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MAY 20 2014

STATE OF ILLINOIS  
Pollution Control Board

ILLINOIS POLLUTION CONTROL BOARD  
May 20, 2014

KCBX TERMINALS COMPANY,	)	
	)	
Petitioner,	)	
	)	
v.	)	
	)	PCB 14-110
ILLINOIS ENVIRONMENTAL PROTECTION	)	(Permit Appeal - Air)
AGENCY,	)	
	)	
Respondent.	)	
	)	

**HEARING OFFICER ORDER**

On May 16, 2014, KCBX Terminals Company (KCBX) filed a motion to revise hearing officer schedule to complete the record (Mot.). On May 19, 2014, the Illinois Environmental Protection Agency (Agency) filed its response. For the reasons set forth below, KCBX's motion is denied.

**KCBX Motion to Revise Briefing Schedule**

KCBX acknowledges that the record was due to close on May 16, 2014, but requests an additional four days, or May 20, 2014 to file a reply brief. Mot. at 1. In support, KCBX cites to Section 101.612(b) of the Board's procedural rules, 35 Ill. Adm. Code 101.612(b) where it provides in pertinent part:

The hearing officer may rule upon any motion to revise the schedule to complete the record. The hearing officer may grant the motion to the extent that the revised schedule provides for a completed record at least 30 days before the decision date or to prevent material prejudice.

KCBX argues that its request for an additional four days to May 20, 2014, would allow the Board 30 days before the decision date in this matter. Mot. at 2. KCBX states that it "just received" the Agency's post-hearing brief "and has yet to have an opportunity to fully review it." *Id.*

**Agency's Response**

The Agency in its five page response argues that KCBX's motion must be denied. The Agency states that KCBX and the Agency submitted to the hearing officer an agreed case management schedule on March 24, 2014 setting May 16, 2014 as the due date for the Agency's post-hearing brief and the record close date. Resp. at 2. No allowance for reply or surreply was

included. The agreed case management schedule was memorialized in a hearing officer order issued March 25, 2014.

The Agency also references the May 2, 2014 hearing transcript where I asked the parties to confirm the previously agreed to post-hearing briefing schedule that set the date for record close on May 16, 2014. Resp. at 3. All parties were in agreement. *Id.* The Agency also references my hearing report issued May 6, 2014, addressing the post-hearing briefing schedule and setting the record close date on May 16, 2014. *Id.* at 4.

The Agency states that KCBX does not claim “material prejudice” should it not be allowed to file a reply. *Id.* And finally, had the Agency known that a reply would be filed, it would have requested time to file a surreply. *Id.*

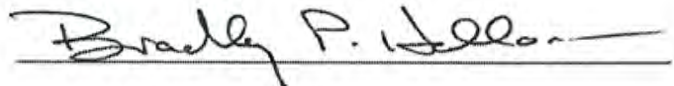
### **Ruling**

The Agency is correct in arguing that the case management schedule was agreed to and that I repeatedly sought and received affirmation of the agreed briefing schedule, including the record close date of May 16, 2014. KCBX does not allege that it would be materially prejudiced should I deny their motion.

KCBX’s statement that it just received the Agency’s brief and has not had the opportunity to review it could not have come as a surprise to KCBX as it knew 53 days beforehand that the Agency’s post-hearing brief and the record close date was on May 16, 2014. All parties were aware and in agreement that the briefing schedule did not allow for replies.

KCBX’s motion to revise hearing officer schedule to complete record is denied in its entirety.

IT IS SO ORDERED.



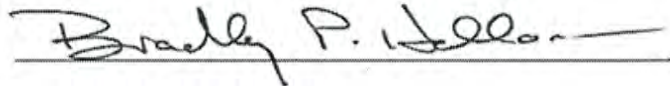
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CERTIFICATE OF SERVICE

It is hereby certified that true copies of the foregoing order were mailed, first class, on May 20, 2014, to each of the persons on the attached service list.

It is hereby certified that a true copy of the foregoing order was hand delivered to the following on May 20, 2014:

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