

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

KCBX TERMINALS COMPANY,)	
)	
Petitioner,)	
)	
v.)	PCB 10-110
)	PCB 11-43
ILLINOIS ENVIRONMENTAL)	(Permit Appeal - Air)
PROTECTION AGENCY,)	(Consolidated)
)	
Respondent.)	

NOTICE OF FILING

TO: Mr. John Therriault	Mr. Bradley P. Halloran
Assistant Clerk of the Board	Hearing Officer
Illinois Pollution Control Board	Illinois Pollution Control Board
100 West Randolph Street	100 West Randolph Street
Suite 11-500	Suite 11-500
Chicago, Illinois 60601	Chicago, Illinois 60601
(VIA ELECTRONIC MAIL)	(VIA FIRST CLASS MAIL)

(SEE PERSONS ON ATTACHED SERVICE LIST)

PLEASE TAKE NOTICE that I have today filed with the Office of the Clerk of the Illinois Pollution Control **PETITIONER'S REPLY TO RESPONDENT'S RESPONSE TO PETITIONER'S MOTION TO SUPPLEMENT THE RECORD**, a copy of which is herewith served upon you.

Respectfully submitted,

KCBX TERMINALS COMPANY,
Petitioner,

Dated: May 11, 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 REPLY TO RESPONDENT'S RESPONSE TO PETITIONER'S MOTION TO SUPPLEMENT THE RECORD upon:

Mr. John Therriault
Assistant Clerk of the Board
Illinois Pollution Control Board
100 West Randolph Street
Suite 11-500
Chicago, Illinois 60601

via electronic mail on May 11, 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 11, 2011.

/s/ Katherine D. Hodge

Katherine D. Hodge

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**PETITIONER'S REPLY TO RESPONDENT'S RESPONSE
TO PETITIONER'S MOTION TO SUPPLEMENT THE RECORD**

NOW COMES Petitioner, KCBX TERMINALS COMPANY ("KCBX"), a North Dakota corporation, by and through its attorneys, HODGE DWYER & DRIVER ("HD&D"), and for its reply to Respondent Illinois Environmental Protection Agency's ("Illinois EPA") Response to Petitioner's Motion to Supplement the Record ("Motion"), states as follows:

1. On December 29, 2010, Illinois EPA issued the Renewed FESOP to KCBX for its bulk solids materials terminal located in Chicago, Illinois ("Facility").
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 4, 2011, Illinois EPA filed its Record of Decision ("Record") with the Board.

4. During its review of the Record, KCBX discovered that several documents, which should have been included in the Record, were omitted therefrom.

5. On April 28, 2011, KCBX filed its Motion, which sought to have forty-five (45) documents included in the Record.

6. On May 6, 2011, Illinois EPA filed its Response to KCBX's Motion, including a discussion about each exhibit to KCBX's Motion and a statement about whether it objected to the inclusion of that particular exhibit into the Record.

7. KCBX provides the following comments regarding the exhibits Illinois EPA objected to including in the Record:

- a. *A FESOP issued by Illinois EPA to KCBX on June 22, 2000, attached to the Motion as Exhibit 1, Bates stamped K:000541-K:000550 (omitted from the Record);*

KCBX believes it is necessary to include this document in the Record because it establishes the FESOP history of the Facility and allows a full understanding of how Illinois EPA has permitted the Facility to operate in the past. Additionally, in their deposition testimony, the representatives of Illinois EPA referenced the two prior FESOPs issued to the Facility as justification for the issuance of the FESOP at issue in this matter. Therefore, KCBX believes Exhibit 1 to the Motion should be included in the Record.

- b. *A November 29, 2004 Illinois EPA letter to KCBX regarding expiration and renewal of the FESOP, attached to the Motion as Exhibit 2, Bates stamped K:000551-K:000553 (omitted from the Record);*

KCBX believes it is necessary to include this document in the Record because it helps establish a complete timeline of the permitting of the Facility. Therefore, KCBX believes Exhibit 2 to the Motion should be included in the Record.

- c. *A September 13, 2007 Illinois EPA letter regarding an August 29, 2007 inspection of the Facility, attached to the Motion as Exhibit 4, Bates stamped K:000568-K:000575 (omitted from the Record);*

KCBX believes it is necessary to include this document in the Record because Illinois EPA included in the Record information from a July 6, 2005 inspection of the Facility (See Bates stamps K:00197-K:00214). Exhibit 4 is information from a more recent inspection of the Facility. Therefore, KCBX believes Exhibit 4 should be included in the Record.

- d. *A September 4, 2008 e-mail from Katherine Hodge (HD&D) to Chris Pressnall (Illinois EPA) regarding finalizing the permit, attached to the Motion as Exhibit 14, Bates stamped K:000632 (omitted from the Record);*

KCBX believes it is necessary to include this document in the Record because it is similar to other e-mails included by Illinois EPA in the Record (See Bates stamps K:00018, K:00243, K:00244 and K:00277), and it helps establish a complete understanding of the communications between the attorneys for both parties. Further, such e-mails demonstrate the iterative process of permit writing and prove that KCBX was actively engaged in communications and meetings with Illinois EPA throughout the process providing requested information in order to assist Illinois EPA in drafting the FESOP. Such e-mails are, therefore, relevant as to what information was before Illinois EPA when it issued the FESOP to KCBX. Thus, KCBX believes that Exhibit 14 should be included in the Record.

- e. *An October 7, 2008 e-mail from Katherine Hodge (HD&D) to Chris Pressnall (Illinois EPA) regarding conference call to discuss permit, attached to the Motion as Exhibit 16, Bates stamped K:000634 (omitted from the Record);*

KCBX believes it is necessary to include this document in the Record because it is similar to other e-mails included by Illinois EPA in the Record (See Bates stamps K:00018, K:00243, K:00244 and K:00277), and it helps establish a complete understanding of the communications between the attorneys for both parties. Further, such e-mails demonstrate the iterative process of permit writing and prove that KCBX was actively engaged in communications and meetings with Illinois EPA throughout the process providing requested information in order to assist Illinois EPA in drafting the FESOP. Such e-mails are, therefore, relevant as to what information was before Illinois EPA when it issued the FESOP to KCBX. Thus, KCBX believes that Exhibit 16 should be included in the Record.

- f. *An October 8, 2008 e-mail from Katherine Hodge (HD&D) to Chris Pressnall (Illinois EPA) regarding confirmation of conference call, attached to the Motion as Exhibit 17, Bates stamped K:000635-K:000636 (omitted from the Record);*

KCBX believes it is necessary to include this document in the Record because it is similar to other e-mails included by Illinois EPA in the Record (See Bates stamps K:00018, K:00243, K:00244 and K:00277), and it helps establish a complete understanding of the communications between the attorneys for both parties. Further, such e-mails demonstrate the iterative process of permit writing and prove that KCBX was actively engaged in communications and meetings with Illinois EPA throughout the process providing requested information in order to assist Illinois EPA in drafting the FESOP. Such e-mails are, therefore, relevant as to what information was before Illinois EPA when it issued the FESOP to KCBX. Thus, KCBX believes that Exhibit 17 should be included in the Record.

- g. *An October 9, 2008 e-mail from Katherine Hodge (HD&D) to Chris Pressnall (Illinois EPA) regarding availability for conference call, attached to the Motion as Exhibit 18, Bates stamped K:000637 (omitted from the Record);*

KCBX believes it is necessary to include this document in the Record because it is similar to other e-mails included by Illinois EPA in the Record (See Bates stamps K:00018, K:00243, K:00244 and K:00277), and it helps establish a complete understanding of the communications between the attorneys for both parties. Further, such e-mails demonstrate the iterative process of permit writing and prove that KCBX was actively engaged in communications and meetings with Illinois EPA throughout the process providing requested information in order to assist Illinois EPA in drafting the FESOP. Such e-mails are, therefore, relevant as to what information was before Illinois EPA when it issued the FESOP to KCBX. Thus, KCBX believes that Exhibit 18 should be included in the Record.

- h. *An October 14, 2008 e-mail from Katherine Hodge (HD&D) to Chris Presnall (Illinois EPA) regarding scheduling of meeting/conference call, attached to the Motion as Exhibit 19, Bates stamped K:000638-K:000639 (omitted from the Record);*

KCBX believes it is necessary to include this document in the Record because it is similar to other e-mails included by Illinois EPA in the Record (See Bates stamps K:00018, K:00243, K:00244 and K:00277), and it helps establish a complete understanding of the communications between the attorneys for both parties. Further, such e-mails demonstrate the iterative process of permit writing and prove that KCBX was actively engaged in communications and meetings with Illinois EPA throughout the process providing requested information in order to assist Illinois EPA in drafting the FESOP. Such e-mails are, therefore, relevant as to what

information was before Illinois EPA when it issued the FESOP to KCBX. Thus, KCBX believes that Exhibit 19 should be included in the Record.

- i. *An October 16, 2008 e-mail from Katherine Hodge (HD&D) to Chris Pressnall (Illinois EPA) regarding execution of the permit, attached to the Motion as Exhibit 21, Bates stamped K:000641-K:000642 (omitted from the Record);*

KCBX believes it is necessary to include this document in the Record because it is similar to other e-mails included by Illinois EPA in the Record (See Bates stamps K:00018, K:00243, K:00244 and K:00277), and it helps establish a complete understanding of the communications between the attorneys for both parties. Further, such e-mails demonstrate the iterative process of permit writing and prove that KCBX was actively engaged in communications and meetings with Illinois EPA throughout the process providing requested information in order to assist Illinois EPA in drafting the FESOP. Such e-mails are, therefore, relevant as to what information was before Illinois EPA when it issued the FESOP to KCBX. Thus, KCBX believes that Exhibit 21 should be included in the Record.

- j. *An October 17, 2008 e-mail from Katherine Hodge (HD&D) to Chris Pressnall (Illinois EPA) regarding problems with permit, attached to the Motion as Exhibit 24, Bates stamped K:000647 (omitted from the Record);*

KCBX believes it is necessary to include this document in the Record because it is similar to other e-mails included by Illinois EPA in the Record (See Bates stamps K:00018, K:00243, K:00244 and K:00277), and it helps establish a complete understanding of the communications between the attorneys for both parties. Further, such e-mails demonstrate the iterative process of permit writing and prove that KCBX was actively engaged in communications and meetings with Illinois EPA throughout the process providing requested information in order to assist Illinois EPA in drafting the FESOP. Such e-mails are, therefore, relevant as to what information was before Illinois EPA when it issued the FESOP to KCBX. Thus, KCBX believes that Exhibit 24 should be included in the Record.

- k. *An October 17, 2008 e-mail from Katherine Hodge (HD&D) to Chris Pressnall (Illinois EPA) regarding signed permit, attached to the Motion as Exhibit 25, Bates stamped K:000648-K:000649 (omitted from the Record);*

KCBX believes it is necessary to include this document in the Record because it is similar to other e-mails included by Illinois EPA in the Record (See Bates stamps K:00018, K:00243, K:00244 and K:00277), and it helps establish a complete understanding of the communications

between the attorneys for both parties. Further, such e-mails demonstrate the iterative process of permit writing and prove that KCBX was actively engaged in communications and meetings with Illinois EPA throughout the process providing requested information in order to assist Illinois EPA in drafting the FESOP. Such e-mails are, therefore, relevant as to what information was before Illinois EPA when it issued the FESOP to KCBX. Thus, KCBX believes that Exhibit 24 should be included in the Record.

- l. A July 13, 2009 e-mail from Katherine Hodge (HD&D) to George Kennedy, Bob Bernoteit and Chris Pressnall (Illinois EPA) regarding scheduling meeting, attached to the Motion as Exhibit 27, Bates stamped K:000651 (omitted from the Record);*

KCBX believes it is necessary to include this document in the Record because it is similar to other e-mails included by Illinois EPA in the Record (See Bates stamps K:00018, K:00243, K:00244 and K:00277), and it helps establish a complete understanding of the communications between the attorneys for both parties. Further, such e-mails demonstrate the iterative process of permit writing and prove that KCBX was actively engaged in communications and meetings with Illinois EPA throughout the process providing requested information in order to assist Illinois EPA in drafting the FESOP. Such e-mails are, therefore, relevant as to what information was before Illinois EPA when it issued the FESOP to KCBX. Thus, KCBX believes that Exhibit 27 should be included in the Record.

- m. A July 13, 2009 e-mail from Chris Pressnall (Illinois EPA) to Katherine Hodge (HD&D) regarding scheduling meeting, attached to the Motion as Exhibit 28, Bates stamped K:000652 (omitted from the Record);*

KCBX believes it is necessary to include this document in the Record because it is similar to other e-mails included by Illinois EPA in the Record (See Bates stamps K:00018, K:00243, K:00244 and K:00277), and it helps establish a complete understanding of the communications between the attorneys for both parties. Further, such e-mails demonstrate the iterative process of permit writing and prove that KCBX was actively engaged in communications and meetings with Illinois EPA throughout the process providing requested information in order to assist Illinois EPA in drafting the FESOP. Such e-mails are, therefore, relevant as to what information was before Illinois EPA when it issued the FESOP to KCBX. Thus, KCBX believes that Exhibit 28 should be included in the Record.

- n. A July 13, 2009 e-mail from C. Pressnall (Illinois EPA) to Katherine Hodge (HD&D) regarding scheduling meetings, attached to the Motion as*

Exhibit 29, Bates stamped K:000652-K:000654 (omitted from the Record);

KCBX believes it is necessary to include this document in the Record because it is similar to other e-mails included by Illinois EPA in the Record (See Bates stamps K:00018, K:00243, K:00244 and K:00277), and it helps establish a complete understanding of the communications between the attorneys for both parties. Further, such e-mails demonstrate the iterative process of permit writing and prove that KCBX was actively engaged in communications and meetings with Illinois EPA throughout the process providing requested information in order to assist Illinois EPA in drafting the FESOP. Such e-mails are, therefore, relevant as to what information was before Illinois EPA when it issued the FESOP to KCBX. Thus, KCBX believes that Exhibit 29 should be included in the Record.

- o. An October 7, 2009 e-mail from Katherine Hodge (HD&D) to Chris Pressnall (Illinois EPA) regarding KCBX meeting, attached to the Motion as Exhibit 35, Bates stamped K:000722 (omitted from the Record);*

KCBX believes it is necessary to include this document in the Record because it is similar to other e-mails included by Illinois EPA in the Record (See Bates stamps K:00018, K:00243, K:00244 and K:00277), and it helps establish a complete understanding of the communications between the attorneys for both parties. Further, such e-mails demonstrate the iterative process of permit writing and prove that KCBX was actively engaged in communications and meetings with Illinois EPA throughout the process providing requested information in order to assist Illinois EPA in drafting the FESOP. Such e-mails are, therefore, relevant as to what information was before Illinois EPA when it issued the FESOP to KCBX. Thus, KCBX believes that Exhibit 35 should be included in the Record.

- p. An October 15, 2009 e-mail from Katherine Hodge (HD&D) to Chris Presnall (Illinois EPA) regarding Construction Permit issued on October 17, 2008, attached to the Motion as Exhibit 36, Bates stamped K:000723-K:000735 (omitted from the Record); and*

KCBX believes it is necessary to include this document in the Record because it is similar to other e-mails included by Illinois EPA in the Record (See Bates stamps K:00018, K:00243, K:00244 and K:00277), and it helps establish a complete understanding of the communications between the attorneys for both parties. Further, such e-mails demonstrate the iterative process of permit writing and prove that KCBX was actively engaged in communications and meetings with Illinois EPA throughout the process providing requested information in order to assist Illinois EPA

in drafting the FESOP. Such e-mails are, therefore, relevant as to what information was before Illinois EPA when it issued the FESOP to KCBX. Thus, KCBX believes that Exhibit 36 should be included in the Record.

- q. *A May 4, 2010 KCBX letter to Illinois EPA regarding Revision to Fugitive Particulate Operating Program, attached to the Motion as Exhibit 38, Bates stamped K:000737-K:000751 (omitted from the Record).*

KCBX believes it is necessary to include this document in the Record because Illinois EPA included in the Record information regarding a June 29, 2009 Revision to Fugitive Particulate Operating Program (See Bates stamps K:00221-K:00230). Exhibit 38 is information regarding a more recent revision to the Fugitive Particulate Operating Program at the Facility. Therefore, KCBX believes Exhibit 38 should be included in the Record.

8. In the Board's February 17, 1994 Opinion and Order in the permit appeal of Industrial Salvage, Inc. v. IEPA, PCB Nos. 93-60 and 93-61 (Ill.Pol.Control.Bd. Feb. 17, 1994), the Board stated that it is Illinois EPA's "responsibility to file the complete record that is before it The filing of a partial record places the Board in a difficult situation, causing the Board to be faced with making its decision based upon the incomplete record and pleadings as they stand." Id. at 4.

9. As further noted in the Motion, because the Record is incomplete, KCBX requests that it be supplemented with the exhibits to the Motion discussed above, in order to make available to the Board all documents relevant to this matter.

10. Section 105.212 of the Board's rules requires that "[t]he record must include ... [c]orrespondence with the petitioner and any documents or materials submitted by the petitioner to the Agency related to the permit application." 35 Ill. Admin. Code § 105.212(b)(2). (Emphasis added.) The majority of the documents to which Illinois EPA has objected were submitted by KCBX to Illinois EPA in connection with the permit application. Therefore, by definition, they must be included in the Record.

11. In addition, Illinois EPA did not address KCBX's request, in either the construction permit appeal (PCB No. 10-110) or the FESOP appeal (PCB No. 11-43), that Illinois EPA confirm whether there exists "[a]ny other information [Illinois EPA] relied upon in making its final decision," which was not included in the Record. *See* 35 Ill. Admin. Code § 105.212.

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

Respectfully submitted,

KCBX TERMINALS COMPANY
Petitioner,

Dated: May 11, 2011

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

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