

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

KCBX TERMINALS COMPANY,)	
)	
Petitioner,)	
)	
v.)	PCB 14-110
)	(Air Permit Appeal)
ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
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 Board PETITIONER'S RESPONSE TO PUBLIC COMMENTS OF THE SOUTHEAST ENVIRONMENTAL TASK FORCE, a copy of which is herewith served upon you.

Respectfully submitted,

KCBX TERMINALS COMPANY,
Petitioner,

Dated: May 16, 2014

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

Katherine D. Hodge
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500 West Madison Street, Suite 2450
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CERTIFICATE OF SERVICE

I, Katherine D. Hodge, the undersigned, hereby certify that I have served the attached PETITIONER'S RESPONSE TO PUBLIC COMMENTS OF THE SOUTHEAST ENVIRONMENTAL TASK FORCE 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 16, 2014 and upon:

Mr. Bradley P. Halloran
Hearing Officer
Illinois Pollution Control Board
100 West Randolph Street
Suite 11-500
Chicago, Illinois 60601

Division of Legal Counsel
Illinois Environmental Protection
Agency
1021 North Grand Avenue
Post Office Box 19276
Springfield, Illinois 62794-9276

by depositing said documents in the United States Mail, postage prepaid, in Springfield, Illinois on May 16, 2014 and upon:

Kathryn A. Pamenter, Esq.
Christopher J. Grant, Esq.
Robert R. Petti, Esq.
Assistant Attorney General
Office of the Attorney General
69 West Washington Street, Suite 1800
Chicago, Illinois 60602

via facsimile and by depositing said document in the United States Mail, postage prepaid, in Springfield, Illinois on May 16, 2014.

/s/ Katherine D. Hodge
Katherine D. Hodge

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**PETITIONER’S RESPONSE TO PUBLIC COMMENTS
OF THE SOUTHEAST ENVIRONMENTAL TASK FORCE**

NOW COMES Petitioner, KCBX TERMINALS COMPANY (“KCBX”), a North Dakota corporation, by and through its attorneys, HODGE DWYER & DRIVER, and submits its Response to Public Comments of the Southeast Environmental Task Force (“SETF”) to the Illinois Pollution Control Board (“Board”).

On May 6, 2014, the SETF filed public comments that address public participation and the role of citizen complaints in evaluating the KCBX permit application at issue in this permit appeal (“Request for Revision”).¹ Since SETF’s comments directly address the relief requested by KCBX and information to be considered by the Board in the permit appeal, KCBX responds.

First, SETF argues that if the Board directs Illinois EPA to move forward with KCBX’s Request for Revision, “this does not mean Illinois EPA must issue a permit to KCBX.” *Id.* at 3. SETF argues that Illinois EPA “retains the Authority and responsibility to provide a full and complete opportunity for the public to contribute to

¹ Public Comments of the Southeast Environmental Task Force, PCB 14-110 (Ill.Pol.Control.Bd. May 6, 2014).

the record on which the ultimate permitting decision will be made, including a public notice, a permit hearing(s) and a written comment period.” *Id.* at 4.

However, the Administrative Record (“Record”) for this Request for Revision already spans 178 days – nearly twice the length of the statutorily required 90-day permit application review period. *See* 415 ILCS 5/39(a). During that period, Illinois EPA held a meeting with members of the public to discuss and answer questions about the Request for Revision. *See* R-125. The Record contains correspondence from politicians (R-29; R-172-R-173) and forms submitted by citizens (R-222-R-537). This level of public outreach and involvement was not required by statute or regulation. Therefore, Illinois EPA has already gone over and above its statutory obligations with respect to public input. This is particularly true given the limited scope of the Request for Revision.

KCBX is simply attempting to relocate portable equipment for the KCBX North Terminal to the KCBX South Terminal but is not requesting any changes to the annual and monthly throughput limitations, emission limitations, or any other applicable requirements in its existing revised construction permit. R-186-R-204. Further, any future action by the Illinois EPA in this permitting matter, should the Board grant KCBX’s request to direct Illinois EPA to issue the permit, will be limited by the Permit Denial letter and the Board’s direction in any such remand. Additional public input would not serve to inform Illinois EPA. Instead, it would only delay issuance of the revised construction permit.

Second, SETF argues that citizen complaint forms are relevant to this permit application review and, in particular, the “duty of the applicant to demonstrate its

activities will not cause violations of the Illinois Environmental Protection Act ["Act"] or its implementing regulations." SETF Comments at 5. Specifically, SETF indicates that the citizen complaint forms are relevant to determining compliance with Sections 9(a) of the Act and 35 Ill. Admin. Code § 201.141. *Id.* at 5-6. SETF also points to a transcript from a hearing held by the City of Chicago as further evidence of noncompliance. *Id.* at 9. Finally, SETF argues that the citizen complaints are consistent with Illinois EPA's inspection reports and the complaint filed by the Illinois Attorney General ("Complaint").

As described in KCBX's Post-Hearing Brief, citizen complaint forms, inspection reports, and the Complaint constitute unadjudicated alleged noncompliance; thus, Illinois EPA is precluded from considering them in its permit decision. Further, the Permit Denial letter does not list potential violations of Section 9(a) of the Act or Section 201.141 of the Board's regulations as specific reasons for denying the Request for Revision. The Permit Denial letter only considers citizen complaint forms in the context of 35 Ill. Admin. Code § 212.301. R-2. Since the scope of this permit appeal is limited to the Permit Denial letter, Section 9(a) of the Act and Section 201.141 of the Board's regulations are not relevant in this permit appeal or any subsequent remand by the Board. Finally, SETF attempts to introduce a transcript related to proposed regulations presented by the City of Chicago. SETF Comments at 9. However, the transcript is not part of the Record, and SETF presents no evidence that this transcript was before Illinois EPA during the permit application review period, or is otherwise relevant to Illinois EPA's decision to deny the Request for Revision. Therefore, the transcript does not belong in the Record, and its contents should not be considered by the Board.

WHEREFORE Petitioner, KCBX TERMINALS COMPANY, appreciates the opportunity to provide this response to comments, and it respectfully requests that the Board consider its response and prays that the Board issue an Order directing Illinois EPA to issue the requested revised construction permit to KCBX TERMINAL COMPANY upon entry of the Board's Order, 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 16, 2014

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KCBX:004/Filings Permit Appeal PCB 2014-110:Response to Public Comments of SETF 5.16.2014