

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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

NOTICE OF FILING

TO: John T. Therriault
Clerk of the Board
Illinois Pollution Control Board
James R. Thompson Center
100 West Randolph, Suite 11-500
Chicago, Illinois 60601
(VIA ELECTRONIC MAIL)

PLEASE TAKE NOTICE that I have today filed with the Office of the Clerk of the Illinois Pollution Control Board the **ENTRY OF APPEARANCE OF KATHERINE D. HODGE, ENTRY OF APPEARANCE OF MATTHEW C. READ,** and KCBX TERMINALS COMPANY'S **PETITION FOR REVIEW**, copies of which are herewith served upon you.

Respectfully submitted,

KCBX TERMINALS COMPANY,
Petitioner,

Dated: February 21, 2014

By: /s/ Katherine D. Hodge
One of Its Attorneys

Katherine D. Hodge
Matthew C. Read
HODGE DWYER & DRIVER
3150 Roland Avenue
Post Office Box 5776
Springfield, Illinois 62705-5776
(217) 523-4900

THIS FILING SUBMITTED ON RECYCLED PAPER

CERTIFICATE OF SERVICE

I, Katherine D. Hodge, the undersigned, hereby certify that I have served the attached ENTRY OF APPEARANCE OF KATHERINE D. HODGE, ENTRY OF APPEARANCE OF MATTHEW C. READ, and KCBX TERMINALS COMPANY'S PETITION FOR REVIEW upon:

John T. Therriault
Clerk of the Board
Illinois Pollution Control Board
James R. Thompson Center
100 West Randolph Street, Suite 11-500
Chicago, Illinois 60601

via electronic mail on February 21, 2014; and upon:

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 February 21, 2014.

/s/ Katherine D. Hodge
Katherine D. Hodge

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ENTRY OF APPEARANCE OF KATHERINE D. HODGE

NOW COMES Katherine D. Hodge, of the law firm of HODGE DWYER & DRIVER, and hereby enters her appearance on behalf of KCBX TERMINALS COMPANY, in the above-referenced matter.

Respectfully submitted,

KCBX TERMINALS COMPANY,

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

Dated: February 21, 2014

Katherine D. Hodge
HODGE DWYER & DRIVER
3150 Roland Avenue
Post Office Box 5776
Springfield, Illinois 62705-5776
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ENTRY OF APPEARANCE OF MATTHEW C. READ

NOW COMES Matthew C. Read, of the law firm of HODGE DWYER & DRIVER, and hereby enters his appearance on behalf of KCBX TERMINALS COMPANY, in the above-referenced matter.

Respectfully submitted,

KCBX TERMINALS COMPANY,

By: /s/ Matthew C. Read
Matthew C. Read

Dated: February 21, 2014

Matthew C. Read
HODGE DWYER & DRIVER
3150 Roland Avenue
Post Office Box 5776
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PETITION FOR REVIEW

NOW COMES Petitioner, KCBX TERMINALS COMPANY (“KCBX”), a North Dakota corporation, by and through its attorneys, HODGE DWYER & DRIVER, pursuant to Section 40(a)(1) of the Illinois Environmental Protection Act (“Act”) (415 ILCS 5/40(a)(1)) and 35 Ill. Admin. Code Part 105, Subpart B, and petitions the Illinois Pollution Control Board (“Board”) for review of the Permit Denial issued to KCBX by the Illinois Environmental Protection Agency (“Illinois EPA”) on January 17, 2014, in response to its Request for Revision to Revised Construction Permit (“Request for Revision”). A copy of the Permit Denial, which was received by KCBX on January 21, 2014, is attached as Exhibit 1.

In support of its petition, KCBX states as follows:

I. BACKGROUND

1. KCBX operates two bulk material terminals, with one terminal located at 10730 South Burley Avenue, Chicago, Illinois 60617 (Facility ID No. 031600GSF) (hereafter “South Facility”), and the other terminal located at 3259 East 100th Street, Chicago, Illinois 60617 (Facility ID No. 031600AHI) (hereafter “North Facility”). The

business of these facilities is to transfer bulk products – currently coal and petroleum coke (“pet coke”)¹ – from one mode of transportation such as train or barge, to another form of transportation such as lake vessel, staging the materials for a period of time to match up the incoming and outgoing modes of transportation.

2. KCBX currently operates the North Facility pursuant to a federally enforceable state operating permit (“FESOP”), Application No. 95050167 (April 5, 2012) (hereafter “KCBX North FESOP”) and a protective Clean Air Act Permit Program (“CAAPP”) permit application filed on December 20, 2012, which was updated on January 18, 2013. Exhibits 2, 3, and 4.

3. KCBX currently operates the South Facility pursuant to Construction Permit – NSPS and NESHAP Source – Revised, Application No. 07050082 (April 18, 2013) (hereafter “Revised Construction Permit”) and a pending application for a FESOP.

4. A copy of the Revised Construction Permit is attached to this Petition as Exhibit 5, and the initial application for a FESOP, submitted by KCBX’s predecessor at the site, DTE Chicago Fuels Terminal, LLC (hereafter “DTE”), is attached as Exhibit 6.

5. KCBX notified Illinois EPA in a meeting on September 19, 2012, that KCBX intended to purchase the South Facility from DTE, and KCBX requested to transfer both the current (at the time) construction permit and pending applications, and followed up with a written notification on October 4, 2012. Exhibit 7, Letter from Katherine D. Hodge to Edwin C. Bakowski (Oct. 4, 2012).

¹ Pet coke is a valuable product intentionally produced as part of the process of refining crude oil. Pet coke has many uses, including energy generation and the production of cement, steel, aluminum, and other specialty products. Notably, pet coke has been used safely and broadly since the 1930s. See, e.g., <http://www.afpm.org/policy-position-petroleum-coke/>.

6. Illinois EPA issued a revised construction permit to DTE on December 18, 2012. Exhibit 8, DTE Construction Permit – NSPS and NESHAP Source – Revised, Application No. 07050082 (Dec. 18, 2012) (hereafter “December 18, 2012, Construction Permit”).

7. Thereafter, on December 20, 2012, KCBX again notified Illinois EPA of the transfer and that it intended to operate in accordance with the permit issued to DTE on December 18, 2012. Exhibit 9, Letter from Monica T. Rios to Lori Pennington (Dec. 20, 2012). KCBX also incorporated the September 20, 2012, DTE construction permit application (hereafter “September 20, 2012, Construction Permit Application”) for the December 18, 2012, Construction Permit as a supplement to its pending FESOP application for the site. Exhibit 10, Letter from Katherine D. Hodge to Edwin C. Bakowski and attached September 20, 2012 Construction Permit Application (Dec. 20, 2012).

8. On December 20, 2012, Illinois EPA sent a return letter acknowledging that “Illinois EPA has appropriately updated its records accordingly.” Exhibit 11, Letter from Edwin C. Bakowski, Illinois EPA to KCBX (Dec. 20, 2012).

9. Also on December 20, 2012, Illinois EPA sent a “revised construction permit which reflects a change of ownership.” Exhibit 12, Construction Permit – NSPS and NESHAP Source – Revised, Application No. 07050082 (Dec. 20, 2012) (hereafter “December 20, 2012, Construction Permit”). Due to concerns related to the December 20, 2012, Construction Permit, KCBX filed a Joint Request for Ninety-Day Extension of Appeal Period with the Board on January 18, 2013. *KCBX Terminals Co. v. Illinois Environmental Protection Agency*, PCB 13-39 (Ill.Pol.Control.Bd. Jan. 18, 2013). The

Revised Construction Permit was issued on April 18, 2013, as a result of negotiations between Illinois EPA and KCBX following that filing.

10. KCBX intends to operate the South Facility and the North Facility as a single source for purposes of air permitting. Pending permit applications for both the South Facility and the North Facility indicate KCBX's intent to accept limitations on emissions and production and/or operation of this new combined source such that potential emissions would not exceed major source applicability levels and, thereby, exclude the new combined source from requiring a CAAPP permit. Exhibit 13, Request for Revision, Cover Letter.

11. In its Request for Revision, dated July 23, 2013, and received by Illinois EPA on that same day, KCBX requested that Illinois EPA revise the Revised Construction Permit to authorize the installation of certain additional conveyance and handling equipment as part of the Conveyor Addition Project at the South Facility. Request for Revision, Cover Letter.

12. In particular, KCBX requested permission to relocate equipment consisting of ten portable conveyors, one box hopper, and one stacker (collectively "Equipment") from the North Facility to the South Facility. Request for Revision.

13. Illinois EPA previously permitted the operation of the Equipment at the North Facility. *See* KCBX North FESOP. The South Facility would use the Equipment for the same purposes and in the same manner as the North Facility.

14. The Request for Revision does not request any change to the permit limitations for the South Facility. That is, KCBX is not requesting any changes to the annual and monthly throughput limitations or the emission limitations in the existing

Revised Construction Permit. Likewise, KCBX is not requesting any changes to related testing, monitoring, recordkeeping, and reporting requirements. Rather, the requested changes would simply be necessary to achieve the contemplated throughput for the Conveyor Addition Project that is already permitted. Request for Revision, Cover Letter. Additional units of the same type of equipment already operating at the South Facility would be added.

15. KCBX met with Illinois EPA to discuss the Request for Revision on August 27, 2013. Exhibit 14, August 27, 2013, Meeting Sign-in Sheet. At that meeting, Illinois EPA and KCBX agreed that the Request for Revision was “tacked on” to the existing Application No. 07050082. In addition, Illinois EPA stated that the only additional information needed from KCBX was equipment identification numbers. Equipment identification numbers were provided to Michael Dragovich at Illinois EPA by e-mail on September 3, 2013. Exhibit 15, E-mail from Terry Steinert to Michael Dragovich, re: Equipment ID Nos. (Sept. 3, 2013) (hereafter “September 3, 2013, Steinert e-mail”). Mr. Dragovich did not respond to this e-mail, but in a subsequent telephone conversation with Terry Steinert on November 4, 2013, Mr. Dragovich confirmed that he did not need any additional information from KCBX to review the Request for Revision. Exhibit 16, affidavit of Terry Steinert (hereafter “Steinert Affidavit”).²

16. At the August 27, 2013 meeting, Illinois EPA also discussed environmental justice outreach and explained the potential need to hold a public meeting. Illinois EPA later held a community outreach meeting at the Eastside United Methodist Church on Ewing Avenue. Exhibit 17, Environmental Justice Outreach Meeting Flyer.

² Exhibit 17 contains an unsigned affidavit for Terry Steinert. Mr. Steinert is currently away from his office on a business trip. A notarized affidavit will be filed with the Board upon Mr. Steinert’s return.

17. Meanwhile, on August 30, 2013, a wind storm occurred in Chicago.³ This storm allegedly resulted in visible airborne dust over the neighborhood east of the South Facility. The windstorm occurred less than a year after KCBX acquired its South Facility, and when the storm occurred, KCBX was in the process of constructing improvements to the site, including a state-of-the-art dust-suppression system. Since August 30, that new dust suppression system has been put into service and is the one that worked during a November 17, 2013 severe wind storm. But at the time of the August 30 windstorm, KCBX was operating the system that had been in place at the South facility at the time that KCBX acquired it. Notably, on that same date, there were no complaints about dust from the North Facility, where the KCBX dust suppression system was operating.

18. Following the wind event, the Illinois EPA Bureau of Air inspected the South Facility on September 5, 11, and 13, 2013, and November 6, and 19, 2013.

19. On November 4, 2014, the Illinois Attorney General, on her own and at the request of Illinois EPA, filed a two-count complaint alleging air pollution and failure to amend and maintain a current fugitive particulate matter operating program. Exhibit 18, Complaint for Injunctive Relief and Civil Penalties, Circuit Court for Cook County, Chancery Division, 2013 CH 24788 (Nov. 4, 2013).

20. Following the wind event, Illinois EPA requested, and KCBX granted two waivers of application review deadlines. Exhibit 19, Section 39 Waiver Letters from

³ Local Chicago news reported that wind gusts were up to 70 miles per hour. The storm brought down trees and caused power outages and transportation delays throughout the city. See, e.g., http://articles.chicagotribune.com/2013-08-31/news/ct-met-severe-weather-metra-20130831_1_metra-trains-metra-website-tom-miller.

Katherine D. Hodge to Robert W. Bernoteit (October 18, 2013, and November 19, 2013) (hereafter "Section 39 Waiver Letters").

21. On December 10, 2013, Illinois EPA issued a letter notifying KCBX that Illinois EPA intended to consider information contained within the Illinois EPA files in its review of the Request for Revision. Exhibit 20, Letter from Raymond E. Pilapil, Acting Manager, Permit Section, Division of Air Pollution Control, Illinois EPA to Michael Estadt, KCBX (Dec. 10, 2013) (hereafter "Pilapil Letter").

22. Specifically, the Pilapil Letter stated that "Illinois EPA intends to consider information collected by the Illinois EPA as part of the inspections conducted by the Illinois EPA, Bureau of Air, Field Operations Section on September 5, 2013, September 11, 2013, September 13, 2013, November 6, 2013, and November 19, 2013, and approximately 50 citizen pollution complaint forms." Pilapil Letter at 1. Illinois EPA concluded that "[t]hese documents and other available information indicate violations of Section 9 and 39.2 of the Illinois Environmental Protection Act, and 35 Ill. Adm. Code Part 212, Subparts K and U." *Id.*

23. The Pilapil Letter also provided KCBX "an opportunity to respond to the information which the Illinois EPA intends to consider in its review" of the Request for Revision and gave KCBX eight days from the date of the letter to respond. *Id.*

24. Prior to receiving the Pilapil Letter, KCBX had requested all documents related to this facility. In the initial responses to that request, and after specific requests for the inspection reports, Illinois EPA did not provide September or November inspection reports or citizen complaint forms. *See* Exhibit 21, E-mail correspondence between Angie Buhl and Sharon Dowson.

25. KCBX received inspection reports from September 2013 on December 11, 2013. Exhibit 22, Tier II, Report Summarizing September 5, 2013 Inspection, ID No. 031600GSF (Sept. 19, 2013) (hereafter "September 5th Inspection Report"). Exhibit 23, Tier II, Report Summarizing September 11, 2013, and September 13, 2013 Inspections, ID No. 031600GSF (Sept. 19, 2013) (hereafter "September 11th and 13th Inspection Report").

26. On December 12, 2013, after receiving the Pilapil Letter, KCBX specifically requested the November inspection reports, citizen pollution complaint forms, and all other documents referenced in the first paragraph of the Pilapil Letter. Exhibit 24, E-mail from Angie Buhl to Sharon Dowson (Dec. 12, 2013).

27. On December 17, 2013, reports detailing the November 2013 inspections were finally provided by Illinois EPA. Exhibit 25, Tier II, Report Summarizing November 6, 2013 and November 19, 2013 Inspections, ID No. 031600GSF (Nov. 27, 2013) (hereafter "November 6th and 19th Inspection Report").

28. On December 18, 2013, KCBX responded to the Pilapil Letter and requested an extension of the response deadline until January 13, 2014, to allow time for a meaningful response. Exhibit 26, Letter from Katherine D. Hodge to Raymond E. Pilapil (Dec. 18, 2013) (hereafter "First Response to Pilapil"). KCBX explained that it had not yet received information Illinois EPA was relying on for its review, specifically the citizen complaints and "other available information." First Response to Pilapil at 2. In light of the missing information and short response period, it was impossible for KCBX to submit a meaningful response by the initial deadline. *Id.* KCBX also renewed

its request for the missing information. *Id.* Finally, KCBX provided an additional waiver of the application review period deadline to allow time to fully respond. *Id.*

29. On December 20, 2013, after the deadline for response imposed by Illinois EPA, KCBX received redacted citizen complaint forms and online complaints (together “Complaints”) from Illinois EPA. Exhibit 27, Letter from Thomas J. Reuter, FOIA Officer (Acting), Illinois EPA to Hodge Dwyer & Driver with attachments (Dec. 17, 2013) (hereafter “FOIA Response”). Redactions made to the Complaints prevented KCBX from fully responding to the allegations. In addition, the FOIA Response cover letter was dated December 17, 2013 and e-mailed on that date, but the attached Complaints and justification for redacting the Complaints were mailed in an envelope that was postmarked December 19, 2013, one day after Illinois EPA’s initial December 18th deadline to respond to the Pilapil Letter. FOIA Response. Contrary to the cover letter, Illinois EPA did not mail the Complaints on December 17, 2013.

30. On January 13, 2014, KCBX responded substantively to the Pilapil Letter, to the extent that it could, given the redactions made by Illinois EPA. *See* Exhibit 28, Letter from Katherine D. Hodge to Raymond E. Pilapil (January 13, 2014) (hereafter “Second Response to Pilapil”).

II. PERMIT DENIAL

31. Illinois EPA denied KCBX’s Request for Revision in its Permit Denial dated January 17, 2014, stating initially that the “permit application is DENIED because Sections 9 and 39.2 of the Illinois Environmental Protection Act, and 35 Ill. Adm. Code 201.152, 201.160(a), 212.301, and 212.321 *might* be violated.” Permit Denial (emphasis added).

32. Notably, the Permit Denial does not specifically describe violations of Section 9 of the Act that “might” occur.

A. Paragraph 1 – Minimum Data and Information

33. In paragraph 1(a) of the Permit Denial, Illinois EPA states that the Request for Revision does not contain the minimum data and information required in 35 Ill. Admin. Code § 201.152, and Illinois EPA could not determine compliance with the Act and regulations. Permit Denial, ¶1(a).

34. Illinois EPA lists information it claims is necessary for Illinois EPA to determine compliance. Permit Denial, ¶1(b).

35. Specifically, paragraph 1(b) of the Permit Denial states that the following information must be provided in order for Illinois EPA to determine compliance:

- i. information concerning processes to which the emission unit or air pollution control equipment is related;
- ii. the quantities and types of raw materials to be used in the emission unit or air pollution control equipment;
- iii. the nature, specific points of emission and quantities of uncontrolled and controlled air contaminants emissions at the source that includes the emission unit or air pollution control equipment;
- iv. the type, size, efficiency and specifications (including engineering drawings, plans and specifications) of the proposed emission unit or air pollution control equipment; and
- v. maps, statistics and other data reasonably sufficient to describe the location of the emission unit or air pollution control equipment.

Permit Denial, ¶1(b).

36. Despite meeting with KCBX representatives to discuss the Request for Revision, participating in multiple phone conversations to discuss the Request for

Revision, and being granted three waivers of its application review period, Illinois EPA never requested this additional information during the review period. Steinert Affidavit.

37. Illinois EPA already possesses this information, as the Request for Revision is a continuation of the prior Application No. 07050082 submitted to Illinois EPA. *See* September 20, 2012, Construction Permit Application.

38. Before KCBX filed the Request for Revision, Illinois EPA issued three prior versions of the Revised Construction Permit under the same Application No. 07050082. Exhibit 29, DTE Joint Construction and Operating Permit, Application No. 07050082 (May 21, 2009) (hereafter “May 21, 2009, Construction Permit”); December 18, 2012, Construction Permit; December 20, 2012, Construction Permit.

39. Applications for these prior construction permits, particularly the September 20, 2012, Construction Permit Application, and the Request for Revision together contain all the necessary information to grant the Request for Revision. *See* September 20, 2012 Construction Permit Application.

40. Applications for these prior versions of the Revised Construction Permit contain information about the same type of equipment and activities at issue in the Request for Revision.

41. Based on information in these prior applications, Illinois EPA found that the same type of equipment would not violate the Act or regulations and issued construction permits. *See* May 21, 2009, Construction Permit; December 18, 2012, Construction Permit; December 20, 2012, Construction Permit; Revised Construction Permit.

42. KCBX granted multiple extensions of Illinois EPA's permit application review deadline, and KCBX met with Illinois EPA to discuss the Request for Revision on August 27, 2013. Section 39 Waiver Letters; First Response to Pilapil at 2.

43. However, at the August 27, 2013 meeting and in numerous teleconferences, Illinois EPA did not raise any concerns regarding incompleteness before the Permit Denial. Illinois EPA's sole request at the meeting was for equipment identification numbers. *See* September 3, 2013, Steinert e-mail.

44. On November 4, 2013, Mr. Dragovich stated that no additional information was needed from KCBX. Steinert Affidavit.

45. Furthermore, Illinois EPA did not alert KCBX to any alleged application deficiencies within thirty days of the filing date of the Request for Revision. *See* 35 Ill. Admin. Code § 201.158.

B. Paragraph 2 – Construction or Modification so as not to Cause a Violation

46. Paragraph 2 of the Permit Denial states that pursuant to 35 Ill. Admin. Code § 201.160(a)(1), “no construction permit shall be granted unless the applicant submits proof to the Illinois EPA that the emission unit or air pollution control equipment will be constructed or modified to operate so as not to cause a violation....” Permit Denial, ¶2.

47. For the reasons already stated, Illinois EPA already possesses this information, as the Request for Revision is a continuation of the prior Application No. 07050082 submitted to Illinois EPA.

C. Paragraph 3 – Compliance with 35 Ill. Admin. Code § 212.301

48. Specifically, paragraph 3 of the Permit Denial alleges that “[t]he application does not show compliance with 35 Ill. Adm. Code 212.301 (Fugitive Particulate Matter).” It goes on to claim that emissions from the facility “may” violate Section 212.301 based on observations made by Illinois EPA field staff and Complaints.

49. Illinois EPA must rely on facts to deny a permit, not unproven allegations, vague supposition, and mere conjecture. Illinois EPA does not present evidence that shows the Equipment “may” cause a violation of Section 212.301. Furthermore, the mere possibility of causing a violation is not appropriate grounds for denying a permit.

50. Since taking over operation of the South Facility in December 2012, KCBX has made significant investments in, and implemented a number of dust suppression improvements at, the South Facility. This includes pile management procedures and surfactant application capability. In addition, KCBX designed and installed an advanced, programmable water cannon system to control dust emissions, which commenced operation in early November 2012. It includes forty-two oscillating water cannons mounted on sixty-foot high poles that operate on a computer-controlled, pre-programmed schedule to apply up to 1,800 gallons of water per minute to the entire storage area at the site. This system is at least as robust as the water spray system at the North Facility, which Illinois EPA has deemed appropriate.

51. KCBX provided Illinois EPA with test results from soil and surface sampling in the neighborhoods around KCBX’s facilities. Exhibit 30, Petcoke Test Results, David L. MacIntosh, Sc.D, C.I.H., Environmental Health & Engineering, Inc. (Jan. 13, 2014). The samples were collected and tested in accordance with ASTM and

EPA methods by independent environmental professionals and laboratories. These test results show no evidence of key chemical indicators of pet coke or coal on surfaces or in soil in the neighborhoods surrounding the KCBX facilities. Therefore, no significant amount of pet coke or coal from the KCBX facilities has been deposited in the areas sampled.

52. Inspection reports referenced in the Pilapil Letter do not justify Illinois EPA denying the Request for Revision. Second Response to Pilapil at 4-5.

53. Reports of the Illinois EPA inspections that occurred on September 5, 2013, November 6, 2013, and November 19, 2013, do not allege any emissions of particulate matter at the South Facility. *See* September 5th Inspection Report; *see also* November 6th and 19th Inspection Report. This supports granting the Request for Revision.

54. The report summarizing Illinois EPA's inspections that occurred on September 11 and 13, 2013, do allege air emissions, but Illinois law and the Revised Construction Permit allow emissions. September 11th and 13th Inspection Report at 4. No allegations in these inspection reports support a finding that moving the Equipment from the North Facility to the South Facility will lead to violations of the Act or regulations.

55. The September inspections were performed prior to the improved water cannon system at the South Facility becoming operational in November 2013. Second Response to Pilapil at 5.

56. Allegations in the reports of September inspections regarding deficiencies in the fugitive particulate operating program (hereafter “FPOP”) at the South Facility do not provide a basis for the denial of the Request for Revision.

57. FPOP deficiencies in the inspection report are simply allegations of legal noncompliance, which Illinois EPA cannot consider when deciding whether to grant or deny the Request for Revision. Second Response to Pilapil at 5. Furthermore, the Board, not Illinois EPA, has the authority to determine the adequacy of FPOPs. Finding otherwise would be an unauthorized delegation of the Board’s authority to set emission or equipment standards. In addition, KCBX’s FPOP is not deficient.

58. On November 1, 2013, KCBX provided an updated FPOP for the South Facility to Illinois EPA, which contained considerable enhancements and explained that the new cannon system at the South Facility was operational on a full manual and/or limited automated basis. Exhibit 31, E-mail from Katherine D. Hodge with attachments to Kathryn Pamerter, cc: to Chris Pressnall, Illinois EPA (Nov. 1, 2013).

59. On November 15, 2013, KCBX notified Illinois EPA that the new cannon system at the South Facility was operational. Exhibit 32, Letter from Katherine D. Hodge to Kathryn A. Pamerter, pc: to Christopher R. Pressnall (Nov. 15, 2013). This is consistent with Illinois EPA’s reports of the inspections conducted on November 6 and 19, 2013, which specifically reference and describe the new water cannon system and other improvements. These subsequent inspection reports do not include any allegations of violations.

60. Complaints provided to KCBX do not justify denial of the Request for Revision. Second Response to Pilapil at 5-6.

61. Illinois EPA may not rely on mere allegations to deny the Request for Revision, especially when the Complaints include only general and vague comments of emissions of particulate matter in the area and lack specific facts related to and/or descriptions of events, locations, dates, times, etc. Thus, they do not provide an adequate basis for a Permit Denial. Second Response to Pilapil at 5-6. Many forms have no information at all in space provided for a description of the event. Second Response to Pilapil at 5. Information in the Complaints has been improperly redacted such that KCBX could not properly assess the allegations in the forms.

62. KCBX petitioned the Public Access Counselor to request a review of Illinois EPA's FOIA Response and to request the release of redacted information to allow KCBX to fully review and respond to the Complaints. Exhibit 33, Letter from Matthew C. Read to Sarah Pratt, Request for Review (Feb.14, 2014).

63. Despite making several requests, Illinois EPA did not send the Complaints to KCBX until December 19, 2013. FOIA Response. Even then, the Complaints were redacted to the point that KCBX could not fully respond to allegations within the Complaints. The FOIA Response cover letter was dated December 17, 2013 and e-mailed on that date, but the attached Complaints and justification for redacting the Complaints were later sent by mail and postmarked December 19, 2013, one day after KCBX's initial December 18th deadline to respond to the Pilapil Letter. FOIA Response. Contrary to the cover letter, Illinois EPA did not mail the Complaints on December 17, 2013.

64. Illinois EPA granted the FESOP to KCBX North on April 5, 2012, which allows the operation of the Equipment at the North Facility. Therefore, Illinois EPA has

already made the determination that operation of the Equipment at the North Facility would not cause a violation of the Act or regulations.

65. The same type of equipment is already permitted for use at the South Facility pursuant to the Revised Construction Permit. Therefore, Illinois EPA determined that the same type of equipment operating with the same throughput would not violate the Act or regulations at the South Facility. The Request for Revision simply aligns the contemplated (and permitted) throughput with the appropriate equipment.

66. In its Request for Revision, KCBX does not propose to modify the Equipment or how it is used. The Equipment would be operated at the South Facility in exactly the same way it is used at the North Facility. Furthermore, it would be operated just as the same type of equipment is already operated at the South Facility under the Revised Construction Permit.

D. Paragraph 4 – Compliance with 35 Ill. Admin. Code § 212.321

67. In paragraph 4, Illinois EPA states that the application does not show whether particulate matter emissions from the Equipment will comply with 35 Ill. Admin. Code § 212.321. Permit Denial, ¶4. Illinois EPA stated that since KCBX did not include the appropriate data or information, Illinois EPA “could not assess whether these emission units have a particulate matter emission rate at levels below which would be allowed by this rule.” *Id.*

68. As described above, Illinois EPA already possesses the information necessary to make a showing of compliance. As described above, Illinois EPA found that the Equipment did not cause a violation of the Act or regulations at the North Facility.

Similarly, Illinois EPA found that the same type of equipment did not cause a violation of the Act or regulations at the South Facility.

E. Paragraph 5 – Pollution Control Facility

69. Illinois EPA alleges that storage pile #8 is a waste pile due to vegetative growth observed during an inspection conducted by the Illinois EPA Bureau of Land on November 6, 2013. Permit Denial, ¶5(c).

70. Illinois EPA never alerted KCBX that it would be considering its Bureau of Land inspection on November 6, 2013, when reviewing the Request for Review. *See* Pilapil Letter. Therefore, KCBX never had the opportunity to address this allegation during the permit review period.

71. Storage pile #8 contains coal, which is a valuable product. It does not contain waste, and, therefore, is not a waste pile.

72. Since the South Facility does not contain a waste storage site, sanitary landfill, waste disposal site, waste transfer station, waste treatment facility, or waste incinerator, it is not a pollution control facility, as alleged by Illinois EPA.

III. CONCLUSION

73. As set forth above, Illinois EPA's decision to deny the Request for Revision was arbitrary and capricious and not supported by the Act and Board regulations promulgated thereunder. Its decision was not required by the Act or regulations promulgated thereunder, and is not necessary to prevent noncompliance with, or to otherwise accomplish the purposes of, the Act or regulations.

WHEREFORE, Petitioner, KCBX TERMINALS COMPANY, petitions the Illinois Pollution Control Board for a hearing on the Illinois Environmental Protection Agency's action to deny its Request for Revision and for such other relief as the Board deems appropriate.

Respectfully submitted,

KCBX TERMINALS COMPANY,
Petitioner,

Dated: February 21, 2014

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

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KCBX:004/Filings Permit Appeal PCB 2014-/Petition for Review 2.21.2014