to the best of my

12 ability and thereafter reduced to typewriting under

13 my direction; that I am neither counsel for,

14 related to, nor employed by any of the parties to

15 the action in which this deposition was taken, and

16 further that I am not a relative or employee of any

17 attorney or counsel employed by the parties

18 thereto, nor financially or otherwise interested in

19 the outcome of the action.

20 *Donna M. Dodd*

21 \_\_\_\_\_

22 Certified Shorthand Reporter

23 and Notary Public

24 CSR # 0047003012 DONNA M DODD

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1 WITNESS ERRATA SHEET

2 Witness Name: GEORGE KENNEDY

3 Case Name: KCBX Terminals Co. vs. IEPA

4 Date Taken: April 14, 2011

5 Page # \_\_\_\_\_ Line # \_\_\_\_\_

6 Should Read:

7

8 Reason for Change: \_\_\_\_\_

9 Page # \_\_\_\_\_ Line # \_\_\_\_\_

10 Should Read:

11

12 Reason for Change: \_\_\_\_\_

13 Page # \_\_\_\_\_ Line # \_\_\_\_\_

14 Should Read:

15

16 Reason for Change: \_\_\_\_\_

17 Page # \_\_\_\_\_ Line # \_\_\_\_\_

18 Should Read:

19

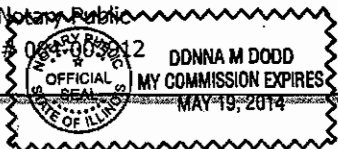
20 Reason for Change: \_\_\_\_\_

21

22

23 Witness Signature: \_\_\_\_\_

24



1 STATE OF )  
2 COUNTY OF )

3 I, GEORGE KENNEDY, do hereby certify: That I have  
4 read the foregoing deposition; that I have made  
5 such changes in form and/or substance within the  
6 deposition as might be necessary to render the same  
7 true and correct; that having made such changes  
8 thereon, I hereby subscribe my name to the  
9 deposition.

10 I declare under penalty of perjury that the  
11 foregoing is true and correct.

12 \_\_\_\_\_  
13 GEORGE KENNEDY

14 Executed this day of  
15 2011, at

16 Notary Public:

17 My Commission Expires:

18 Signature page to: Mr. Christopher Pressnall

19 WLD/George Kennedy, April 14, 2011

20 KCBX Terminals Co. Vs. IEPA



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