

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

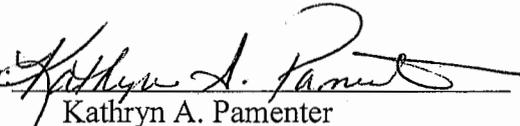
|                         |   |                     |
|-------------------------|---|---------------------|
| KCBX TERMINALS COMPANY, | ) |                     |
|                         | ) |                     |
| Petitioner,             | ) |                     |
|                         | ) |                     |
| v.                      | ) | PCB No. 14-110      |
|                         | ) | (Air Permit Appeal) |
| ILLINOIS ENVIRONMENTAL  | ) |                     |
| PROTECTION AGENCY,      | ) |                     |
|                         | ) |                     |
| Respondent.             | ) |                     |

NOTICE OF ELECTRONIC FILING

|     |                       |  |
|-----|-----------------------|--|
| To: | <i>Via Facsimile</i>  | <i>Via Email</i>                       |
|     | Katherine D. Hodge    | Bradley P. Halloran                    |
|     | Edward W. Dwyer       | Hearing Officer                        |
|     | Matthew C. Read       | Illinois Pollution Control Board       |
|     | Hodge Dwyer & Driver  | James R. Thompson Center, Suite 11-500 |
|     | 3150 Roland Avenue    | 100 W. Randolph Street                 |
|     | Springfield, IL 62705 | Chicago, Illinois 60601                |

PLEASE TAKE NOTICE that on the 15<sup>th</sup> day of April, 2014, the Respondent's Response to KCBX Terminals Company's Motion for Leave to File Amendment to Motion to Supplement the Record was filed with the Illinois Pollution Control Board, a true and correct copy of which is attached hereto and is hereby served upon you.

ILLINOIS ENVIRONMENTAL PROTECTION  
AGENCY

By:   
Kathryn A. Pamerter  
Christopher J. Grant  
Assistant Attorneys General  
Environmental Bureau  
69 W. Washington St., 18<sup>th</sup> Floor  
Chicago, IL 60602  
(312) 814-0608  
(312) 814-5388

DATE: April 15, 2014

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

|                                |   |                            |
|--------------------------------|---|----------------------------|
| <b>KCBX TERMINALS COMPANY,</b> | ) |                            |
|                                | ) |                            |
| <b>Petitioner,</b>             | ) |                            |
|                                | ) |                            |
| <b>v.</b>                      | ) | <b>PCB No. 14-110</b>      |
|                                | ) | <b>(Air Permit Appeal)</b> |
| <b>ILLINOIS ENVIRONMENTAL</b>  | ) |                            |
| <b>PROTECTION AGENCY,</b>      | ) |                            |
|                                | ) |                            |
| <b>Respondent.</b>             | ) |                            |

**RESPONDENT'S RESPONSE TO KCBX TERMINALS COMPANY'S MOTION FOR LEAVE TO FILE AMENDMENT TO MOTION TO SUPPLEMENT THE RECORD**

Respondent, Illinois Environmental Protection Agency (the "Illinois EPA"), for its Response to KCBX Terminals Company's Motion for Leave to File Amendment to Motion to Supplement the Record, hereby states as follows:

1. On April 7, 2014, KCBX filed its Motion to Supplement the Record ("Motion to Supplement"), which was served on the Illinois EPA on April 9, 2014.
2. On April 11, 2014, KCBX filed its Motion for Leave to File Amendment to its Motion to Supplement the Record ("Motion for Leave").
3. On April 14, 2014, the Illinois EPA filed its Response to the Motion to Supplement, which is incorporated herein by reference.
4. Through the Motion for Leave, KCBX seeks to have a privilege log included in the Administrative Record.<sup>1</sup> In the Motion for Leave, KCBX does not request that the documents listed in the privilege log be added to the Administrative Record.

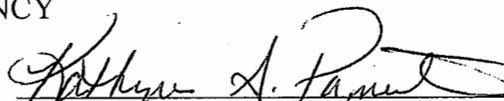
<sup>1</sup> KCBX did not attach a copy of the privilege log to its Motion to Supplement in support of its arguments concerning the attorney-client privilege. The Illinois EPA has no objection to the Board's consideration of the privilege log in ruling on KCBX's request within its Motion to Supplement to have certain, specified documents listed on the privilege log included in the Administrative Record.

5. Counsel at the Illinois Attorney General's Office representing the Illinois EPA in this Permit Appeal created the privilege log between March 21-24, 2014. The Board's review of the Illinois EPA's January 17, 2014 Permit Denial is limited to information submitted to the Illinois EPA during the statutory review period. *West Suburban Recycling and Energy Center, L.P. v. Illinois Environmental Protection Agency*, PCB No. 95-119 and 95-125, 1996 WL 633368, at \*3 (Oct. 17, 1996) (citing *Alton Packaging Corp. v. Illinois Pollution Control Board*, 516 N.E.2d 275, 280 (5th Dist. 1987)). Because the privilege log was created between March 21-24, 2014, well after the end of the statutory review period at issue in this Permit Appeal, KCBX's request to include the privilege log in the Administrative Record should be denied.

Based upon the foregoing, the Illinois EPA respectfully requests that the Board deny KCBX's Motion for Leave to File Amendment to its Motion to Supplement the Record.

ILLINOIS ENVIRONMENTAL PROTECTION  
AGENCY

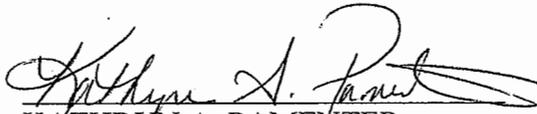
By:



KATHRYN A. PAMENTER  
CHRISTOPHER J. GRANT  
Assistant Attorneys General  
Environmental Bureau  
69 W. Washington, 18<sup>th</sup> Floor  
Chicago, Illinois 60602  
(312) 814-0608  
312) 814-5388

**CERTIFICATE OF SERVICE**

I, KATHRYN A. PAMENTER, an Assistant Attorney General, do certify that I caused to be served this 15th day of April, 2014, the attached Notice of Electronic Filing and Respondent's Response to KCBX Terminals Company's Motion for Leave to File Amendment to Motion to Supplement the Record upon (a) Edward W. Dwyer, Katherine D. Hodge and Matthew C. Read *via facsimile* and (b) Bradley P. Halloran *via email*.

  
KATHRYN A. PAMENTER