

ILLINOIS POLLUTION CONTROL BOARD

MARCH 25, 2014

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

TRANSCRIPT FROM THE PROCEEDINGS taken before
HEARING OFFICER BRADLEY HALLORAN by Kari
Wiedenhaupt, CSR, at the Illinois Pollution
Control Board, 100 West Randolph Street, Room
9-040, Chicago, Illinois, on the 30th day of April
2014, at the hour of 9:07 a.m.

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I N D E X

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| NUMBER | MARKED FOR ID |
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| PETITIONER'S Exhibit | |
| No. 3 | 187 |
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1 HEARING OFFICER HALLORAN: Good
2 morning, everyone. My name is Bradley Halloran.
3 I am a Hearing Officer with the Illinois Pollution
4 Control Board. I am also assigned to this matter
5 entitled, KCBX Terminals Company, Petitioner
6 versus the Illinois Environmental Protection
7 Agency, Respondent. Our docket number is PCB
8 14-110, and it's a permit appeal for air.

9 Originally, this hearing was
10 noticed for Room 11-500. Yesterday was held in
11 9-031, and the appropriate signs were put up both
12 on the 11th floor and the 9th floor. Today it's
13 in Room 9-040. Today is April 30th, 2014. Again,
14 the appropriate signs have been put up on the 11th
15 floor and here on the 9th floor.

16 This hearing will be conducted
17 in accordance with Section 101.600 and 105.200 of
18 the Board's procedural rules. I do want to note
19 that it's a pleasure that two members are here
20 again today, as they were yesterday, Members Burke
21 and Zalewski.

22 And I guess with that said --
23 and we have a continuing motion for exclusion of
24 witnesses. Any witnesses in the room that --

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1 other than Mr. Kolaz? And if there is, they must
2 be excluded. I don't see any.

3 I do see -- any members of the
4 public here other than Mr. Harley that aren't
5 affiliated with the parties?

6 (No response.)

7 HEARING OFFICER HALLORAN: I see no
8 hands. All right. Yesterday I think Mr. Dwyer
9 from KCBX was just finishing up Mr. Kolaz'
10 qualifications, and I think before we continue --
11 because sometimes the oath dissolves overnight.
12 So we will have the court reporter swear you in
13 again, and you may proceed, Mr. Dwyer, unless we
14 have any other issues to talk about.

15 (Whereupon, the witness was duly
16 sworn.)

17 DAVID KOLAZ,
18 called as a witness herein, was examined and
19 testified as follows:

20 DIRECT EXAMINATION (Continued)

21 BY MR. DWYER:

22 Q. Good morning, Dave. Let's just move
23 ahead. Yesterday we talked about your background
24 and experience.

1 **Today, Dave, I want to start**
2 **with talking about the facility involved in this**
3 **permit appeal. Are you familiar with the company**
4 **KCBX Terminals Company?**

5 A. Yes.

6 **Q. Okay. And are you familiar with the**
7 **facilities that they have in Chicago, Illinois?**

8 A. I am.

9 **Q. Okay. And tell me, how did you**
10 **become familiar with those facilities?**

11 A. Well, I became familiar with those
12 facilities in a variety of ways. I visited both
13 the north facility on 100th Street and the south
14 facility on Burley Avenue. I have also reviewed
15 their permits that applied to both facilities. I
16 looked at the permit application for the south
17 facility in some detail.

18 **Q. And let's talk about that, Dave. In**
19 **terms of reviewing documents, what was the purpose**
20 **of your review of those documents?**

21 A. The purpose of my review was to
22 determine if in my expert opinion I felt that
23 there was sufficient information for the Illinois
24 EPA to make a decision to grant the requested

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1 permit.

2 Q. And in the course of reviewing
3 documents, did you review any documents that are
4 not in the record here today?

5 A. No.

6 Q. Well, let me ask you this, did you
7 review the petition filed by KCBX in this
8 proceeding?

9 A. Yes, I did.

10 Q. Okay. Now, just so we are clear,
11 you didn't view -- when you reviewed the record,
12 that petition was not in the record, was it?

13 A. That's correct, but it's my
14 understanding that it's in the record at this --
15 never mind. Yes. Right. I did review that,
16 whatever its status.

17 Q. All right. Let me first, Dave, ask
18 you if you would go in the record that's in front
19 of you and go to page R130. And are you at record
20 130, Dave?

21 A. Yes, I am.

22 Q. Before today have you seen that
23 document?

24 A. I have.

1 **Q. Okay. And what do you understand**
2 **that document to be?**

3 A. This document is a construction
4 permit that was granted by the Illinois EPA on
5 April 18th, 2013 to the KCBX facility on South
6 Burley Avenue, based on a permit application
7 submitted on March 11th.

8 **Q. And for purposes of our discussion,**
9 **we are going to refer to that as the south**
10 **facility. Okay?**

11 A. Yes.

12 **Q. And in the record is that permit**
13 **approximately 19 pages? Does it go from the**
14 **record at 130 to 149?**

15 A. It does.

16 **Q. And what do you understand -- what**
17 **was the purpose of that permit?**

18 A. The purpose of that permit was to
19 add four portable conveyers and two, 779 brake
20 horsepower diesel engines, and also to make some
21 corrections to the permit conditions --

22 MR. GRANT: Excuse me. Are we
23 talking about page 130, or have you moved on?

24 MR. DWYER: We are talking about

1 page 130.

2 MR. GRANT: Okay.

3 BY MR. DWYER:

4 Q. And, Dave, looking at the first page
5 of that document, R130, can you tell me, what is
6 described there?

7 A. The first page you refer to contains
8 a list of the equipment located at the facility,
9 and then -- and then it begins a listing of the
10 terms and conditions of the permit starting with
11 1(a) at the bottom of that first page.

12 Q. And does it refer to certain
13 equipment, specifically 10 portable conveyers?

14 A. Yes, it does.

15 Q. And how does it refer to those
16 pieces of equipment?

17 A. The permit page listed on R130 uses
18 a terminology that consists of two letters and a
19 number. So, for example, for one of the portable
20 conveyers it has the designation PC-3, PC standing
21 for portable conveyer.

22 Q. And does it also on the record at
23 130 refer to other equipment, such as a portable
24 hopper?

1 A. Yes, it does.

2 **Q. And how does it refer to that?**

3 A. The portable hopper is designated as
4 PH-1.

5 **Q. And on R130, does that first page**
6 **refer to equipment including a stacker?**

7 A. Yes. It has a listing for four
8 stackers that range in identification from SC-1
9 sequentially through SC-4.

10 **Q. Now, if you would turn your**
11 **attention now to the record to page 186 and 187.**
12 **You know, excuse me, Dave. Strike that.**

13 **Can we go back to the record at**
14 **130, the document we were just talking about? In**
15 **that document we talked about the description of**
16 **the equipment to be permitted, and my question to**
17 **you is, do you see anywhere in there a reference**
18 **to -- for any of the equipment we discussed, the**
19 **conveyers, the hoppers and the stacker, do you see**
20 **any reference to the manufacture of each of those**
21 **pieces of equipment?**

22 A. No.

23 **Q. Is there any reference to the speed**
24 **of the equipment?**

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1 A. No. It would not be on the first
2 page that we have been specifically referring to,
3 but I have reviewed the entire permit, and there
4 is nothing in there that refers to the speed or
5 otherwise refers to any individual piece of
6 equipment that's listed on the first page.

7 **Q. Now, then, if you would go to the**
8 **record, page 186 and 187. Before today did you**
9 **review that document?**

10 A. Yes, I did.

11 **Q. Okay. And what do you understand**
12 **that document to be?**

13 A. This document, starting with page
14 R186, is a cover letter to a permit application
15 that was submitted by KCBX on July 23rd, 2013,
16 requesting the -- a revision to the construction
17 permit and later in this cover letter it
18 specifically mentions 10 portable conveyers, one
19 box hopper and one stacker.

20 **Q. And is there any other information**
21 **in there that you reviewed or relied upon in**
22 **preparing your opinions today?**

23 A. Yes.

24 **Q. And what is that information?**

1 A. I -- there are several pieces of
2 information in here that I think are important to
3 note.

4 **Q. Okay. Why don't we start with the**
5 **first page, page 186?**

6 A. On page 186 there is a background
7 given as to KCBX's intent regarding both the north
8 and south facility. And they explain in this
9 paragraph, the second paragraph of that page, that
10 they intend to operate -- operate the south and
11 north facility as a single source pursuant to a --
12 what's known as a Federally Enforceable State
13 Operating Permit, and they explain that there are
14 pending applications for both the south and north
15 facility so -- expressing their intent.

16 **Q. Okay. If we go to the second page**
17 **of that letter for the record at 187, does that**
18 **portion of the letter make any specific requests**
19 **or disclosures to the Illinois EPA that you think**
20 **are relevant to your opinion?**

21 A. Yes.

22 **Q. And what are they?**

23 A. Well, the first full paragraph of
24 page two, which is R187, explains that the company

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1 is seeking to add 10 portable conveyers, one box
2 hopper and one stacker, and they point out that
3 they may be relocating from the north facility.

4 It also explains the reason for
5 their request, which is actually in the portion of
6 the paragraph above that first full paragraph,
7 explaining why they are making that request, but I
8 think very importantly, it's necessary to note
9 that in that first full paragraph toward the
10 bottom, they point that -- point out that KCBX is
11 not requesting any changes to the annual and
12 monthly throughput limitations.

13 So they are not asking to
14 increase what's already authorized by their
15 April 2013 permit, and that they are not asking
16 for any increase in the emission limitations.
17 They are not asking for any changes to the
18 testing, monitoring, recordkeeping or reporting
19 requirements.

20 And they then end that paragraph
21 by saying they are not requesting any changes to
22 any other applicable requirements in the revised
23 construction permit. The point being, they are
24 simply asking to locate this equipment so that

1 they can achieve the goal that was the intent of
2 the permit that they already have.

3 **Q. Now, Dave, if you would go in the**
4 **record right now to page 538.**

5 A. Okay. I am there.

6 **Q. Have you seen that document before**
7 **today?**

8 A. Yes, I have.

9 **Q. And what is that document?**

10 A. This is the Federally Enforceable
11 State Operating Permit that was issued to the KCBX
12 north facility on 100th Street. It was issued
13 April 5th, 2012 and expires April 5th, 2022. And
14 the permit application that was the basis for this
15 permit that was issued was submitted in July of
16 2011.

17 **Q. And in reviewing that, can you tell**
18 **me what equipment was being permitted by that**
19 **permit?**

20 A. Well, this permit is -- on the first
21 page does have a listing of equipment. It's
22 structured a little differently than the permits
23 we were talking about earlier, in that there is a
24 description of the equipment, but there is no

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1 specific identification numbers listed on this
2 one, but are you asking for me to --

3 **Q. So let me ask you. Does it include**
4 **reference to 10 portable conveyers?**

5 A. Yes. It has an entry that says
6 exactly that, 10 portable conveyors.

7 **Q. And does it also reference a hopper?**

8 A. Yes, it does.

9 **Q. Is that a portable hopper?**

10 A. Yes. It's listed as a 35-foot --
11 well, there is a 35-foot box hopper, and let's see
12 if I can find it specifically. Yes, because there
13 is a couple of hoppers at that facility. This is
14 noted as a cart or box hopper, portable.

15 **Q. And does that permit also reference**
16 **that it's permitting a stacker?**

17 A. Yes.

18 **Q. Okay. Now, let's go back to pages**
19 **186 and 187 of the record. Is it your**
20 **understanding after reviewing these two documents**
21 **that the equipment that you just described that**
22 **had previously been permitted at the north**
23 **facility is the equipment that, in fact, KCBX was**
24 **seeking to have permitted at the south facility?**

1 MR. GRANT: I am going to object.
2 There is no basis for him to draw that conclusion.

3 HEARING OFFICER HALLORAN: Mr. --

4 MR. GRANT: There is just no basis
5 for it. I'm sorry. You know, I mean, he has
6 looked at equipment on the front, and looked at
7 equipment on the bottom.

8 MR. DWYER: You know, if it's --
9 that's fine. I am happy to lay some more
10 foundation for that.

11 HEARING OFFICER HALLORAN: Okay.
12 Thank you.

13 BY MR. DWYER:

14 Q. Dave, if you would take a look at
15 the record at page 183 -- I'm sorry. If you would
16 look at page 182, Dave.

17 A. Yes, I have that.

18 Q. Okay. Have you seen that document
19 before today?

20 A. Yes, I have.

21 Q. And can you tell me what you
22 understand that document to be?

23 A. I understand this document to be an
24 e-mail from Terry Steinert of KCBX to Michael

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1 Dragovich of the Illinois EPA in which there is
2 reference to a discussion between Mike and Terry
3 regarding the specific equipment that KCBX is
4 asking to be located at their south facility.

5 **Q. And is that the equipment that's the**
6 **subject of the request for revision that was**
7 **denied that we are here on today?**

8 A. Yes.

9 MR. GRANT: I am going to again
10 object. I mean, this e-mail only makes reference
11 to PC numbers. It doesn't make reference to the
12 equipment that's on -- that's listed on the --
13 excuse me -- it's on 538. 583? No. 538. On
14 page 538, and I am not trying to slow things down
15 here, but to draw the conclusion this is the same
16 stuff when Illinois EPA was never really advised
17 of it, it's just -- you know, it's not -- you
18 can't have an opinion based on what you have done
19 so far.

20 MR. DWYER: I submit that the
21 evidence in the record that he has testified to
22 clearly demonstrates, one, that this is the
23 equipment that was permitted under the north FESOP
24 permit, that the e-mail from Mr. Steinert to the

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1 Agency clearly indicates that that is the
2 equipment that the State is seeking to have
3 permitted under the request for revision.

4 We have talked about that
5 equipment is referenced in the request for
6 revision in the cover letter at pages 186 and 187,
7 and I think the foundation is clear that the
8 reference is being made in the request for
9 revision to the same equipment that was previously
10 permitted at the north facility under the north
11 FESOP, which is also in the record.

12 MR. GRANT: I have to disagree,
13 because the -- on page 187 it says, "We may
14 relocate." May also means may not, and there is
15 no reference in this e-mail to any of the
16 equipment that's listed at the north site.

17 So, I mean, if you want to argue
18 on it in your brief that you have evidence for it,
19 but as far as him having an opinion that that is
20 the same thing, there has got to be a basis for
21 it.

22 HEARING OFFICER HALLORAN:
23 Mr. Dwyer, anything further?

24 MR. DWYER: I think that there is a

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1 basis, and I think that the documents in the
2 record, and Mr. Kolaz' opinion is --

3 HEARING OFFICER HALLORAN: I think
4 there is sufficient basis that Mr. Kolaz can
5 continue his testimony. I think there is
6 sufficient basis.

7 So objection overruled.

8 BY MR. DWYER:

9 Q. Now, Dave, going back to the record,
10 page 186 and 187, you were talking about
11 information that was on the second page of the
12 letter that you reviewed and relied upon in
13 preparing your opinions. Can you continue and
14 describe what information that you believe was
15 relevant to making your -- to rendering your
16 opinion on that page?

17 A. Well, I think that probably one
18 thing I didn't mention, it just adds a little more
19 detail is that the -- the letter on R187 in the
20 first paragraph in the middle specifically
21 mentions the throughput of 11 million tons per
22 year of coal and coke, authorizing special
23 condition 14(c)(1) of the revised construction
24 permit that the south facility had at the time of

1 this submittal and still has in effect today.

2 Q. And in the letter, Dave, did KCBX in
3 applying for its request for revision, did it
4 request any increase in its emissions limits?

5 A. It did not.

6 Q. Did it request any increase in its
7 throughput?

8 A. No.

9 Q. Looking back at the first page,
10 Dave, does the cover letter which is in the record
11 at 186 and 187, does it reference other permits
12 already on file with the Illinois EPA?

13 A. Yes, it does.

14 Q. Okay. And can you tell me what are
15 those permits that it references?

16 A. Well, it -- it references the
17 Federally Enforceable State Operating Permit that
18 is at the north facility, and -- and, of course,
19 it -- and in the subject it mentions the request
20 for revision to the revised construction permit at
21 the south facility.

22 Q. Okay. And is that the document in
23 the record at page 130 through 149 that we were
24 speaking of earlier?

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1 A. The document -- if you are referring
2 to the south facility, yes, that's the document.

3 **Q. And I just want to -- that's one of**
4 **the permits referenced in the cover letter to the**
5 **request for revision permit application?**

6 A. Yes, that's the permit that is -- is
7 the subject of the request to revise.

8 **Q. Based upon your experience, Dave,**
9 **and the documents that you reviewed and the**
10 **documents we have discussed, in your opinion, was**
11 **there any reason or need to further identify the**
12 **12 pieces of equipment that KCBX was seeking to**
13 **permit in its request for revision?**

14 A. No.

15 **Q. Okay. And can you tell me why?**

16 A. Yes. Well -- well, going back to
17 the cover letter, you know, I have to admit that
18 when I first read that, I -- I did wonder at the
19 word "may" as to what that exactly meant. It
20 wasn't clear to me that it was definitely coming
21 from the north facility.

22 **Q. Did any other documents in the**
23 **record clarify that for you?**

24 A. Well, it did. And what I am saying

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1 is that the sequence of events in my review was
2 such that by reading that particular document
3 ahead of the e-mail, which, in fact, is what I had
4 done, I wondered what they were doing, not in the
5 sense that I was concerned, because as I am sure
6 we will talk later, a portable conveyer is a
7 pretty common, consistent type of device, but I
8 didn't know for sure that it was going to be
9 coming from the north facility.

10 But I did see in reviewing the
11 record further that there was a meeting with the
12 Illinois EPA on August 27th, and as referenced in
13 the e-mail that we talked about earlier from Terry
14 Steinert to Mike Dragovich, which references that
15 meeting, refers to it in the sense of saying from
16 our discussion last Tuesday, which based on the
17 date of the e-mail, I think the previous Tuesday
18 was August 27th, here is the information. Here is
19 the ID numbers from the north facility. And that
20 represents the equipment that we are intending on
21 moving to the south facility.

22 So between the submittal of the
23 application on July 23rd and August 27th or
24 certainly September 3rd, the date of the e-mail,

1 KCBX had made a definite decision that they were
2 going to be moving those pieces of equipment.

3 **Q. And just on that subject, Dave,**
4 **let's just make this clear. If you would look at**
5 **the record at page 125, have you reviewed that**
6 **document before today?**

7 A. I have.

8 **Q. And what do you understand that to**
9 **be?**

10 MR. GRANT: Can you give me just one
11 second? I'm sorry. I am the slowest page turner
12 in the room. Go ahead. I'm sorry.

13 BY MR. DWYER:

14 **Q. Dave, what do you understand that**
15 **document to be?**

16 A. This document is titled, Fact Sheet,
17 and I understand this to be a notice that was put
18 out by the Illinois EPA stating that there would
19 be a meeting on November 14th in the southeast
20 Chicago area for the purpose of discussing the
21 permit application from KCBX Terminals.

22 **Q. So if you will look at -- there is**
23 **subsections on that, and the third subsection it's**
24 **referred to as permitting, and would you review**

1 **that and tell me what you understand the Agency**
2 **was communicating in that fact sheet?**

3 A. Yes. Well, it -- you know, without
4 reading the whole thing, just paraphrasing, the
5 first sentence explains that KCBX submitted a
6 permit application July of 2013 requesting the
7 ability to move 12 portable conveyers to this
8 location from their north facility. Of course,
9 the number was actually 10 that was being
10 requested, but that's inconsequential, really.

11 **Q. And just so we understand, this is a**
12 **document that you understand was issued by the**
13 **Illinois EPA?**

14 A. Right.

15 **Q. So do you have any doubt after**
16 **reviewing this that the Agency understood that the**
17 **equipment that KCBX was seeking to permit in its**
18 **request for revision was coming from the north**
19 **facility?**

20 A. No. And that's supported by the
21 next sentence that says, KCBX would also retain
22 the ability to use the conveyer at the north
23 facility, and so, no. I think that was very
24 clear, that the -- that at least at that point in

1 time, the Illinois EPA understood the intent and
2 was publically expressing that to citizens in the
3 area.

4 Q. Now, Dave, let me direct your
5 attention -- well, let's stay with that equipment.

6 Dave, based upon the information
7 you reviewed at page 186 and 187, did you -- well,
8 strike that.

9 Did you review additional
10 documents that accompanied the permit
11 application -- I mean, the letter, the permit
12 cover letter?

13 A. Yes, I did.

14 Q. Okay. And would you look at pages
15 188 -- starting at page 188, continuing to page
16 204?

17 A. Okay.

18 Q. Have you reviewed that document
19 before today?

20 A. Yes.

21 Q. And what do you understand that to
22 be?

23 A. Well, it's a portion of the permit
24 application. Would you like me to explain

1 specifically the components?

2 **Q. Yes, please.**

3 A. Okay. Well, 188 is the last page of
4 the cover letter, but starting with page 189, this
5 is the form for determining the construction
6 permit fee that would be applicable to this
7 transaction, and then the next distinction I would
8 make is on R191 is the form produced by the
9 Illinois EPA that KCBX used that is titled,
10 Construction Permit Application For a FESOP
11 Source, Form APC-628, and that form continues
12 through page R194, but then beginning on page R195
13 is a form, an Illinois Environmental Protection
14 Agency form titled, Process Emission Unit Data and
15 Information, and that continues on all the way
16 through the end to R204.

17 **Q. Okay. And, Dave, in reviewing that**
18 **application, did you see any information providing**
19 **the name of the manufacturer or serial number or**
20 **other identifying equipment for the portable**
21 **conveyer, stacker and hopper that the KCBX was**
22 **seeking to have permitted?**

23 A. No.

24 **Q. Okay. And do you believe that**

1 **information was necessary for the Agency to review**
2 **the permit application?**

3 A. No.

4 **Q. Why?**

5 A. I say that based on the type of
6 equipment that was identified, the portable hopper
7 and the stacker and the conveyers, and I -- I will
8 add that I think it was appropriate for the Agency
9 to ask for some identification of the equipment,
10 and -- but it wasn't necessary to begin the
11 analysis to determine if that type of equipment
12 could be added.

13 And I say that because when a
14 permit is issued, the application itself is
15 referenced in the permit and is a component of
16 that permit. So as I mentioned in the FESOP for
17 the north facility, that particular permit analyst
18 that completed that permit was different than the
19 person who did the south facility, and there are
20 just different characteristics in different
21 approaches.

22 So the north facility, there is
23 no specific mention in that list of equipment of
24 identification numbers, but I would presume,

1 though I have not looked, that the Illinois EPA
2 feels there is an adequate description within the
3 permit application itself.

4 I cannot say for certain that
5 there is, but there is something that apparently
6 that permit analyst felt would adequately describe
7 the equipment. I will add that the description in
8 some cases in the north facility refers -- you
9 know, describes it in a little more detail;
10 although, I will point out that it does simply say
11 10 portable conveyers.

12 But in the case of the south
13 facility, Mike Dragovich clearly chooses to
14 identify the equipment with an identification
15 number, and so Mike in asking for that information
16 of Terry Steinert, most certainly included that
17 e-mail as now an addendum as a component of the
18 permit application.

19 MR. GRANT: Objection. I mean,
20 there is no foundation that he knows what Mike
21 Dragovich was either thinking of or was asking
22 for. How does he know what was part of their
23 conversation? He is concluding that the
24 information that was given was what Mike asked for

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1 at this meeting that he did not attend.

2 MR. DWYER: I think he is basing his
3 opinion on the documents in the record, his
4 experience, his knowledge of the permitting
5 process and permit review process at the Agency.

6 HEARING OFFICER HALLORAN: You know,
7 I think that might be a little far afield. I am
8 going to sustain Mr. Grant's objection.

9 BY MR. DWYER:

10 Q. Dave, if you would take a look at
11 the record, page 538. Is that the north FESOP
12 permit for the 10 stackers -- I mean, the 10
13 portable conveyers, the stacker and the hopper
14 that we have been talking about?

15 A. Yes.

16 Q. Okay. In order to issue that permit
17 for those pieces of equipment, based upon your
18 experience, did the Agency have to make a
19 compliance determination with respect to those
20 pieces of equipment?

21 A. Yes.

22 Q. Okay. Now, Dave let's go to the
23 record, the very beginning -- excuse me -- page
24 one. Have you seen that document before today,

1 **Dave?**

2 A. Yes.

3 **Q. Okay. What do you understand that**
4 **to be?**

5 A. This is a letter dated January 17th,
6 2014 to KCBX Terminals in care of Michael Estadt
7 at the South Burley facility, and it's titled, A
8 Permit Denial, and I understand this to be the
9 Agency's response to the July 2013 permit
10 application, in which case the Agency is denying
11 that request.

12 **Q. Okay. And in looking at that, does**
13 **that -- is that letter composed of three pages?**

14 A. Yes.

15 **Q. And does it include in it five --**
16 **excuse me -- six numbered paragraphs?**

17 A. It does.

18 **Q. And is it your understanding that**
19 **paragraphs one through four state what the Agency**
20 **identifies as its basis for denying the request**
21 **for revision?**

22 A. Yes.

23 **Q. Okay. And in looking at the first**
24 **paragraph, 1(a), what do you understand it to**

1 **indicate as the basis in 1(a) for denying the**
2 **request for a revision of the construction permit?**

3 A. 1(a) refers to 35 Illinois
4 Administrative Code 201.152, which refers to the
5 content of permit applications.

6 **Q. And then in Section 1(b), what do**
7 **you understand that to be stating?**

8 A. 1(b) lists specific reasons -- well,
9 reasons extracted from the rules themselves, Rule
10 201.152 that the Agency is citing as deficiencies
11 in the permit application.

12 **Q. And based upon your knowledge, skill**
13 **and experience at the Illinois EPA and as a**
14 **private consultant, do you have an opinion as to**
15 **whether the first listed reasons in paragraph 1(a)**
16 **and 1(b), (i) through (v), are a valid basis to**
17 **deny the request for revision?**

18 A. I do not believe it is.

19 **Q. And would you tell me, what is the**
20 **basis for that opinion?**

21 A. Well, there is maybe two bases that
22 I could cite. One that -- maybe I will just give
23 the one that's most direct, and that is it says
24 that they don't understand -- the Illinois EPA

1 does not understand the processes to which the
2 emission unit or pollution control equipment is
3 related.

4 But the equipment itself was
5 specifically identified as portable conveyers,
6 portable hopper and a stacker. And in Mike
7 Estadt's e-mail to Mike Dragovich he --

8 **Q. Let me just stop you there. When**
9 **you said Mike Estadt, do you mean Terry Steinert?**

10 A. I did mean Terry Steinert.

11 **Q. You did mean Terry Steinert?**

12 A. Yeah, Terry Steinert, and his
13 September 3rd e-mail that we referred to earlier
14 lists the equipment at -- the equipment at the
15 north facility and said it's being moved to the
16 south. Well, that equipment is permitted at the
17 north facility.

18 So, clearly, the Illinois EPA
19 understood the processes to which this emission
20 unit or pollution control equipment is related,
21 especially in light of the existing permit at the
22 south facility, in which it clearly states that
23 they are handling coal and coke and salt.

24 **Q. Okay. So let's talk about the --**

1 individually these elements of this paragraph one.
2 I will call it the permit denial reason one. It
3 requests in -- or it identifies lacking -- that
4 the request for revision was lacking information
5 concerning the processes to which the emission
6 unit or the air pollution control equipment is
7 related.

8 Can you tell me, did you
9 identify this -- whether this information was in
10 the record before the Agency?

11 A. Yes.

12 Q. Okay. Can you tell me where in the
13 record you believe that information is available?

14 A. You were talking about (b)(ii) in
15 there?

16 Q. No, just (b)(i), (b)(i).

17 A. Well, in the permit application that
18 was submitted July of 2013 in the -- I would say
19 generally speaking, in the cover letter it
20 described the processes in the sense that it said,
21 we are not requesting a change to anything. We
22 want to use this equipment to accomplish the goals
23 of the permit that you have already granted us
24 without any further changes.

1 But also there is a narrative
2 portion in the permit application that we have not
3 referred to yet that describes in some detail --
4 that begins in the record on page 205.

5 **Q. Okay. And did you review that**
6 **document before today?**

7 A. Yes.

8 MR. GRANT: Give me one second. I'm
9 sorry. Just a minute. Slow guy, remember?

10 BY THE WITNESS:

11 A. Yes.

12 BY MR. DWYER:

13 **Q. Okay. Looking at the record at 205,**
14 **what information -- where is the information you**
15 **believe provided the Agency information that**
16 **addressed denial 1(b)(i)?**

17 MR. GRANT: I am going to object for
18 the record that it hasn't been established this
19 was part of the permit application. I understand
20 it's in the record, if that's what you are dealing
21 with, but as far -- we are going to object on the
22 basis that it's not established this was part of
23 the permit application.

24 MR. DWYER: Well, our position would

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1 be, it's in the record. It was information
2 considered by the Agency, and I think it's
3 relevant, and I think he is entitled to testify --

4 MR. GRANT: We won't object on the
5 basis of this in the record, but it
6 doesn't provide information -- so that's fine. Go
7 ahead.

8 HEARING OFFICER HALLORAN: You may
9 proceed, Mr. Kolaz.

10 BY THE WITNESS:

11 A. We are talking about (b)(i) which
12 says, "Information concerning processes to which
13 the emission unit or air pollution control
14 equipment is related."

15 Well, in the narrative
16 description, it -- the project narrative, it talks
17 about conveyors, storage piles, compressors. It
18 talks about rules that apply, and then it
19 references various tables that -- and actually
20 contains tables; for example, beginning on page
21 R208, that identify the emissions that would be
22 produced by the operation of all the equipment at
23 the facility.

24 And as you go further and look

1 at the various tables, it provides examples, let's
2 see, starting on page R2000 -- 213 that of at
3 least one scenario in which, you know, this type
4 of equipment can be configured.

5 BY MR. DWYER:

6 **Q. And was this narrative specifically**
7 **referenced in the request for revision**
8 **application?**

9 A. Yes.

10 **Q. Okay. And if you would look in the**
11 **record, Dave, at page 199, and looking at that**
12 **page and specifically -- well, is this a portion**
13 **of KCBX's request for revision of its construction**
14 **permit?**

15 A. Yes, it is.

16 **Q. Okay. And on page 199 and Box 31,**
17 **what do you understand the reference there to**
18 **mean?**

19 A. Well, the box is titled, Explanation
20 of How Initial Compliance is to Be or Was
21 Previously Demonstrated, and in the box it says,
22 see narrative, Section 1 in initial application.

23 **Q. And is that section 1 that it refers**
24 **to the narrative that you were just discussing**

1 that's in the record at page 205?

2 A. It is.

3 Q. Okay. And in your experience, Dave,
4 would it be common for a request for revision of a
5 permit application to reference or incorporate
6 information in prior permits for the facility?

7 A. Yes.

8 Q. Would it be normal in your
9 experience and not -- in fact, common to reference
10 permit applications for permits previously issued
11 to the facility in a request for revision?

12 A. Yes.

13 Q. Now, going back to the permit denial
14 letter, was there any other -- are there any other
15 places in the record that you believe provided
16 support and information concerning the processes
17 and the emission units that were sought to be
18 permitted in the request for revision?

19 A. Well, I would certainly reference
20 the fact sheet that we talked about earlier as --
21 as certainly not a document produced by KCBX, but
22 talking about the Agency expressing in that fact
23 sheet that these conveyors are being added without
24 any changes to the -- you know, to any of the

1 terms or conditions of the permit, that's -- and
2 but I think that what we have talked about is
3 essentially what I would consider to be --

4 **Q. All right. So then if we look at**
5 **1(b)(ii), you have indicated you believe there was**
6 **sufficient information for -- upon which the**
7 **Agency could have made its permit determination**
8 **here.**

9 **Can you tell me where in the**
10 **record you found, if you did, information**
11 **regarding the quantities and types of raw**
12 **materials to be used in the emission units or**
13 **pollution control equipment sought to be**
14 **permitted?**

15 **A. It's in several places. It's**
16 **certainly in the cover letter that the company --**
17 **the permit application in July of 2000 --**

18 **Q. And is that the letter we talked**
19 **about in the record of 186 and 187?**

20 **A. Yes.**

21 **Q. Where else?**

22 **A. Well, it's contained in the -- you**
23 **are talking about the entire record?**

24 **Q. Yes.**

1 A. I think it's contained in several
2 spots. I mean, again, it's contained in the fact
3 sheet, and it's also listed in the permit analyst,
4 Mike Dragovich's, permit calculation sheet.

5 **Q. Okay. Let's take a look at that.**
6 **Dave, if you would look in the record, are you**
7 **referring to the information that begins at the**
8 **record page four and continues to page nine?**
9 **Pollution control?**

10 A. Yes.

11 **Q. Okay. So tell me where in that**
12 **document you see the information regarding**
13 **quantities and types of raw materials to be used**
14 **in the emission unit and pollution control**
15 **equipment KCBX was seeking to have permitted?**

16 A. Well, if we go through the entire
17 document in order, in section three, the second
18 paragraph it says that the facility is a bulk
19 material handling facility. That clearly
20 identifies the type of processes that were
21 applied.

22 MR. GRANT: Can you direct me to
23 what page you are on? I'm sorry.

24 THE WITNESS: R4.

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1 MR. GRANT: Thank you.

2 BY THE WITNESS:

3 A. And then it goes on to say the
4 materials handling includes coal and salt. Later
5 on it will come to the point where it refers to
6 coke, and it refers to the fact that the facility
7 is requesting a throughput of 11 million tons per
8 year of coal and 250,000 tons per year of salt.

9 That, again, reflects the fact
10 that KCBX did not request any change in their
11 throughput. It then goes on. We are talking
12 about, you know, (b) (2) (i). When you go to page
13 R5, at the top of the page, there is a point where
14 the permit analyst is determining the method for
15 calculating the emissions, and he refers to -- for
16 coal, coke and salt.

17 And then as you continue down
18 that page, about the middle of that page -- and I
19 am talking about R5, it has the permit condition
20 that is in the current south facility's permit,
21 and I am presuming is listed here, because the
22 company -- and this is a presumption, that the
23 company was requesting exactly this type of a --
24 you know, no change to this condition.

1 But in this condition it talks
2 about coal and coke, 11 million tons per year of
3 throughput, and it lists the emissions that are in
4 the current permit and would also be in the permit
5 revision that KCBX was asking for.

6 And then, let me see. I haven't
7 highlighted anything, but I think that adequately
8 shows that the Agency understood the processes and
9 the quantities and the types of raw materials.
10 Certainly, the types; coal, coke and salt, and the
11 quantities as we have already referenced. And the
12 processes, I think that's shown in the type of
13 calculations that the permit analyst produced in
14 his calculation sheet.

15 BY MR. DWYER:

16 **Q. Okay. Let me direct you to -- Dave,**
17 **in the record to page 195, and again, is it your**
18 **understanding that that is part of KCBX's**
19 **application for a request for revision of its**
20 **construction permit?**

21 A. It is.

22 **Q. And on that page anywhere does it**
23 **contain any information describing the processes?**

24 A. Yes, it does.

1 **Q. And can you tell me where on that**
2 **document?**

3 A. Well, I would start with item four,
4 the item that's labeled four in this application.
5 And it says, "Additional conveyance and handling
6 equipment." And so that's the type of process.
7 It's conveying and it's handling, and then it
8 lists 10 additional portable conveyors, one box
9 hopper, one stacker, and the name of the process
10 is material handling.

11 The description of the process
12 is handling of coal and petcoke. Again, so that
13 refers to the raw material. The description of
14 the item or material produced, that's in -- in
15 item seven it says, material transfer station.

16 **Q. Okay. Dave, in addition if you**
17 **would direction your attention to page -- to page**
18 **95 and 96 -- you know, strike that, Dave. I'm**
19 **sorry. Wrong place.**

20 So, Dave, let's now look at the
21 **next basis for denial reason number one, and**
22 **that's (b) (iii). It references the nature of**
23 **specific points of emission and quantities of**
24 **uncontrolled and controlled air contaminant**

1 emissions at the source that include the emission
2 unit or air pollution control equipment.

3 Is it your opinion that there
4 was information in the record and in the
5 application before the Agency that supplied that
6 information?

7 A. Yes.

8 Q. Okay. Can you tell me where in the
9 record you would find that?

10 A. It was in the application, and
11 it also is in the permit analyst's calculation
12 notes.

13 Q. Can you tell me where in the
14 application if we go and look at the application,
15 if we can start with pages -- the cover letter at
16 186 and 187?

17 A. Yes. I will start off by saying
18 that this type of facility, material handling
19 facility that uses conveyors and hoppers and
20 stackers, is a common type of process, and the
21 equipment itself is very standard. And so, I
22 mean, I will show you in the record, but I am
23 pointing out that a conveyer consists of a belt to
24 which material is added at one point, and then

1 conveyed and dropped at another.

2 And so the nature of the
3 emissions, as you will see here, are particulate
4 matter of emissions and the specific point of
5 emissions are the drop points and transfer points
6 where the material falls off the conveyer, and
7 then we will talk about the quantities.

8 But in the -- just going to
9 table five -- I will go to table five, and then I
10 will go to the permit analyst's notes.

11 **Q. And so table five is on what page of**
12 **the record?**

13 A. It's on 213.

14 **Q. And what do you understand table**
15 **five to be?**

16 A. Well, table five is titled, Maximum
17 Process Unit's Emission Calculations, and what it
18 lists are several categories of operations, and I
19 will start at the top. It's titled, Coal/Petcoke
20 Unloading Emissions. And these abbreviations
21 starting at the top -- I won't go through each
22 one. I am just trying to get a sense of what we
23 have here, and maybe actually to be more to the
24 point, I will talk about portable conveyors and

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1 portable feed hoppers and stackers.

2 So maybe what I should do is
3 start us at R214. Rather than start at the
4 beginning, I will start somewhat in the middle.
5 But what you see there, on our R214, is a row that
6 says, Coal/Petcoke Portable Conveyor Emissions.

7 And what you see is a
8 designation of PC-1 drop point, PC-2 drop point,
9 PC-3 drop point and so on and so forth. And you
10 see next to it a column that is titled at the top,
11 Tons Per Hour, and it's showing that there is --
12 2,500 tons per hour is listed as the handling
13 rate, the maximum handling rate for that conveyor.
14 And then there is a tons per year, and then there
15 is various other columns that ultimately result in
16 a calculation of emissions for both particulate
17 matter and then a category of particulate matter
18 called PM-10, 10 referring to 10 microns, the size
19 of the particle.

20 So, for example, if you look at
21 PC-1, and we go all the way to the right, because
22 it might be simpler looking at it that way, it
23 shows that PC-1 drop point, 0.79 tons per year.
24 PC-2 drop point 0.79, and so on and so forth for

1 all those drop points.

2 So it's reasonable to conclude
3 that if you are handling -- if you are adding 10
4 more portable conveyors, the portable conveyors
5 are going to be dropping the material that's being
6 handled, and that -- the emission rate will be
7 0.79 tons per year. There is no reason to believe
8 the number would be different, but I will point
9 out that even if it were, it doesn't make any
10 difference, and it's for this reason.

11 The company said we are not
12 increasing throughput. We are not increasing
13 emissions. These limits you see here, even in
14 these calculations, are not specifically contained
15 in the permit. In other words, there is nothing
16 that referred to PC-2 being limited to 2,500 tons
17 per hour. If that can run at 4,000 tons per hour,
18 3,000 tons per hour, nothing in the permit
19 prohibits that.

20 So the effect of this whole
21 table is to arrive at the -- at the number on page
22 R216, and that's about in the middle of that table
23 at the far right where it says 48.5 tons per year
24 of PM-10. That is the regulated pollutant here,

1 not PM up on the -- there is no national air
2 quality standard for particulate matter, although
3 it -- there are Board rules. The air quality
4 standard we are trying to achieve here is the
5 PM-10, and we actually do achieve it, by the way,
6 in that area.

7 So 48.5 tons per year is allowed
8 with the permit that exists at the south facility
9 as we sit here today. And so if the company added
10 30 new portable conveyors, based on what they
11 requested, they still cannot exceed 48.5. Not
12 only that, the -- the configuration that is listed
13 here is just one of several that could exist, and
14 there is nothing in the permit that limits how the
15 company configures its equipment.

16 My point is that table that we
17 will look at again in a minute from the analyst's
18 notes simply says, you had 11 million tons at your
19 facility of coal and coke, and you can emit no
20 more than 48.5. What a company must do in its
21 recordkeeping and reporting is to keep track of
22 all of its emissions, and it has to be sure it
23 does not exceed 48.5.

24 **Q. Okay. Just stay with those tables,**

1 Dave. I want to make sure we are clear here.

2 Do those tables include the
3 information you just described for the 10
4 conveyors, the box hopper and the stacker that
5 KCBX was seeking to permit in its request for
6 revision?

7 A. No.

8 Q. Okay. And do you think that that
9 indicates that the application was insufficient in
10 that respect?

11 A. No, I do not.

12 Q. Okay. And is that for the same
13 reasons you just explained?

14 A. Yeah. It's specifically because of
15 the nature of the request. If the company was
16 asking to increase production, increase emissions,
17 there might be an argument that additional
18 information might be needed. But, no, it wasn't
19 necessary to admit that.

20 BY MR. DWYER:

21 Q. Now, you indicated that there was an
22 additional location in the record in the permit
23 reviewer's notes that you believe included
24 reference to the requirements for the nature and

1 **specific points of emission and the quantities of**
2 **controlled and uncontrolled air contaminants?**

3 A. I have forgotten what the page
4 number was.

5 **Q. If you would look in the record**
6 **starting at page four.**

7 A. Four. All right. At the top of
8 page five, R5, the -- and just to refresh, we are
9 talking about the quantities of uncontrolled and
10 controlled air contaminants?

11 **Q. Correct. It's denial (1) (b) (iii).**

12 A. Starting at the top of the page the
13 permit analyst -- well, let me start at the bottom
14 of page R4. This is part of Section 4, what's
15 known as -- what's titled Section 4 of the permit
16 calculation sheet. And the analyst points out
17 that he is using something titled, AP-42 13.2.5-4,
18 revised November of 2006. The emission factor was
19 calculated from that. That's the method used to
20 calculate emissions for the drop points.

21 And starting at the top of page
22 five, the permit analyst determined an emission
23 factor of 0.0005 pounds per ton for particulate
24 matter for coal, coke and salt. So that emission

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1 factor can be used for any of that type of
2 material.

3 But it does get a little
4 confusing in this sheet, and I should -- I might
5 as well explain it now, because it may help. At
6 the bottom of page R4, the permit analyst lists a
7 value of 16.4 for the -- for what's called the U
8 parameter in the equation for calculating
9 emissions. 16.4 refers to the miles per hour of
10 the wind.

11 It also uses a value for the
12 moisture content of the material of 18.3. And so
13 the emission factor he calculated on that basis
14 was 0.0005 pounds per ton. What that means is,
15 once you know how much material is being dropped,
16 let's say 3,000 tons per hour, you would multiply
17 that by that factor and you would compute any
18 emissions that might be expected.

19 **Q. Now, Dave, let me just make sure I**
20 **understand it. What you just described, is that**
21 **the process weight rate calculation?**

22 A. No.

23 **Q. Okay. What is it?**

24 A. That's the emission factor

1 calculation to determine the actual emissions, not
2 the rule allowable.

3 **Q. Okay. So -- go ahead.**

4 A. And partway down the page -- I hope
5 I am not confusing this more, but it is a little
6 confusing on this page, because what I am going to
7 show you is that the number that was actually used
8 by the Agency was not the 0.0005 pounds per ton
9 that the permit analyst had at the top of the
10 page. At the bottom of the page then you will
11 see --

12 **Q. Are we at the bottom?**

13 A. R5.

14 **Q. R5 under the section titled 14(c),**
15 **you will see that in the table -- this is the same**
16 **table that exists in the south facility's current**
17 **permit. You will see the PM emissions listed --**
18 **the emission factor listed is 0.00064, not 0.0005.**
19 **In other words, it's a higher number. That number**
20 **came from table five. It came from the permit**
21 **application that KCBX submitted in July of 2013.**

22 **It was also what was in the**
23 **current permit, but the point is, it's the same**
24 **type of calculation, but KCBX did not use an**

1 18.3 percent moisture content. They used 10
2 percent. And they used the average wind speed for
3 Chicago, which is 10.3 --

4 MR. GRANT: Excuse me. Can I ask
5 what he is referring to with this? I mean, I
6 didn't see that in a permit application, I guess
7 is what I am -- you know, if you can just -- or
8 Ed, if you can clarify where we are on this.

9 BY MR. DWYER:

10 Q. Dave, are you right now describing
11 the information you believe addressed the Agency's
12 allegation that there was insufficient information
13 in the application and the documents before the
14 Agency that demonstrated the nature of specific
15 points of emission and quantities of uncontrolled
16 and controlled air contaminant emissions at the
17 source?

18 A. Yes.

19 Q. My specific question was about -- I
20 mean, he was referring to what KCBX used, and I
21 didn't see those calculations. So if you could at
22 least point me to where the --

23 HEARING OFFICER HALLORAN: Is that
24 an objection or --

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1 MR. GRANT: Just a request for
2 clarification.

3 HEARING OFFICER HALLORAN: Okay.
4 Mr. Dwyer. Yes, I --

5 HEARING OFFICER HALLORAN: Go ahead,
6 sir.

7 BY THE WITNESS:

8 A. I can show in the narrative that we
9 talked about -- the narrative of the permit
10 application from July of 2013.

11 MR. GRANT: I will make a final
12 objection to saying that that was in the permit
13 application, but --

14 HEARING OFFICER HALLORAN: Okay.
15 Now it's an objection. Okay. I didn't know it
16 was --

17 MR. GRANT: Just to characterizing
18 it as part of the permit application, because it's
19 our position that it's not.

20 HEARING OFFICER HALLORAN: I think
21 the witness can proceed and qualify or clarify
22 testimony. Thank you.

23 BY THE WITNESS:

24 A. Okay. On page R2008 toward the

1 bottom of the page -- well, first looking at the
2 table, the row that says, coal and petcoke, you
3 will see for PM a value of 0.00064. If you look
4 at -- you will have to use all your fingers for
5 this -- back at R5 and you look at the table under
6 14(c) for coal and coke, you will see 0.0064.
7 That's the same number that's at the bottom of
8 that table.

9 If you look underneath the
10 table, the -- KCBX shows the equation. It says
11 the equation is as follows, and they list the
12 emission factor that was also the same equation
13 that was listed on the page R4 by the permit
14 analyst, from AP-42 13.2.4, and then the KCBX goes
15 on to show the various parameters it used in
16 calculating its value of 0.00064.

17 In that equation you will see
18 the value of 10.3, which is the wind speed and a
19 moisture content of 10 percent. And my point was
20 and is that on the permit analyst's notes R5, he
21 uses the same equation that's used in this
22 narrative, and while he does calculate a lower
23 emission factor using different parameters, he
24 actually includes in the table here that it -- as

1 I said before, it is the exact same table from the
2 current permit application, except that one
3 footnote that says, on page R5, control for wet
4 suppression, and the permit actually says
5 50 percent control for wet suppression.

6 BY MR. DWYER:

7 Q. Okay. And if you would, Dave, if
8 you would go in the record to page 140?

9 A. Yes.

10 Q. And is that -- is it your
11 understanding that is the existing -- that's a
12 part of the page in the existing permit for the
13 facility?

14 A. Yes.

15 Q. And is that where you are referring
16 to when you say that that's the information that
17 was also in the existing permit?

18 A. Yes.

19 Q. Okay. And that's the information
20 you were just discussing about in table 14 -- I
21 mean, in paragraph 14 in the permit reviewer's
22 notes?

23 A. Yes.

24 Q. So, Dave, now if we go to -- back to

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1 the permit denial letter, which is in the record
2 at -- let's go to page two, (i) (4) (sic) indicates
3 that part of the basis for the denial of the
4 application was the absence of information
5 regarding the type, size, efficiency and
6 specifications, including drawings, plans and
7 specifications of the emission units.

8 Is it your opinion that there
9 was sufficient information in the application and
10 related information in the record from which the
11 Agency could make a determination of whether or
12 not to grant or deny the permit with respect to
13 this information?

14 A. Yes.

15 Q. Okay. And tell me, what is the
16 basis for that opinion?

17 A. Well, it's -- maybe the shortest
18 route is to go back to the permit analyst's
19 calculation sheet where the calculation sheet --
20 on page R5 where he notes a -- near the top of the
21 page, right underneath where it starts, 11 million
22 tons per year. He says, note, 50 percent control
23 efficiency requested for moisture on everything
24 but salt was used in the calculations of

1 emissions.

2 And as we talked about this
3 table 14 on the same page, R5, while it says,
4 control for wet suppression, and as I mentioned
5 earlier, it left off 50 percent control for wet
6 suppression.

7 If you look at the actual
8 numbers in the table, you can see they use
9 50 percent control for wet suppression. So they
10 knew the efficiency of the control device, and the
11 type of equipment, portable conveyors, portable
12 feed hopper, stacker and the size. The size, as I
13 said, is not really relevant when you are saying
14 that you are not increasing any throughput or
15 changing your emissions.

16 And specifications, I am not
17 sure what would be needed there that would help
18 inform the decision as to whether or not this
19 equipment would comply with the regulations.

20 MR. DWYER: Can we take a break?

21 HEARING OFFICER HALLORAN: Sure. I
22 will go off the record.

23 (Whereupon, a short break was
24 taken.)

1 HEARING OFFICER HALLORAN: We are
2 back on the record at approximately 10:17. You
3 may continue, Mr. Dwyer.

4 BY MR. DWYER:

5 Q. Dave, we are back on the record.

6 When we stepped off, we were
7 talking about your opinion that there was
8 sufficient information in the application in the
9 record before the Agency to make a determination
10 whether or not to grant or deny the permit, and in
11 particular, we were talking about the document in
12 the record at page three, beginning at page -- I'm
13 sorry -- at page one, which is the permit denial
14 letter.

15 And so I want to direct your
16 attention back to that document, and specifically,
17 paragraph 1(b)(v), and just to summarize, I think
18 your opinion is that with respect to this denial
19 point, you didn't believe it was a valid basis; is
20 that correct?

21 A. That's correct.

22 Q. And we have discussed why you
23 believe there was information sufficient in the
24 record before the Agency with respect to the

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1 paragraphs 1(b)(i), (ii), (iii) and (iv); is that
2 correct?

3 A. That's correct.

4 Q. So now with respect to 1(b)(v), can
5 you tell me what information you believe was
6 sufficient to address that point in the record
7 before the Agency?

8 A. The type of processes in that
9 facility were well known or should have been well
10 known by the Agency based on the information we
11 have already discussed. And that is that it was a
12 material handling facility that used conveyors,
13 stackers, hoppers and other types of conveying
14 equipment; frankly, including the end loaders and
15 bulldozers to unload and move coal, petroleum coal
16 and salt.

17 And the nature of that type of
18 facility results in piles of material being
19 stacked upon the facility and these various pieces
20 of conveying equipment moving around on the site.

21 Q. Let me just stop you there and ask
22 you, if you would take a look at the record at
23 page -- record page 204. And is it your
24 understanding that's part of the application KCBX

1 **submitted for its request for revision of**
2 **construction permit?**

3 A. Yes.

4 **Q. Okay. And does that page request**
5 **certain information from the applicant?**

6 A. I would not characterize it that
7 way.

8 **Q. Okay. How would you describe what**
9 **page 204 in the record is?**

10 A. I would characterize this as the
11 applicant's response to the data requirements for
12 this type of permit, in which the applicant is
13 describing how it arrived at a determination as to
14 the maximum emission rate that it was willing to
15 have established in its permit.

16 So it -- as we have talked
17 before, it describes various types of operations
18 throughout the facility. It doesn't restrict the
19 facility to this operation, but it's not data
20 that's specifically mandated by the Agency. I
21 mean, the Agency asked in the data forms for
22 estimates of emissions. So this is in response to
23 that.

24 **Q. Okay. Dave, if you would look at**

1 **page 204, and in particular, look at are there a**
2 **series of boxes --**

3 A. Did you say 204?

4 **Q. I said 204.**

5 A. Oh, I was on 214. I'm sorry.

6 **Q. Let's go to 204.**

7 A. There is the problem. All right. I
8 was on table five. All right.

9 **Q. So let's talk about -- we were**
10 **talking about the permit denial reason 1(b)(v) and**
11 **the statement in the denial letter that there was**
12 **not information regarding maps, statistics or**
13 **other data sufficient to describe the locations of**
14 **the emission units for air pollution control**
15 **equipment. Do you agree that that was an**
16 **inappropriate basis upon which to deny the permit?**

17 A. Did you say inappropriate?

18 **Q. An inappropriate.**

19 A. Yes, in this case I believe so.

20 **Q. Okay. And do you believe there was**
21 **information provided to the Agency to address this**
22 **point in the record?**

23 A. Yes.

24 **Q. Can you tell me, if you would look**

1 **at page 204, what do you understand that to be?**

2 A. Well, this is a table entitled,
3 Exhaust Point Information.

4 **Q. And is it your understanding that**
5 **that was part of the application for request for**
6 **revision submitted?**

7 A. Yes.

8 **Q. By KCBX?**

9 A. Yes.

10 **Q. Okay. Do you have any opinion**
11 **whether or not that table contains information**
12 **responding to the denial (1) (b) (v)?**

13 A. Well, it does in the sense that
14 under item 39 it refers to a Figure 1 in the
15 initial application, which is the process, you
16 know, flow diagram showing the, you know, emission
17 points.

18 **Q. Okay. And how about what**
19 **information is requested in paragraph -- in Box 40**
20 **on this page of the application?**

21 A. It says that a description of the
22 exhaust point -- you know, stacks, vents, roof
23 monitors, indoors, et cetera, if the exhaust point
24 discharges indoors do not complete the remaining

1 items, that's the title of the thing, and it says
2 it varies.

3 **Q. And that's how it was filled out by**
4 **KCBX Terminals?**

5 A. Yes.

6 **Q. Okay. And do you believe that that**
7 **was an appropriate response?**

8 A. Yes, I do.

9 **Q. And why?**

10 A. Well, because it does vary. This is
11 a --

12 **Q. And is this similar to your**
13 **discussion earlier that because these are portable**
14 **pieces of equipment that they necessarily don't**
15 **stay in one place at one time?**

16 A. Correct.

17 **Q. So is it your opinion that a diagram**
18 **would --**

19 MR. GRANT: He is leading a little
20 bit. I object.

21 HEARING OFFICER HALLORAN: Could you
22 try to rephrase it a tad?

23 BY MR. DWYER:

24 **Q. Sure. In your experience, Dave, how**

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1 **would you prepare a diagram of equipment that is**
2 **portable for purposes of submitting this**
3 **application?**

4 A. Well, I think any diagram would be
5 an illustration of one possible configuration. In
6 other words, you would have a diagram of the plant
7 boundaries and construct various piles and install
8 conveyors. Frankly, you could, as I have done,
9 look on Google Earth, and you can see the
10 facility. You can see the permanent conveyors.
11 You can see the portable conveyors, and the
12 particular one I looked at, there were four or
13 five portable conveyors parked along the northwest
14 part of the plant.

15 Clearly, they are not parked
16 there all the time. It shows you they move. So I
17 think there would be -- you know, the plant, the
18 address of the facility I think in this instance
19 is adequate.

20 Q. Okay. Now, Dave, if we direct
21 your -- just to summarize, Dave, your opinion with
22 respect to the denial point or denial -- paragraph
23 one of the denial letter is that there was
24 sufficient information before the Agency that

1 **addressed what is required by 35 Illinois**
2 **Administrative Code Part 201.152; is that correct?**

3 A. Yes. And I think an important
4 overarching basis that I have formed in addition
5 to the specifics I mentioned is that when the
6 application was submitted, it was submitted for a
7 facility that already had a permit that was well
8 known to the Agency, and for which the Agency had
9 conducted prior inspections.

10 The Agency had 30 days from
11 July 23rd when the application was submitted to do
12 a completeness review. In the cover letter we
13 referred to earlier, the KCBX asked for a --
14 renewed its request to meet with the Agency to
15 discuss its plans. That meeting was held on
16 August 27th, which was about four or five days
17 after the period of time the Agency had to do a
18 completeness review.

19 And there was no notice of
20 incompleteness, and the information we are looking
21 at here is very, very basic and should have been
22 easily known. The Agency -- at this meeting the
23 Agency had in attendance four engineers from the
24 permit section and two lawyers. So they

1 definitely were well aware of the facility, I am
2 sure had prepared, and if there was a concern that
3 this information was vital, they should have
4 mentioned something there, but yet the only thing
5 we have is the e-mail from Terry Steinert to Mike
6 Dragovich that we've referred to earlier, which in
7 essence, said in response to our meeting of last
8 Tuesday --

9 MR. GRANT: I am going to object to
10 testimony regarding the meeting, because Mr. Kolaz
11 was not there.

12 HEARING OFFICER HALLORAN: Well, I
13 think he is just testifying to what the e-mail
14 said.

15 MR. GRANT: That's fine, but, you
16 know -- what there was, but as to conclusions
17 about what was asked or not asked for at the
18 meeting, he has no basis for an opinion or
19 testimony in that area.

20 HEARING OFFICER HALLORAN:
21 Sustained.

22 BY MR. DWYER:

23 Q. Dave, the objection has been
24 sustained.

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1 **Let me ask you this question,**
2 **Dave. In your experience, can you put the**
3 **permanent location of a piece of portable**
4 **equipment on a diagram?**

5 A. Well, you could, but it would not be
6 something that would necessary represent its
7 permanent location.

8 **Q. Now, let me direct your attention,**
9 **Dave, to the record at page 183. Okay. Have you**
10 **seen that document before today?**

11 A. Yes.

12 **Q. Okay. And tell me what you**
13 **understand that document to be.**

14 A. Well, the document is titled,
15 Illinois Environmental Protection Agency, Division
16 of Legal Counsel, Meeting Sign-in Sheet, and then
17 it has a date of August 27th, and the subject
18 name, KCBX, followed by the name, entity and phone
19 number of what I presumed to be the attendees at
20 the meeting.

21 **Q. And is it your understanding that**
22 **that -- that those names on that list are people**
23 **that attended that meeting?**

24 A. That's my understanding.

1 **Q. And in reviewing it, can you tell me**
2 **how many individuals from the Illinois EPA are**
3 **identified as having attended the meeting?**

4 A. There are six individuals.

5 **Q. Yeah. And are any of those**
6 **individuals involved with the permitting program?**

7 A. Yes.

8 **Q. Okay. And how many?**

9 A. There are four that are involved
10 with the permitting program.

11 **Q. And does it indicate that any Agency**
12 **legal counsel were present at the meeting?**

13 A. Yes.

14 **Q. And who are those individuals, if**
15 **you know?**

16 A. I do know. I know Robb Layman. He
17 is with the legal counsel, and also Chris
18 Pressnall is with the legal counsel.

19 **Q. Okay. Thank you. Now, Dave,**
20 **directing your attention to the permit denial**
21 **letter in the record at -- starting at page one.**
22 **We are on page two of that document. There is a**
23 **second denial basis, and it states that, pursuant**
24 **to 201.160(a)(1), no construction permit shall be**

1 granted, unless the applicant submits proof to the
2 Illinois EPA that the emission unit or air
3 pollution control equipment will be constructed or
4 modified to operate so as not to cause a violation
5 of the Illinois Environment Protection Act, 435
6 Illinois -- or Title 35 Environmental Protection,
7 Subtitle B, Air Pollution, Chapter 1, Pollution
8 Control Board. Have you reviewed that paragraph
9 before today?

10 A. Yes.

11 Q. And based upon your knowledge, skill
12 and experience at Illinois EPA and as a private
13 consultant, do you have an opinion as to whether
14 or not that listed reason is a valid basis for
15 denial of the request for revision?

16 A. I do not believe that it is.

17 Q. Okay. And what is your basis for
18 that opinion?

19 A. Well, the basis is the specific
20 statements in this denial letter on page -- on
21 items three and four.

22 Q. Okay. So just so I understand, you
23 believe that the information in denial reason
24 three sets out more specifically or explains why

1 **denial reason two is included in the denial**
2 **letter?**

3 A. Yes. I believe that two is an
4 overarching requirement that's nonspecific, and
5 that paragraphs three and four pertain to that
6 denial reason two.

7 Q. Okay. So then directing your
8 attention to denial reason three in the record at
9 page two, that states that the application does
10 not show compliance with 35 Illinois
11 Administrative Code 212.301 (fugitive particulate
12 matter) based upon the observations made by the
13 Division of Air Pollution Control's field staff
14 and citizen pollution complaint forms. Emissions
15 from the source may violate 35 Illinois
16 Administrative Code 212.301.

17 Have you reviewed that before
18 today, Dave?

19 A. Yes.

20 Q. And based upon your skill,
21 experience working at Illinois EPA and as a
22 private consultant, do you have an opinion as to
23 whether the reasons provided in paragraph three
24 were sufficient -- or excuse me -- a valid basis

1 **for denying the request for revision?**

2 A. I do not.

3 **Q. You do not believe that they are a**
4 **valid basis?**

5 A. I do not believe they are a valid
6 basis.

7 **Q. Okay. And let me first ask you, do**
8 **you know what -- what is 35 Illinois**
9 **Administrative Code 212.301?**

10 A. 301 is a regulation that, in
11 essence, says that visible emissions shall not be
12 allowed to pass the property line, and further
13 state the requirements for making the
14 assessment -- an assessment that visible emissions
15 have indeed crossed the property line.

16 **Q. And with respect to the first part**
17 **of denial reason three, it indicates that the**
18 **denial was based in part on the observations made**
19 **by the Division of Air Pollution Control's field**
20 **staff. Tell me why you do not think that was a**
21 **valid basis for denial.**

22 A. Well, the record includes -- it
23 includes five inspection reports that the Illinois
24 EPA conducted and -- three in September and two in

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1 November. And upon reviewing those inspection
2 reports, the final inspection reports, but also
3 the draft inspection reports that are part of the
4 record, I concluded that information in the --
5 contained in those reports did not support in any
6 way the existence or even the threat of a
7 violation of 301.

8 **Q. And tell me why -- more**
9 **specifically, let's go to those inspection reports**
10 **starting with page 164. I'm sorry, Dave. I had**
11 **the wrong page. Starting in the record at page**
12 **40, Dave, what do you understand that document to**
13 **be?**

14 A. Page 40, I understand this to be an
15 inspection report conducted by the Illinois EPA on
16 September 11th and September 13th. It's the
17 results of the inspection.

18 **Q. And what about those -- did you**
19 **review those inspection reports before today?**

20 A. I did.

21 **Q. Okay. And what about those**
22 **inspection reports do you believe is insufficient**
23 **to support the denial reason three?**

24 A. Well, first of all, I will say --

1 MR. GRANT: Is it two, I think you
2 mean, don't you, denial reason two?

3 MR. DWYER: No. I mean denial
4 reason three.

5 MR. GRANT: The citizen complaints?

6 MR. DWYER: No. We are talking
7 about field staff observations.

8 MR. GRANT: That's number two. Oh,
9 in the permit. I'm sorry. I apologize. I was
10 looking at your witness disclosure.

11 BY THE WITNESS:

12 A. First of all, I will point out that
13 one aspect of these inspection reports that you
14 can see throughout is a very clear description of
15 the materials that are handled and the processes
16 that are involved includes a -- that -- a
17 description of the number of piles, their size and
18 shape.

19 The inspector then cites the
20 weather condition present during the -- during
21 that visit and then beginning on page three of his
22 report, which is on R42 of the record, he talks
23 about heavy traffic that travels through the truck
24 entrance, and he talks about dust becoming

1 airborne, and then he states -- and this is what
2 is key.

3 He said, official opacity
4 readings were not taken, but instantaneous opacity
5 measured four feet from the right rear tire of one
6 truck and was estimated at 40 percent.

7 BY MR. DWYER:

8 **Q. And what is, in your opinion,**
9 **significant about that?**

10 A. Well, it wasn't significant, because
11 first of all, the requirement is that opacity from
12 traffic on site not be greater than 10 percent.

13 So, you know, this would appear
14 to be a violation, but Rule 212.107 has very
15 specific requirements on how those observations
16 need to be made, and as he says here -- he says,
17 official readings were not made. By itself if
18 they weren't official readings, then what value
19 are they?

20 There is nothing in the rule, in
21 the Board's rules that say, opacity can never at
22 any point in time for any period of time exceed 10
23 percent. As I said, in 212.107 it says this. It
24 says, to make an observation you must observe four

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1 vehicles. You must note the point of maximum
2 opacity from that vehicle. You must be 15 feet
3 away, and the height of your observation must be
4 four feet.

5 Once you make that observation,
6 you have to continue to watch that point and make
7 your next observation five seconds later, and then
8 your next observation five seconds after that. So
9 you have to make three observations, and you have
10 to do that for four vehicles, and then you have to
11 average those 12 readings to get your results.

12 So again, when I saw this, I
13 right away said, well, this doesn't mean anything,
14 because what were the other readings? Well, I
15 thought there weren't any other readings until I
16 saw the supplements to the record, and saw that,
17 in fact, there were other readings.

18 And when you add up those other
19 readings, it was well below 10 percent, but I will
20 also add, that method that was used there, even
21 though it included other readings, was not
22 consistent with 2/12/107.

23 **Q. Okay.**

24 **A. And I could point -- I mean --**

1 **Q. So with respect to that information,**
2 **other than the inspection report you have just**
3 **discussed, did you review any other additional**
4 **inspections conducted by the Agency at the**
5 **facility?**

6 A. Well, I -- yeah, I did.

7 **Q. Let me just ask you, Dave, if you**
8 **would go to the record at page 40. Before -- are**
9 **you there, Dave?**

10 A. Yes.

11 MR. DWYER: Chris? Are you?

12 MR. GRANT: On 40? Yeah. Thank
13 you.

14 BY MR. DWYER:

15 **Q. All right. My apologies. Dave, if**
16 **you would look at the record at page 31.**

17 A. Thirty-one.

18 **Q. Okay. What is that document, Dave?**

19 A. This document is an inspection
20 report recording the results of two inspections
21 made in November, one on November 6th, and one on
22 November 19th. The report itself is dated
23 November 27th.

24 **Q. And did you review that document**

1 **before today?**

2 A. Yes.

3 **Q. And do you believe that the**
4 **information in that document was sufficient basis**
5 **for the Agency to determine that there might be a**
6 **violation of 212.301 at this site?**

7 A. No. I do not believe there was
8 anything in here that would support the idea that
9 there was a violation.

10 **Q. Okay.**

11 A. Or might be a violation.

12 **Q. And now, Dave, if you would, let me**
13 **direct your attention to another part of the**
14 **record starting at page 1255.**

15 MR. GRANT: Give me one second.

16 HEARING OFFICER HALLORAN: Is that
17 volume two?

18 MR. DWYER: It would be the second
19 supplement.

20 MR. GRANT: Second volume.

21 BY MR. DWYER:

22 **Q. Okay. Dave, have you been able to**
23 **find page 1255 in the record?**

24 A. Yes.

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1 **Q. And what do you understand that**
2 **document to be?**

3 A. I understand this document to be the
4 draft of the report we were referring to earlier
5 of inspections conducted on September 11th and
6 September 13th by the Illinois EPA.

7 **Q. And did you review those documents**
8 **before today?**

9 A. Yes.

10 **Q. Okay. And are these the draft**
11 **inspection reports you refer to earlier with**
12 **respect to whether or not you believe that**
13 **measurements were properly conducted during the**
14 **inspections?**

15 A. Yes. I believe the -- I'm not sure
16 I heard you correctly. I believe that the
17 measurements were incorrect.

18 **Q. Correct. But these are the**
19 **documents -- you had referred earlier in your**
20 **testimony to a draft inspection, as well as the**
21 **final inspection report?**

22 A. Yes. The draft inspections
23 supplemented the view I had from looking at the
24 final report.

1 **Q. And what in the draft inspections**
2 **did you rely upon?**

3 MR. GRANT: I am going to object at
4 this point, because his disclosed opinion -- his
5 opinion was disclosed on March 28th, 2014. This
6 document was produced -- was produced well after
7 that date, and so he could not have referred to
8 this document in coming up with his written
9 opinions which were not supplemented.

10 HEARING OFFICER HALLORAN:
11 Mr. Dwyer?

12 MR. DWYER: Well, yes. Thank you.
13 Our position on that is very simple. These are
14 documents that should have been produced with the
15 record, and, in fact, the Board ruled based upon
16 our motion to supplement, and notwithstanding the
17 objections of the State, that these were documents
18 that should have been in the record, and the
19 Agency was directed to supplement the record with
20 those documents.

21 Therefore, I think he is
22 perfectly entitled to refer to them, because he
23 did not have the opportunity to review those
24 documents in the record before the deadline for

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1 tendering his opinion on March 28th.

2 MR. GRANT: And I guess I respond --

3 HEARING OFFICER HALLORAN: Was that
4 the Board order -- I'm sorry, Mr. Grant. Was that
5 the Board order of April 17th?

6 MR. DWYER: I believe so.

7 HEARING OFFICER HALLORAN: Mr.
8 Grant?

9 MR. GRANT: Yeah. He never
10 supplemented his opinion to cover this material.
11 You know, he was -- I mean, I think what we will
12 find out is that he was retained on March 6th and
13 did an opinion on March 28th and has never
14 supplemented that opinion. So as far as
15 considering this and generating his opinion, it's
16 just improper.

17 HEARING OFFICER HALLORAN: When did
18 you --

19 MR. GRANT: I don't know that the
20 Board -- excuse me. I don't know that the Board
21 found that they should have been in the record so
22 much as that they granted a motion to supplement
23 the record with other materials, and, you know,
24 the record is what the Agency relied on or should

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1 have relied on, and I am not sure -- and here I am
2 not actually sure, but the Board order said, we
3 are ordering these produced, because the Agency
4 relied or could have relied on these materials. I
5 think they just directed that they be produced in.

6 But in any event, as an opinion
7 witness, he has got a disclosed opinion on
8 March 28th and reviewing materials that were
9 produced after that cannot be part of his opinion.

10 MR. DWYER: Well, you know, I --
11 again, our response is the same. We believe that
12 the Board's order was, these documents need to be
13 supplemented to the record. I don't think there
14 is any other conclusion you can draw from that,
15 but that the Board believed that those documents
16 should have been in the record when it was
17 originally filed.

18 The Board is entitled to a full
19 record. We were entitled to a full record. We
20 didn't get that record until after we were
21 required to disclose Mr. Kolaz's opinions, and
22 after we went through a number of arguments about
23 those issues, we didn't have the benefit of him
24 having the chance to review those. It's in the

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1 record. Our position is, he is entitled to
2 supplement his opinion with that. The Board can
3 certainly consider that in reviewing and deciding
4 how -- what credit and weight they want to give to
5 that opinion.

6 HEARING OFFICER HALLORAN: I am
7 going to overrule the Agency's objection. You
8 know, the Board can overrule me, I mean, if they
9 want to. Mr. Grant, you can have at it on cross.
10 But I think that I will overrule your objection.
11 You may proceed, Mr. Dwyer.

12 BY MR. DWYER:

13 **Q. So earlier I believe, Dave, the**
14 **question was, what about this draft opinion did**
15 **you rely upon in concluding that the -- the**
16 **observations of the inspectors was not a valid**
17 **basis for permit denial reason three?**

18 A. The -- my opinion was solely based
19 on the final report and a statement by the
20 inspector that he did not do an official reading.
21 As soon as he says that, my opinion was that the
22 reading itself then had no value, because clearly
23 as indicated in the report, the implication was
24 that 40 percent is a value in excess of the

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1 allowed standard of 10 percent, and therefore,
2 it's improper.

3 But once I saw this document, I
4 saw that he had actually made more observations,
5 although it was not stated in the final. And
6 those observations are still improper in the sense
7 that they don't meet the standard of 212.10 -- I
8 might have said 107. It's 109. 212.109. Show on
9 page R1262 that the allowable -- there were three
10 trucks observed, and that there were various
11 readings made, and that the allowable value, as I
12 said before is 10 percent, and then the six-minute
13 average -- which is not correct. It shouldn't be
14 a six-minute average. It's 1.25 percent for one
15 truck, 0.625 percent for a second truck, 0.833 for
16 a third truck. There should have been a fourth
17 truck and they should have been only seconds
18 apart. There should have been 12 readings.

19 But my point is, the conclusion
20 could just as well have been that based on our
21 observations, there is not a problem with
22 emissions from the trucks, but instead --

23 MR. GRANT: I am going to object on
24 the basis of relevance. The regulation he is

1 talking about is not a denial basis. The
2 regulation that was cited as a denial basis was
3 212.301. It has nothing to do with formal opacity
4 readings. It's just not in there, and 212.301
5 essentially says that you can't let fugitive dust
6 leave the boundary of your property.

7 So whether or not he proved up a
8 212.107 or 109 test is -- just doesn't have any
9 relevance to what the denial basis was.

10 MR. DWYER: Well, our position would
11 be, it's absolutely relevant. One of the bases
12 for denial point three is that field inspectors'
13 observations, which are documented in the
14 inspection reports, indicated that Part 212.301
15 may be violated. Part of those observations -- in
16 fact, an elemental part of them are the
17 observations that Mr. Kotas made, the measurements
18 that he took, and the conclusions he drew in his
19 inspection reports.

20 So we believe they are
21 absolutely relevant to our right to refute whether
22 or not denial point three was valid.

23 MR. GRANT: Just as long as -- and
24 the way Mr. Kolaz was testifying was that they

1 can't prove 212.107. I mean, it somehow has to be
2 tied to the denial basis. So I will withdraw my
3 objection. I guess I made my point.

4 HEARING OFFICER HALLORAN: You are
5 on the record. Thank you, Mr. Grant.

6 BY MR. DWYER:

7 Q. Dave, was there anything else about
8 the draft inspection report you have just been
9 talking about that you relied upon in your opinion
10 that this was not a sufficient basis to determine
11 that 212.301 might be violated?

12 A. I would have to go back to the
13 original inspection report.

14 Q. Okay. Which is, I think, page 40 of
15 the record?

16 A. Yes. And I can -- I think I can
17 explain my point of view there. The permit that
18 was requested was to add 10 conveyors, one
19 portable feed hopper and one stacker. And there
20 is no reference to any of that equipment there, in
21 terms of -- I don't mean the equipment that's
22 requested to be added. There is no observation
23 that any of that -- there is a feed hopper. There
24 are four stackers. There are multiple portable

1 conveyors. There is no observations that that
2 equipment is creating a potential 301 violation.

3 I did point to the truck
4 observations, because that seems to be -- what I
5 gathered from Mr. Kotas' report, it's his feeling
6 and belief that the presence of any visible
7 emissions is a threat to 301. And that's what I
8 referred to that. 301 states that to determine
9 compliance with 301, a person must be outside the
10 plant boundaries, and must make an observation
11 generally near the zenith of a plume passing
12 overhead.

13 So he would have to be offsite.
14 He would have to see visible emissions. Simply
15 the presence of visible emissions on the plant
16 boundary in itself is not evidence that there is a
17 threat to 301. If that were the case, there would
18 be no situation where anyone who had particulate
19 emissions would not potentially be a threat.

20 **Q. Let me ask you this, Dave. In**
21 **looking at the inspection reports that are in the**
22 **record, did you find any readings -- did you find**
23 **any information indicating that the inspector**
24 **conducted an evaluation consistent with the**

1 **requirements of 212.301?**

2 A. There was one instance that I would
3 say put the inspector in a position to make that
4 observation.

5 **Q. Okay. And do you recall which**
6 **inspection report that information is contained**
7 **in?**

8 A. Well, I didn't make notes, but
9 there -- I believe it was the November inspection,
10 and I am not sure what page that is on.

11 **Q. Do you recall, as we sit here, what**
12 **information was in that inspection report? You**
13 **know what, let's try and --**

14 MR. GRANT: Do you want to take a
15 second off the record and find it?

16 BY MR. DWYER:

17 **Q. I do. Dave, if you would go to the**
18 **record, page 44. Do you have that in front of**
19 **you, Dave?**

20 A. Yes, I have that.

21 **Q. And if you look at the middle of the**
22 **page, there is a subsection titled, 09/13/13 J**
23 **Kotas?**

24 A. Yes.

1 **Q. Have you reviewed that before today?**

2 A. Yes.

3 **Q. Okay. And does that portion of the**
4 **inspection report reference an observation**
5 **Mr. Kotas made?**

6 A. Yes, it does.

7 **Q. And is that the observation you were**
8 **referring to earlier?**

9 A. Yes. It was the observation that
10 Mr. Kotas made on September 13th, and he states
11 that he -- that the KCBX south site was observed
12 from about 200 feet away to the west. Then he
13 goes on to state that no visible emissions are
14 observed from any of the piles. No visible
15 emissions were observed during 15 minutes of
16 observation under steady, brisk winds estimated at
17 about 15 to 20 miles per hour.

18 **Q. And with respect to that observation**
19 **based upon your experience and knowledge, would**
20 **that be an observation or measurement consistent**
21 **with the requirements of 212.301?**

22 A. Yes, it could be. And the only
23 reason I am hesitant to say absolutely is because
24 he meets the requirements of being outside the

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1 plant boundaries, which he had not in the cases
2 that I was talking about before. He doesn't say
3 which way the wind is blowing, but he was to the
4 west, and that would have required an east wind.
5 He was west of the facility, to have the emissions
6 passing overhead.

7 My point being that it is
8 important, I think, to note that he did not see
9 any visible emissions, but if the wind was from
10 the south to the north and the dust was blowing
11 left or right, and depending upon -- he doesn't
12 say -- I don't believe he says. Excuse me. He
13 doesn't say what time of day it was, but he does
14 say in the paragraph above that the winds were
15 from the north at about 15 to 20 miles an hour.

16 So it would have been blowing
17 perpendicular to him, and 301 is very clear. It
18 has to pass overhead. So I think the -- in one
19 sense, the reading provided useful information in
20 that he did not see any visible emissions, but my
21 truthful answer on this would be that he still
22 could not have made an observation on 310, because
23 he would not fulfill all of the requirements;
24 looking generally toward a zenith, beyond the

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1 plant boundaries, yes.

2 **Q. Okay. Was there any other**
3 **information that you reviewed, Dave, in coming to**
4 **your opinion that reliance upon the inspector's**
5 **observations was an invalid or insufficient reason**
6 **for a determination that granting the permit might**
7 **violate Section 212.301?**

8 A. Yes. I did not make notes on this,
9 but as I went through each report line by line and
10 noted Mr. Kotas' observations like the one we
11 talked about with the trucks, there were others
12 about a cement truck and various other vehicles.
13 I noted this. I am kind of summarizing, but I can
14 go through and point these out individually.

15 I did not see any mention of
16 visible emissions from any of the equipment that
17 was -- type of equipment that was the subject of
18 the request for permit. I did not see anything
19 that pointed to visible emissions from stock
20 piles. I only saw references to emissions from
21 truck driving, and on page R47, which is an
22 inspection report from September 11th or 13th,
23 right in the middle there it kind of points to
24 what I am trying to convey by my opinion.

1 Under this table here, it refers
2 to Section 301, fugitive particulate matter, and
3 you can see the specific rule is cited there, but
4 on the inspection -- well, and then he summarizes
5 the requirement in a requirement column and says,
6 "no visible emissions allowed to cross the
7 property line from any process."

8 But then in his inspection
9 findings he says, "Visible emissions from truck
10 traffic were observed at entrance road. These
11 visible emissions may have crossed the property
12 line at the guard shack." So he is clearly --
13 that's where I drew that opinion I expressed
14 earlier in my testimony where I believe he is
15 concluding that any sign of visible emissions from
16 truck traffic is a threat to 301. And I am trying
17 to point out that that's not -- that's not
18 reasonable.

19 **Q. Directing your attention again to**
20 **the record, Dave, to page 804 in the record. Did**
21 **you find that page, Dave?**

22 A. I did.

23 **Q. Okay. Now, is that a document that**
24 **you reviewed before today?**

1 A. Yes.

2 **Q. Okay. Is that a document you**
3 **reviewed before your opinions were produced on**
4 **March 28th in this matter?**

5 A. No.

6 **Q. Okay. In reviewing that document**
7 **today, does that document affect your opinion with**
8 **respect to the validity of the inspector's**
9 **observations?**

10 A. No, in the sense that I had from the
11 final inspection reports formed the opinion that
12 the observations were improperly done. And this
13 supplement simply supports that conclusion.

14 **Q. And just to be clear, what do you**
15 **understand page 804 to be?**

16 A. I understand this to be a recording
17 of the opacity observations that Mr. Kotas made on
18 his September 13th visit to the plant of vehicle
19 traffic.

20 **Q. And do you recall whether or not**
21 **this information was included in the final**
22 **inspection reports in the record?**

23 A. No, it was not, not -- certainly not
24 in the form that is presented here and not in the

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1 form of an average of these readings. I would
2 have to look at the September 13th date to see if
3 an individual reading listed here may have been
4 included.

5 Q. By a separate September 13th date,
6 do you mean review the September 13th inspection
7 report?

8 A. Yes, I can do that.

9 Q. So, Dave, if you would go to page
10 40, just take a moment to review that inspection
11 report.

12 A. Well, here is what I would say.

13 Q. Well, let me just pose a question.
14 Have you had a chance to review the inspection
15 report in the record at page 40, the final
16 inspection report?

17 A. Yes.

18 Q. Okay. And the -- and with respect
19 to the information you discussed in the record at
20 page 804, were you able to determine whether or
21 not that information was included in the final
22 inspection report that's in the record at page 40?

23 A. Yes, I have.

24 Q. And what did you determine?

1 A. That it was not included.

2 **Q. Okay.**

3 A. That instead there is a note of, a
4 semi truck traveling east, kicked up a heavy plume
5 of dust for about 30 seconds, estimated 50 percent
6 opacity. However, due to the relative location of
7 the sun and the observer, no official readings
8 were taken.

9 The requirement for making those
10 readings is very specific as to where the location
11 of the sun has to be, where the observer has to be
12 in relation to the car. Mr. Kotas is admitting
13 that he was not in a proper position to even make
14 the reading that he made, but the three readings
15 that were on page -- that are on page R804, the
16 readings for the apparently three different
17 vehicles, are substantially lower than what's
18 reported in the inspection report, but they are
19 not included in the inspection report.

20 **Q. So then looking at the second part**
21 **of denial reason three, based upon your**
22 **professional experience, your employment at the**
23 **Illinois EPA and as a private consultant, do you**
24 **have an opinion whether or not the reliance upon**

1 **citizen complaints as a basis for determining that**
2 **Section 212.301 may be violated is valid?**

3 A. No. I do not believe it's valid in
4 this case, and the case being this particular
5 permit.

6 **Q. And what are the bases for that**
7 **opinion?**

8 A. Well, I will start by saying, as I
9 have two times, this was a permit, a request to
10 add additional equipment at a facility without
11 changing any of the other critical parameters;
12 that is, the throughput or the allowed emissions.

13 It certainly is important to
14 consider citizen complaints whenever they are
15 provided, but the way that it should be included
16 is to evaluate those complaints, and certainly
17 address them in whatever appropriate fashion the
18 Agency feels is necessary, just as a general
19 matter, but in tying it to this specific permit
20 transaction, the implication is that the evidence
21 the Agency gathered from those complaints bears
22 directly on the requested permit transaction.

23 On one hand, you know, you could
24 say they did because the Agency went out and

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1 conducted a field inspection, five of them, three
2 in September and two in November, which actually
3 occurred in almost all cases before the complaints
4 that I reviewed were submitted, which was in the
5 middle of November, but my point being, as I went
6 through those complaints, and I went through every
7 one of them a couple of times, first of all, there
8 was a lot of information redacted.

9 But there still was a lot of
10 information provided. None of them talked about
11 conveyors, stackers or portable hoppers. They
12 weren't -- although at times they would list --
13 the citizen would list a name of a facility that
14 they thought caused the problem, which problems
15 were listed in some cases as air, water, land,
16 agriculture, which does not diminish the validity
17 of the complaint, whatsoever, but it was unclear
18 what the source of the problem was.

19 And based on my experience,
20 especially in the compliance section of the
21 Illinois EPA, we take those citizen complaints
22 seriously, but you have to use that information.
23 In this case, it has to be directly related to
24 what is being requested by the applicant. And I

1 cannot see how the observations made by the
2 citizens would impact a decision to add 10
3 portable conveyors, one hopper and one stacker at
4 this facility. I just don't see how it bears on
5 it, whatsoever.

6 And in some ways it's much like
7 Mr. Kotas' observation on truck dust, because as I
8 pointed out, when I went through the inspection
9 report, I really did think there was going to be
10 some statement about a conveyer, a hopper or a
11 stacker that would indicate that, yes, there
12 indeed are visible emissions. There are serious
13 problems, and there was not. Just trucks.

14 **Q. Okay. Now, if we direct your**
15 **attention to -- again to the permit denial, and in**
16 **particular to paragraph four, paragraph four**
17 **states as a basis for the denial that the**
18 **application does not show whether the particulate**
19 **matter emissions from the 10 conveyors, one box**
20 **hopper and one stacker will comply with 35**
21 **Illinois Administrative Code 212.321, further that**
22 **the application did not include data that would**
23 **prove the actual emission levels pursuant to 35**
24 **Illinois Administrative Code 201.122 or any other**

1 information that could be used to estimate
2 emissions. The Illinois EPA could not assess
3 whether these emission units have a particulate
4 matter emission rate at levels below which would
5 be allowed by this rule.

6 Based upon your experience at
7 Illinois EPA as a private consultant and your
8 education, do you have an opinion as to whether or
9 not you believe that that was a sufficient basis
10 for denial of this permit?

11 A. I do.

12 Q. Okay. And what is that opinion?

13 A. I actually feel pretty strongly
14 about this one, because I think there is
15 absolutely no merit, whatsoever, to that
16 particular comment, and I believe that the
17 Illinois EPA knows better.

18 Q. Well, tell me what -- what are the
19 bases for your opinion?

20 A. Well, I would like to give my
21 opinion in two categories, one is -- but it would
22 be the second one, is to look back at the
23 applications. But the first one is much simpler.
24 The process weight rate rule at 321 consists of an

1 equation that is used to calculate the allowable
2 emissions. And that equation is what's known as a
3 power law equation, and for the type of operation
4 at KCBX south -- well, let me state, there is
5 actually two equations.

6 One equation is for process
7 weight rates, and when we say process weight
8 rates, in the case of KCBX we are talking about
9 the amount of coal handled by a conveyer, a
10 hopper, a stacker, an end loader, and if that
11 process weight rate is less than 450 tons per
12 hour, there is one equation used. If it's over
13 450 tons per hour, there is another.

14 For most of the operations at
15 KCBX, the process weight rate is greater than 450.
16 Typically, as we were looking at earlier,
17 2,500 tons per hour for a portable stacker, all
18 the way up to I think I saw -- I mean, a portable
19 conveyor. I did see a stacker that had 4,000 tons
20 per hour.

21 That equation in this case --
22 and I apologize for the detail, but this, I think,
23 will illustrate why this is not a valid reason for
24 denial. The equation is 24.8 times the process

1 weight rate, raised to the 0.16 power.

2 As we talked about earlier,
3 there is a mathematical equation for calculating
4 emissions from this type of equipment. The
5 equation that KCBX used in their application is
6 the same equation that's in Mr. Dragovich's
7 calculation sheet. It's the same equation or
8 information that's in table 14 of their existing
9 permit. And that equation for 10.3 miles per hour
10 and 10 percent moisture content says that you take
11 0.00062 pounds of emissions per ton of process
12 weight rate, times the process weight rate, times
13 any efficiency you get for -- in this case for
14 moisture control for spraying, we call it, and the
15 EPA has agreed that 50 percent is a reasonable
16 number.

17 So with those two equations, if
18 you equate them, you would need to have a process
19 weight rate of 660,000 tons per hour for one
20 conveyer to violate that rule. You don't remotely
21 come close.

22 As an example at 4,000 tons,
23 which is the largest piece of equipment in table
24 five of the permit, there would be three pounds

1 per hour emitted. The process weight rate rule
2 says they are allowed 93. The Illinois EPA knows
3 this.

4 I will also point out that in
5 the permit itself that exists today there is no
6 specific limit on a piece of equipment. There is
7 nothing that says, your stacker is limited to
8 4,000 tons per hour. If you found a way to jack
9 up the motor somehow or do something that would
10 raise it to 5 or 6,000, there is nothing in the
11 permit that limits you from doing that.

12 You are only limited to the
13 total emissions, which the company is required to
14 keep records of and compute and submit to the
15 Agency, and that is one thing that's in the
16 inspection report is a statement that that's being
17 done. So that's -- that's my favorite reason.

18 But the second reason is that
19 table five that we looked at earlier and we could
20 look at again --

21 **Q. And let's do that. Let's go to the**
22 **record, Dave. That's at 213 in the record?**

23 A. Yes, 213. Okay. If you look -- if
24 you look at the emission factor column, you know,

1 at the top where it shows an entry for PM and
2 PM10, and then shows the units of pounds per
3 ton -- and for simplicity I will just look at the
4 PM. That is, by the way, what the process weight
5 rate is for, is for PM and not for PM10.

6 But if you look down that row,
7 for all the pieces of equipment on the left side,
8 you see the same number every time, 0.00064,
9 0.00064, all the way down to our portable
10 conveyors, to reclaimed conveyors, for conveyors
11 that are, you know, permanent conveyors to
12 stackers. If you go to R215 you see stackers, you
13 see -- at the top, the top row it says, stacker
14 one to coal pile five, 4,000 tons per hour.

15 **Q. Okay. Dave, just to clarify, you**
16 **are referring to the record at page 215?**

17 A. Yes.

18 **Q. Go ahead.**

19 A. So if we look at that top row,
20 stacker one to coal pile five, it's showing that
21 the stacker -- KCBX is saying the maximum material
22 handling rate for that, they are saying here in
23 their table -- they are not saying it's the
24 maximum, by the way, that it could do. They are

1 just saying they are estimating that it won't go
2 over 4,000 tons per hour. It may be that is the
3 maximum, but for purposes of establishing a
4 federally enforceable emission rate for that
5 plant, they are saying this is a typical -- or I
6 should say more like a maximum situation.

7 So 4,000 tons per hour, and you
8 look -- you can see the 0.0064 like he is
9 mentioning, and if you go further to the right,
10 you see the PM and PM10 emission rates. Now,
11 those emission rates are given in pounds per day
12 and tons per year, but as I told you, the
13 4,000 tons per hour would have an emission rate of
14 allowable -- allowable emission rate under 321 of
15 93 pounds, and the actual emission rate would be
16 1.2 pounds per hour, much under.

17 So my point is that there is no
18 way that the Illinois EPA could look at this
19 information, look at the information that they
20 have in the calculation sheet, and conclude that
21 they were completely baffled about whether or not
22 portable conveyors, feed hoppers and stackers
23 would violate 321.

24 **Q. Dave, now we are almost finished.**

1 If you would look in the record at page 207 --
2 let's rather start at page 205.

3 Is it your understanding that
4 that is what we refer to as the project narrative?

5 A. Yes.

6 Q. Okay. And is that a project
7 narrative that was incorporated by reference from
8 the DTE application in the request for revision
9 that we are talking about here today?

10 A. Yes.

11 Q. And does that document contain any
12 information with respect to the 212.321 issue that
13 we have been talking about?

14 A. Yes, it does.

15 Q. Okay. And in particular, let me
16 direct your attention to page 207. And tell me
17 what in there you believe is relevant to your
18 opinion that you just expressed.

19 A. Well, in the -- near the top of the
20 page there is a sentence that begins with 35 IAC
21 Section 212.321, and that -- that section gives an
22 example calculation of the process weight rate,
23 for the facility. It uses a process weight rate
24 of 2,500, which as I mentioned, is not actually

1 the highest that the facility shows in their table
2 five, but it's titled an example or a sample
3 calculation is the exact words. And then it
4 computes the process weight rate in pounds per
5 hour.

6 Now, I will point out that it
7 is -- it is an error in the strict sense. It's
8 not an error in terms of what it shows, because as
9 I mentioned earlier, that there are two equations
10 to use; one, if you are less than 450 tons per
11 hour, one if it's more. The parameters that are
12 used here, 2.54 and 0.534, would only be
13 applicable if that number was less than 450.
14 Since it's 2,500, it should be 24.8 and 0.16.

15 **Q. Does that change your opinion at**
16 **all?**

17 A. No.

18 **Q. Why?**

19 A. Well, because using that wrong
20 number they compute 165.7, which in a strict sense
21 is -- it is wrong, but the actual number, I would
22 have to calculate it. I think it's 87, but if I
23 can, I can tell you what it should be.

24 MR. DWYER: Mr. Hearing Officer?

1 MR. GRANT: He is explaining what he
2 is multiplying to me. I have no objection to him
3 doing it now.

4 MR. DWYER: Let the record reflect
5 that the witness is using a calculator to perform
6 the calculation.

7 HEARING OFFICER HALLORAN: I'm
8 sorry. Yes.

9 BY THE WITNESS:

10 A. Okay. Well, you would take the
11 2,500 tons per hour process weight rate, raise it
12 to the 0.16 power and multiply it by 24.8, yes,
13 and that result is 86.7. I had said 87, but so
14 it's 87.

15 In this section that we are
16 looking at, the actual emissions from this
17 transfer point are 0.79 pounds per hour. That is
18 correct. So instead of saying it's 0.79 and it's
19 allowed 165.7, what they should have said is, it's
20 0.79. They are allowed 86.7. Still a very, very
21 large difference, and so I would have to say that
22 there was a permit issued based on this narrative,
23 which is the April 2013 permit.

24 MR. GRANT: No. That's the wrong

1 permit. Just to keep the record clear, that's the
2 wrong permit.

3 MR. DWYER: It's the correct permit.

4 MR. GRANT: Excuse me one second.

5 I'm sorry.

6 HEARING OFFICER HALLORAN: Let's go
7 off the record for a second.

8 (Whereupon, a discussion was had
9 off the record.)

10 HEARING OFFICER HALLORAN: We are
11 back on the record.

12 MR. GRANT: Just for the record, I
13 withdraw any objection that I may have made.

14 HEARING OFFICER HALLORAN: Okay. So
15 noted. Thank you.

16 BY MR. DWYER:

17 **Q. Dave, let me just clarify a couple**
18 **things here and we will be done. When we went off**
19 **the record, we were talking about a calculation**
20 **that was included in a document in the record at**
21 **page 207. Is that your understanding?**

22 A. Yes.

23 **Q. Okay. And is it your understanding**
24 **that that document referred to starting at page**

1 205 as a project narrative, was included in the
2 September 2012 DTE application that's in the
3 record?

4 A. Yes.

5 Q. Okay. And is it your understanding
6 that the Illinois EPA issued a permit to DTE on
7 December 18th, 2012?

8 A. Yes.

9 Q. And if you would just -- just to
10 confirm that, would you look in the record at page
11 699?

12 A. I have page 699.

13 Q. Okay. And what do you understand
14 that document to be? Is that, in fact, an IEPA
15 permit issued to DTE dated December 28th, 2012?

16 A. It's a -- it is a construction
17 permit issued to DTE showing an issue date of
18 December 18th.

19 Q. And is it your understanding that
20 IEPA transferred that permit to KCBX on
21 approximately December 20th, 2012?

22 A. Yes.

23 Q. And just to confirm, if you look on
24 the record at page 624 --

1 A. I have it.

2 Q. -- is that letter at page 624 a
3 letter from Mr. Edwin Bakowski at the Illinois
4 EPA?

5 A. Yes, it is.

6 Q. Okay. And can you tell me what you
7 understand that letter to be?

8 A. This as a cover letter addressed to
9 Mr. Walker of KCBX. It's Brandon Walker, and
10 it's -- it encloses the revised construction
11 permit, which reflects a change of ownership.

12 Q. And then directing your attention --
13 well, first, is it your understanding that IEPA
14 issued a revision to that permit to KCBX on
15 April 18th, 2013?

16 A. Yes.

17 Q. And just to summarize your
18 opinion -- and you correct me if I am wrong, but
19 based upon the discussion we have had today,
20 Mr. Kolaz, is it your opinion that the request for
21 revision submitted to Illinois EPA, including the
22 references to the existing permits, including
23 No. 07050082 and the supporting application and
24 the information regarding the equipment

1 identification numbers provided in an e-mail dated
2 September 3rd, 2013, which is in the record,
3 contains sufficient information demonstrating that
4 granting the permit would not violate Section 9 or
5 35 Illinois Administrative Code, Sections 201.168,
6 212.301, 212.321 and that it would satisfy the
7 requirements of 35 Illinois Administrative Code
8 Section 201.152?

9 A. Yes, it is.

10 MR. DWYER: Okay. I don't have any
11 further questions.

12 HEARING OFFICER HALLORAN: Thank
13 you, Mr. Dwyer. Let's go off the record for a
14 second.

15 (Whereupon, a short break was
16 taken.)

17 HEARING OFFICER HALLORAN: All
18 right. We are back on the record. We are going
19 to take a lunch break. Everybody is to be back in
20 the room by 12:35. Thank you.

21 (Whereupon, a short break was
22 taken.)

23 (WHEREUPON, Board Member O'Leary
24 entered the proceedings.)

1 HEARING OFFICER HALLORAN: We are
2 back on the record. It's approximately 12:40. We
3 just took a break from lunch. I believe Mr. Grant
4 is ready to cross Mr. Kolaz, but I do want to know
5 for the record that we do have Member O'Leary here
6 today, too, as well as Member Zalewski and Member
7 Burke.

8 Mr. Grant?

9 MR. GRANT: Thank you.

10 HEARING OFFICER HALLORAN: And
11 please remember you are still under oath,
12 Mr. Kolaz.

13 THE WITNESS: Yes.

14 HEARING OFFICER HALLORAN: Thank
15 you.

16 CROSS-EXAMINATION

17 BY MR. GRANT:

18 Q. Mr. Kolaz, I am Chris Grant with the
19 Attorney General's Office. If you recall, I took
20 your deposition earlier this month. Do you
21 recall?

22 A. Yes, I recall.

23 Q. I want to ask you a few questions
24 about your background. You were with Illinois

1 EPA, I think, from 1971 to 2004?

2 A. That's correct.

3 Q. And you were with the permit section
4 from 1973 to 1974; is that correct?

5 A. Yes.

6 Q. Okay. And during that period
7 that -- you were with the permit section for a
8 total of nine months during that period; isn't
9 that correct?

10 A. Yes.

11 Q. And at no time afterwards were you
12 ever assigned in the permit section at Illinois
13 EPA?

14 A. No.

15 Q. Okay. And while you were with the
16 permit section, you did not make the final
17 decision on the permits that you reviewed?

18 A. No.

19 Q. And during the time that you were
20 with the permit section, most of the permits that
21 you reviewed were for incinerators; is that
22 correct?

23 A. Yes.

24 Q. You were responsible for the permit

1 **section as bureau chief between 2000 and 2004;**
2 **isn't that correct?**

3 A. Yes.

4 Q. Okay. But in none -- during that
5 period you did not make -- and I am talking 2000
6 to 2004 as bureau chief, you did not make any
7 final permit decisions, correct?

8 A. That's correct.

9 Q. And in none of the other positions
10 at Illinois EPA did you review permit applications
11 or make a final decision on permit applications;
12 is that correct?

13 A. Well, I reviewed permit
14 applications. I did not make the final decisions.

15 Q. And was that review as you described
16 yesterday?

17 A. It was.

18 Q. Okay. Did you work with Bob
19 Bernoteit while at Illinois EPA?

20 A. I know Bob Bernoteit. I'm not sure
21 what you mean by work with Bob Bernoteit.

22 Q. Okay. Did you work in the same
23 bureau?

24 A. Yes.

1 Q. Did you work together in the permit
2 section when you were there?

3 A. No.

4 Q. Was Mr. Bernoteit in the permit
5 section during the time that you were bureau
6 chief?

7 A. Yes.

8 Q. Okay. Do you believe that
9 Mr. Bernoteit is a competent permit engineer?

10 A. Yes.

11 Q. Okay. And let me ask you also about
12 Mike Dragovich. Was Mr. Dragovich with the Bureau
13 of Air Permit Section while you were bureau chief?

14 A. Yes.

15 Q. Okay. And do you believe him to be
16 a competent permit engineer?

17 A. I do.

18 Q. Since leaving Illinois EPA 10 years
19 ago, you have worked exclusively in the regulated
20 community, correct? In other words, you weren't
21 working for government, for regulators?

22 A. I worked for the Illinois EPA during
23 2005.

24 Q. I think I remember you saying that

1 **yesterday, yes, as a consultant in air monitoring**
2 **or in the vehicle system?**

3 A. Vehicle inspection maintenance
4 program.

5 Q. Right. Okay. With the exception of
6 that, have you worked in government or for a
7 government regulator for the past --

8 A. No.

9 Q. Okay. Let me ask you about the
10 period from 2006 to the present. How many permit
11 applications have you worked on that were
12 submitted to Illinois EPA?

13 A. I worked on the Caterpillar and
14 Mossville Engine Center's Title V Permit. I also
15 worked on a construction permit for them. I
16 worked on a Title V Permit for the Caterpillar
17 Pontiac facility.

18 Q. I'm sorry. Was that a CAAPP permit
19 you said, the last one, for the Pontiac?

20 A. Yes, it was a CAAPP permit.

21 Q. All right.

22 A. I worked on a construction permit
23 for a company called Eviraz. That was a
24 construction permit.

1 I worked on the permit
2 application for an ethanol plant, which is Abengoa
3 Bioenergy. I worked for a -- a permit for a
4 reclaimed stacker to -- excuse me -- a radial arm
5 stacker and two reclaimed feeders and an extension
6 of a fixed conveyer for a coal handling facility
7 in Massac County.

8 I worked for an -- I worked on
9 some permit applications that were filed with the
10 state of Texas and the state of Kentucky and the
11 state of Georgia. Those are the ones that come to
12 mind.

13 Well, I worked on -- I worked
14 with a fellow Conestoga-Rovers employee on a
15 construction permit for A. Finkl & Sons for their
16 move to Southeast Chicago.

17 **Q. What -- for the CAAPP permits, and**
18 **that's, C-A-A-P-P, that you worked on for**
19 **Caterpillar, what was the major source**
20 **contaminant? In other words, what made them a**
21 **major source requiring a CAAPP permit?**

22 A. Volatile organic material.

23 **Q. Okay. The last -- I'm sorry. I**
24 **didn't write it down. The last company that**

1 **worked for -- or that you said relocated?**

2 A. A. Finkl & Sons.

3 **Q. Okay. What -- you said there was a**
4 **construction permit you worked on?**

5 A. Yes.

6 **Q. Okay. And what were they -- what**
7 **was covered? What equipment was covered by the**
8 **construction permit?**

9 A. It involved equipment for their
10 furnaces, rolling mill, and, you know, fugitive
11 sources of articulate matter from their scrap
12 metal that they used.

13 **Q. Okay. Are you currently working on**
14 **any permit applications?**

15 A. No. The permitting work I am doing
16 right now is to draft a -- draft regulations
17 for -- in conjunction with a trade association.
18 We are working with the state of Illinois, or the
19 Illinois EPA specifically, to develop some
20 streamline approaches to permitting, and we are
21 doing this through something called permit by
22 rule. Right now we are working on a permit by
23 rule for boilers, and we are also working on a --
24 what's called a general permit. So that's the

1 permit related work I am doing at this moment.

2 Q. Okay. Does Illinois EPA Bureau of
3 Air currently have any permits by rule?

4 A. Not the Bureau of Air, no, they do
5 not.

6 Q. I am going to ask you specifically
7 about this case, about the KCBX case, and at your
8 deposition I think I recall that you said that you
9 began working on this matter on March 6th, 2014;
10 is that correct?

11 A. If it wasn't March 6th, it was
12 within a day or two of March 6th. I recall as it
13 being March 4th, but it might have been March 6th.

14 Q. And when you first started working,
15 you were working as a representative of
16 Conestoga-Rovers & Associates, correct?

17 A. Yes.

18 Q. Okay. And again, this is what I
19 think I read in your deposition. You worked for
20 Conestoga-Rovers & Associates for -- until the
21 26th of March?

22 A. Yes.

23 Q. Okay. And then you -- your further
24 participation in this case was independent

1 retained by Hodge Dwyer & Associates; is that
2 correct?

3 A. Yes.

4 Q. And your compensation for this case
5 is being provided by Hodge Dwyer, correct?

6 A. Correct.

7 Q. Again, from the deposition if you
8 remember, when I was asking you about your
9 compensation, I think you said that you had
10 worked -- that you had billed five and a half
11 hours working for Conestoga-Rovers between -- to
12 this file or to -- you know, for this case between
13 March 6th and March 26th. Do you recall that?

14 A. Yes.

15 Q. Okay. When did you first visit the
16 KCBX facility?

17 A. It was -- I don't have my records
18 with me, but it was after -- after the March 26th,
19 I believe.

20 Q. Okay. Okay. So while you were with
21 Conestoga-Rovers, you did not visit the KCBX
22 facility?

23 A. I did not.

24 Q. Okay. And I believe in your opinion

1 **you said that you reviewed the inspection reports?**

2 A. Yes.

3 **Q. Okay. And when did you review the**
4 **inspection reports?**

5 A. When the record became available.

6 **Q. Okay. Was that with -- while you**
7 **were at Conestoga-Rovers or was that afterward?**

8 A. You know, I don't recall. It was --
9 I received the record electronically, and I recall
10 it as being within a day or two of when it was
11 filed on the Board's website.

12 **Q. Okay. What sorts of things did you**
13 **do while you were with Conestoga-Rovers from the**
14 **6th and to the 26th specifically to this case?**

15 A. I -- I reviewed the petition for
16 review of the denial. It was on the Board's
17 website.

18 **Q. Okay. As far as the rest of the**
19 **record, the rest of the record including -- and**
20 **the record; meaning, what was filed by the State**
21 **and not what was supplemented subsequently, but --**
22 **so approximately 500 pages, but including the**
23 **citizen complaints and including the permit**
24 **application, that sort of thing, do you recall**

1 **when you reviewed that material?**

2 A. Well, as I said, it was -- it was on
3 or about the time it was filed with the Board.
4 Possibly a day or two after is when I started
5 through that material.

6 **Q. Okay. Is Conestoga-Rovers still**
7 **working for KCBX, or does it have a project**
8 **related to this case with KCBX?**

9 MR. DWYER: I am going to object for
10 relevance. Go ahead and answer if you can.

11 HEARING OFFICER HALLORAN:

12 Overruled. Go ahead, sir.

13 BY THE WITNESS:

14 A. I don't know. I haven't talked with
15 anyone from CRA about this for quite a while. So
16 I'm not sure if they are doing anything, and I
17 haven't -- I do not know if they are doing any
18 work for KCBX.

19 BY MR. GRANT:

20 **Q. Okay. Can you give me one minute?**
21 **I think I have lost the witness disclosure.**
22 **Exhibit 1, I think it was. Okay. I got it.**

23 **Mr. Kolaz, do you have a copy of**
24 **this, of Petitioner's Exhibit 1 in front of you?**

1 **This is your -- the expert from the witness**
2 **disclosure.**

3 HEARING OFFICER HALLORAN: He can
4 use mine.

5 BY THE WITNESS:

6 A. Yes, I do.

7 BY MR. GRANT:

8 **Q. I guess my first question is, who**
9 **wrote this opinion?**

10 A. What do you mean by "wrote it"?

11 **Q. In its current form, who put this**
12 **together?**

13 A. Who typed it?

14 **Q. Sure. Let's start with that. Who**
15 **typed it?**

16 A. You know, I don't know. I know how
17 this was formed, how the thoughts and ideas here
18 were formed. I can't tell you --

19 **Q. Let's talk about that, because**
20 **that's where I am going with this. In other**
21 **words, obviously it was filed by counsel for KCBX,**
22 **but to what extent does this represent your**
23 **opinion?**

24 A. Do you mean in terms of a

1 percentage?

2 Q. No. Is this your opinion?

3 A. Yes, this is my opinion.

4 Q. Okay. And one of the reasons I am
5 saying that is yesterday you sort of answered the
6 question by, I participated in the opinion or
7 something like that.

8 So can you explain, you know,
9 did you -- I mean, as far as writing and typing it
10 out, did you provide this opinion in its present
11 form?

12 A. I believe I understand your
13 question, and I'm not sure. I don't recall the
14 exact question that you were referring to
15 yesterday, but how this came about is I spoke
16 directly with Mr. Dwyer by phone. I was in San
17 Antonio, and I discussed with him my opinions on
18 this case, in this matter based on the things I
19 had reviewed. And he -- I was on vacation, and he
20 drafted what he understood to be -- to be the
21 opinion as I expressed it to him, and then he sent
22 me a draft, and I edited the draft, and sent it
23 back, and I think we went through two, maybe three
24 iterations until it was in the form that it's in

1 now, and that fully represented my opinion.

2 Q. Okay. Okay. I am happy with that,
3 and I am not trying to nag you, but I am now
4 curious if you are on vacation on or around the
5 date this was filed, which is the 28th, and you
6 worked for Conestoga-Rovers up until the 26th, how
7 it is that you got to the site, the north site and
8 the south site, I think you said?

9 A. Well, I am going from memory. I --
10 I came back from San Antonio, and I would call my
11 wife to ask her when we got back. And the next
12 day --

13 Q. She would just give you a hard time
14 if you called her.

15 A. Yeah, she would. And the next day I
16 went to the site. So it was -- you know, I just
17 am going from memory, but it was after I got back
18 from San Antonio.

19 Q. Okay. And you were in San Antonio
20 on the 28th?

21 A. You know --

22 Q. I'm not -- I am just -- what I am
23 wondering about is since there is a very
24 abbreviated period of time here before we have an

1 opinion, your opinion on it, you know, what your
2 opinion was based on, so -- and if as of
3 March 28th you had actually seen the north
4 facility or the south facility. Okay? And I --
5 put that in the form of a question.

6 Had you been to the north
7 facility by the time this was filed on March 28th?

8 A. I do not believe so.

9 Q. Okay. And you toured them both at
10 the same time; isn't that correct?

11 A. Yes, right. I don't -- you know, I
12 am not -- yeah. I kept a record of these things,
13 but I did not bring it with me. I don't -- I
14 really don't know if the opinion was filed before
15 my visit of the plant or not.

16 Q. Okay.

17 A. But I think the way -- you know, the
18 way I structured my opinion in that is that I was
19 familiar with the plant and that that familiarity
20 involved a number of aspects, one of which was the
21 site.

22 Q. Let me take a quick look through
23 here. Okay. I -- yeah, just in looking, I don't
24 see anything in your opinion that says it was

1 **based on the tour of the site, so --**

2 A. Right. Yeah, I didn't think it --

3 **Q. Okay. But just for the record, your**
4 **personal observations at the north site and at the**
5 **south site are not a basis for the opinions you --**
6 **the opinion that you have?**

7 MR. DWYER: You know, I am going to
8 object. I think -- you know, I think the witness
9 should at least be given an opportunity to review
10 this document in detail, you know. I just think
11 you should have the opportunity to review the
12 document before you answer that question.

13 MR. GRANT: I have no problem with
14 that. I just -- it just kind of gets back to the
15 same thing, what is this opinion based on? I
16 mean, if this opinion is not -- this is the only
17 opinion we have on this. If it's not based on
18 personal experience at the north site or the south
19 side, I think that's relevant.

20 HEARING OFFICER HALLORAN: Are you
21 talking about the document, the Petitioner's
22 Exhibit 1?

23 MR. GRANT: Yes.

24 HEARING OFFICER HALLORAN: He has

1 that in front of him.

2 MR. GRANT: Right. Mr. Dwyer, do
3 you want him to take a minute to take a look at
4 it?

5 MR. DWYER: Yeah, I would.

6 HEARING OFFICER HALLORAN: All
7 right. Do you want to take a look at it then? We
8 will go off the record for a minute.

9 (Whereupon, a short break was
10 taken.)

11 HEARING OFFICER HALLORAN: We are
12 back on the record now. Thanks.

13 BY THE WITNESS:

14 A. I have refreshed my memory of my --
15 of Exhibit 1.

16 BY MR. GRANT:

17 Q. Okay. So my question was, isn't it
18 true that this opinion that was filed on 3/28 does
19 not include or is not based on your personal
20 visits to the north site or the south site,
21 correct?

22 A. It may not be. As I said, I'm not
23 sure of when I visited, but I can say that my
24 visit to the north or south site was --

1 MR. DWYER: We would like to object
2 to this questioning to the extent that it's
3 suggesting that the witness today is limited to
4 what was in the disclosure on March 28th in
5 rendering his opinions. Under the rules of Civil
6 Procedure this was a disclosure of what we
7 expected his opinions to be. It was done on
8 March 28th. He is entitled to testify today to
9 what his opinions are and what they are based
10 upon.

11 HEARING OFFICER HALLORAN: I don't
12 think we are there yet. So your objection is
13 overruled, but thank you for putting that on the
14 record. Mr. Grant?

15 BY MR. GRANT:

16 Q. When you did go to the KCBX
17 facility, do you remember how much time you spent
18 there?

19 A. I would say no more than two hours.

20 Q. Okay. And I know there were two
21 sites that you visited on the same day?

22 A. Yes.

23 Q. Is that inclusive of both sites, or
24 is it --

1 A. It includes both sites.

2 Q. Okay. Was that your first trip to
3 the site, to the north site and the south site as
4 we have been using them?

5 A. Yes.

6 Q. Okay. You were never there in a
7 professional capacity with Illinois EPA; is that
8 correct?

9 A. No.

10 Q. Okay. And with Conestoga-Rovers you
11 were not there, that's correct?

12 A. Correct.

13 Q. Okay. One of the permits, the DTE
14 permit, was a Conestoga-Rovers product apparently,
15 the prior DTE permit, and I think that you said at
16 your deposition you did not work on that permit
17 application, correct?

18 A. Correct.

19 Q. Okay. I am going to ask you to turn
20 to -- I'm sorry. One more question.

21 When you were at the -- when you
22 visited the north and south sites, did you also
23 visit the residential area near the south site?

24 A. What do you mean by visit?

1 Q. When you -- the day that you -- the
2 one day that you were at the two facilities, did
3 you visit a residential area near the KCBX south
4 facility?

5 A. We drove through the neighborhood,
6 that neighborhood to get to the facility.

7 Q. Okay. Can I ask you to turn to page
8 186 in the record?

9 A. Okay.

10 Q. And let's go to page 195. Then do
11 you see the heading of this says, process,
12 emission unit, data and information?

13 A. Yes.

14 Q. And boxes eight -- or nine, 10 and
15 eleven. Do you see those?

16 A. Yes.

17 Q. Okay. And let's see. In Box 9 it
18 asks for the manufacturer of the emission unit
19 that was sought to be permitted; is that correct?

20 A. Yes.

21 Q. Okay. And in that box it's filled
22 in, "to be determined." Do you see that?

23 A. Yes.

24 Q. Okay. Do you know if the

1 **manufacturer of the emission unit had been**
2 **determined on the date that this permit**
3 **application was filed?**

4 A. I would presume that it had not,
5 based on the cover letter that said the equipment
6 may be moved from the north. That left the
7 possibility that maybe it would come from
8 somewhere else and --

9 **Q. So it -- I'm sorry.**

10 A. And the fact that nine says
11 manufacturer of emission unit, if known, and that
12 would reflect the fact that there was at the time
13 of the application at least some possibility that
14 there would be a different piece of equipment.

15 **Q. Okay. So the page you are referring**
16 **to on 187 where it says, all of which may be**
17 **relocated from the north facility, on that page.**
18 **It's your understanding that they had not decided**
19 **as of that point; is that correct?**

20 A. That's what I am presuming.

21 **Q. Okay. Do you know if that**
22 **information was ever supplemented or provided to**
23 **Illinois EPA, who the manufacturer of the**
24 **equipment sought to be permitted was?**

1 A. I do not believe it was.

2 **Q. And similarly, with -- let's see.**

3 **With 195, the box is 10, and it asks for the model**
4 **number and the serial number, "to be determined."**

5 **Do you know if the model number or the serial**
6 **number of the equipment sought to be installed had**
7 **been determined by KCBX as of the date of the**
8 **filing of this application?**

9 A. No. I would give the same answer as
10 I did before.

11 **Q. Okay. The same that they had not**
12 **decided at that time that they submitted the**
13 **permit application, correct?**

14 A. Correct.

15 **Q. And again, do you know if this**
16 **information was ever provided to Illinois EPA?**

17 A. No. I don't know, but I would
18 presume not. It's not routinely required.

19 **Q. Do you know why if you put this**
20 **information in a permit application you would not**
21 **update it to the Agency once you decided what you**
22 **wanted to install?**

23 MR. DWYER: I am going to object
24 that it calls for speculation.

1 BY MR. GRANT:

2 Q. Yeah. Do you know why this was
3 never supplemented?

4 HEARING OFFICER HALLORAN:

5 Overruled. You may answer.

6 BY THE WITNESS:

7 A. Yes. The application forms that you
8 see here are prepared, you know, for general
9 applicability to a variety of sources, and the
10 necessity of the information depends upon the
11 particular type of emission unit that you are
12 requesting to be permitted, and as the 201.152
13 states, the Agency has the ability to waive
14 requirements and also the ability to add
15 requirements.

16 The Agency historically -- and
17 waives requirements by simply not asking for the
18 information if it's not provided. One good
19 example that's in Rule 152 is the request for the
20 deterioration rate and life expectancy of
21 equipment. I don't know of any case -- there is
22 not even a place on any of the forms for that
23 information. So, in essence, the Agency just
24 unilaterally waives that.

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1 In the denial letter we were
2 talking about where it talked about the
3 specifications and so on and so forth -- you know,
4 I could read that back if it's --

5 BY MR. GRANT:

6 **Q. If we get to it. I'm sure Mr. Dwyer**
7 **will have a chance to go to it, but my question**
8 **is, why wasn't this provided?**

9 A. Because it wasn't needed.

10 **Q. Okay. If it wasn't needed, why**
11 **didn't they say this information isn't needed in**
12 **there?**

13 A. Because the Agency does not formally
14 waive requirements. They exercise that, I
15 think -- well, I am guessing for efficiency's
16 sake -- that's the way it was when I was there --
17 by simply letting a person know that, you know, we
18 would like your ID numbers for your conveyors, and
19 then the person provides that.

20 If the Agency needed the
21 manufacturer or the serial number or the model
22 number, they would ask, but for a conveyer -- for
23 the equipment that was being requested to be
24 permitted, that information was irrelevant.

1 **Q. Why would they have a box on their**
2 **application form if they -- if it was not**
3 **information that was required?**

4 A. Because it's not irrelevant for
5 every permit transaction.

6 **Q. Okay. It -- why didn't -- well,**
7 **never mind, I have already asked that question. I**
8 **have got a couple of exhibits I want to mark.**
9 **These are -- because we will be referring to them.**
10 **If you could give me just a minute.**

11 **(Whereupon, a discussion was had**
12 **off the record.)**

13 HEARING OFFICER HALLORAN: Back on
14 the record.

15 MR. GRANT: Mr. Halloran I have got
16 copies of 35 Illinois Administrative Code 201.152
17 and 212.321. I would like to mark them as
18 exhibits so we can refer to them during this
19 testimony.

20 HEARING OFFICER HALLORAN: Okay.

21 MR. GRANT: Respondents 1 and 2?

22 HEARING OFFICER HALLORAN: Okay. Do
23 you have copies for me, or no?

24 MR. GRANT: I do.

1 HEARING OFFICER HALLORAN: Okay.

2 Good.

3 (Whereupon, RESPONDENT'S Exhibit
4 Nos. 1-2 were marked for
5 identification.)

6 MR. GRANT: May I approach?

7 HEARING OFFICER HALLORAN: You may.

8 BY MR. GRANT:

9 Q. Mr. Kolaz, I have handed you a copy
10 of what's listed as Petitioner's (sic) Exhibit 2,
11 which is a copy of Section 201.152 of the Board
12 regulations. Are you familiar with that
13 regulation?

14 A. Yes.

15 Q. Okay. Doesn't that regulation
16 require the person seeking the permit or the
17 entity seeking the permit to provide all necessary
18 information in its permit application?

19 A. Yes.

20 Q. And as you said and down toward the
21 bottom of it it also says, the Agency may waive
22 the submission of engineering plans, drawings or
23 specifications, that sort of thing; is that
24 correct?

1 A. Yes.

2 Q. Okay. Isn't it the petitioner --
3 isn't it the person seeking the permit's burden to
4 make the determination as to what needs to be
5 submitted to meet the regulations?

6 A. The person being permitted, it's
7 their responsibility to submit what they believe
8 is necessary to be permitted.

9 Q. Do you agree with them?

10 A. Yes.

11 Q. Okay. The Agency is not -- does not
12 have a responsibility under 201.152 to tell the
13 applicant what needs to be submitted; isn't that
14 correct?

15 A. No. I would say that that would be
16 under another provision.

17 Q. You mean a different section of the
18 Act?

19 A. A different section of --

20 Q. Okay. What are you referring to?

21 A. I believe it's 201.158 it talks
22 about the completeness of the application.

23 Q. Okay. And I don't have the
24 regulation in front of me. What's your

1 **understanding of it?**

2 A. Well, my understanding is that,
3 first of all, keeping in mind that there is
4 various complexities of equipment that is being
5 requested. A Caterpillar facility or a steel mill
6 are highly complex, and it's impossible for the
7 Agency to develop a form and request for
8 information that covers every instance.

9 So as you said, it's the
10 responsibility of the permit applicant to provide
11 the information essential and necessary for the
12 Agency to make its decision. 152 talks about the
13 contents, and as you have said, it allows the
14 Agency to waive what the Agency deems
15 inappropriate or unnecessary, but also to ask for
16 information in addition to what's listed here.

17 **Q. Okay.**

18 A. Now, both of those circumstances
19 occur, but during the period of the first 30 days
20 of when an application is filed, that is the
21 opportunity for the Agency to do a completeness
22 review, and if the Agency sees that there is some
23 essential information that's missing, that's when
24 they are to provide the notice.

1 Now, in this case, this specific
2 case, the type of information that the Agency said
3 was missing was not highly complex or unknown.
4 The specific points you were making about the name
5 of the manufacturer or the model number or serial
6 number does not take an extensive review to see
7 that's not there, and yet, the Agency did not deem
8 it important to request anything more than the
9 identification numbers of the equipment.

10 **Q. How do you know that?**

11 A. Because in the e-mail that we
12 referred to earlier from Terry Steinert. Terry
13 refers to a discussion with Mike Dragovich and
14 said, here's the information we discussed, and it
15 listed the equipment and then the identification
16 number.

17 **Q. So what you saw was their response**
18 **to the Agency's request for information, correct?**

19 A. Resulting from the August 27th
20 meeting.

21 **Q. That's what was referred to in the**
22 **e-mail, but what you saw was KCBX's response,**
23 **correct?**

24 A. Yes.

1 **Q. You have no idea what was requested**
2 **at that meeting, do you?**

3 A. No. I am -- that's correct. I
4 don't know if they requested the model number, the
5 serial number.

6 **Q. Okay. And as far as the Agency's,**
7 **you know, sending out a notice of incompleteness,**
8 **the Agency isn't required to send out a notice of**
9 **incompleteness, are they?**

10 A. No, they are not.

11 **Q. Okay. I mean, the Agency if it**
12 **wanted to could simply deny a permit for lack of**
13 **information, couldn't it?**

14 A. Well, yes, they could.

15 **Q. Okay. In your direct examination**
16 **you have mentioned that in this specific case --**
17 **and there is nothing in the record of a notice of**
18 **incompleteness, but in this specific case that**
19 **there was a meeting on August 27th, and they**
20 **didn't send out a notice of incompleteness prior**
21 **to that or words to that effect. Do you remember**
22 **saying that?**

23 A. Yes, I did.

24 **Q. Okay. Now, if you would set up a**

1 **meeting to discuss a permit, would it be standard**
2 **practice to send out a notice of incompleteness**
3 **before the meeting?**

4 A. Yes, sure. It has to be within the
5 first 30 days. The company had requested to meet
6 even prior to the submittal of their application
7 on July 23rd and that -- stated in that letter
8 that we referred to, I believe I referenced it
9 during my earlier testimony, where Mike Estadt
10 said, and I reiterate my request to meet, and that
11 request clearly came even before he filed the
12 application. But the meeting wasn't scheduled
13 until August 27th. And I think it would have been
14 proper for the Agency if they were concerned
15 about, you know, incompleteness to have sent it
16 out within the statutory required 30-day period.

17 **Q. That's if they choose to send out a**
18 **notice of incompleteness, correct?**

19 A. Yes.

20 **Q. I mean, if there was a meeting**
21 **scheduled just a few days after that, wouldn't the**
22 **meeting serve the same purpose as the notice of**
23 **incompleteness?**

24 A. Well, I would agree with that, and

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1 that's why I have said what I have about presuming
2 that the outcome of that meeting was simply
3 sending the identification numbers.

4 **Q. Please turn to the next page, page**
5 **196.**

6 A. It's 196 in the record?

7 **Q. Yeah. I'm sorry. It's the next**
8 **page in the process unit -- Process Emission Unit**
9 **Data and Information. And down at the bottom in**
10 **the table marked, Material Usage Information, do**
11 **you see the reference to "see tables five and six**
12 **in initial application"?**

13 A. Yes.

14 **Q. Okay. What was the initial**
15 **application?**

16 A. Is your question where is it at in
17 the record?

18 **Q. I guess it's -- no. It's my**
19 **question to you. What is the initial application**
20 **in this case? In other words, there is no**
21 **information down in these columns here. It just**
22 **simply makes reference to initial application.**

23 A. Yeah. Well, I have to admit, when I
24 first saw that, I wasn't sure myself. However, I

1 see -- I saw in the Agency records that they
2 weren't confused, because what happened was there
3 was an application filed in September of 2012 that
4 resulted in the permit being issued that we talked
5 about earlier, being issued December 18th, and
6 then there was another permitting transaction
7 where in this case KCBX applied for a revision to
8 the construction permit for four portable
9 conveyors and two, 773 brake horsepower engines on
10 March 11th.

11 The permit was then issued by
12 the Agency one month later. It was in that
13 application that the phrase "initial application"
14 was first used. And that initial application,
15 tables five and six, I believe came from the
16 September application. And then I think this was
17 carried over then in the July application.

18 BY MR. GRANT:

19 **Q. Okay. So do you think it was the --**
20 **was it the September 2012 application? Is that**
21 **what you understand to be the initial?**

22 A. Well, let me take a look.

23 **Q. Sure.**

24 A. I can tell you. You know, tables

1 that are referred to are -- are from the
2 application that Conestoga-Rovers prepared.

3 **Q. And that was for DTE?**

4 A. Yes. And Conestoga-Rovers' footnote
5 and with their name is on these documents.

6 **Q. But not on the July 23rd, 2013**
7 **permit application, correct?**

8 A. No. It is. It's what I have been
9 calling the application.

10 **Q. Okay. I am going to ask you -- and**
11 **I apologize to everybody who has got to sit**
12 **through this. I have to ask you to look through**
13 **the July 23, 2013 permit application, and tell me**
14 **if anywhere in that document it identifies what**
15 **the initial application is.**

16 HEARING OFFICER HALLORAN: Where is
17 that in the record, Mr. Grant?

18 BY MR. GRANT:

19 **Q. That's -- I'm sorry -- pages 186**
20 **through 204, and I don't mean references to the**
21 **initial application, but identification of what**
22 **application that is. Have you looked through it?**

23 A. No, I haven't.

24 **Q. Okay. Pages 186 to 204, I am**

1 **looking to see where the term "initial**
2 **application" is defined.**

3 A. I think I understand your question.
4 As you have stated before, I was not privy to
5 every conversation that might have transpired
6 between Mr. Dragovich and KCBX or anyone else at
7 the EPA and KCBX. But when the record was
8 presented by the Agency, the Agency supplied
9 tables five and six. So somewhere in the process
10 if there was any confusion about what initial
11 application meant --

12 Q. Oh, I know -- excuse me for
13 interrupting you. I know we produced it, but I
14 want to know simply about the application that we
15 received, if the term "initial application" is
16 identified by a permit number, by, you know,
17 initial application is this or any other reference
18 to it, and the reason is, is that it's caused a
19 lot of confusion. So if you can take a look
20 through there and see if you can find where the
21 term "initial application" is defined, I would
22 appreciate it.

23 A. Well, I could look, but I don't
24 expect I will find it, because as I stated

1 earlier, when I first saw this term, I, too, was
2 uncertain, because there was an application in
3 September of 2012. This is a revision of a
4 revised permit is how the cover letter
5 characterizes the July 2013, a revision of a
6 revised permit.

7 So I wasn't sure how far back
8 the initial application went. So when I looked at
9 the record, I saw that the Agency concluded it was
10 the tables five and six that was in the record.
11 How they came to that conclusion, I do not know.
12 If that was a term they were familiar with, that's
13 one thing. If someone at the Agency called the
14 company and clarified that, that could have
15 happened. I wasn't a party to that. But I don't
16 believe there was any confusion in terms of making
17 this permit decision as to what tables five and
18 six was.

19 **Q. Okay. Do you know when the record**
20 **was prepared?**

21 A. The Agency record?

22 **Q. Yes. Or let me just shorten it.**
23 **That was after the permit denial; isn't that**
24 **correct?**

1 A. Yes. Well, I assume.

2 **Q. Okay. Let's see. I am going to**
3 **have you look at page 187 and in the first**
4 **paragraph --**

5 MR. DWYER: Just to clarify here,
6 are we talking about the first full paragraph on
7 187?

8 MR. GRANT: Yes.

9 THE WITNESS: First full paragraph.
10 BY MR. GRANT:

11 **Q. Oh, no. I'm sorry. It's the top,**
12 **the first paragraph that's present on 187. And**
13 **what I am referring to specifically is, "Also**
14 **since the acquisition and the progression of**
15 **construction at the south facility, KCBX has**
16 **discovered the equipment included in the conveyer**
17 **addition project will not allow KCBX to achieve**
18 **the material handling and throughput rates**
19 **envisioned." Do you see that?**

20 A. Yes.

21 **Q. Do you take that to mean that they**
22 **were not able to -- that the purpose of this**
23 **permit application was to increase their**
24 **throughput?**

1 A. No. That's not how I viewed that.

2 Q. Okay. Do you think that they mean
3 that -- that when they say, "We are not able to
4 achieve the throughput rates" means they wanted to
5 lower their throughput rates?

6 A. Well, they refer here to their
7 approved construction permits, and I am assuming
8 you are talking about their authorized throughput
9 rates that were approved by the Illinois EPA.
10 They were not asking to increase those.

11 Q. Yeah. Okay. This is their
12 statement. "We are not able to achieve the
13 handling and throughput rates envisioned."

14 A. Envisioned by the construction
15 permit that --

16 Q. I am assuming that means the
17 April 13th construction permit, but --

18 A. Yes, yes.

19 Q. So they -- in this application they
20 are saying that they want to increase their
21 throughput rates, correct?

22 A. You know, I don't think I would
23 characterize it that way.

24 Q. Well, it's right there in the paper.

1 **What do they mean by this?**

2 A. Well, what they mean is they had
3 received -- they had submitted a permit
4 application demonstrating to the Illinois EPA that
5 they could operate at certain throughput rates
6 handling coal and petroleum coke and not violate
7 rules and regulations. The Illinois EPA agreed
8 with them and gave them a construction permit.

9 Then after analyzing their
10 situation with the equipment they had on hand,
11 they realized that they could not meet the
12 authorized operational rates with the equipment
13 they have on hand.

14 **Q. Okay. So --**

15 A. I don't disagree with what they
16 said, but I will point out that I think what they
17 really mean is in an efficiency way, and here's
18 why.

19 **Q. But it doesn't say that, though,**
20 **does it?**

21 A. No, but let me explain. In a
22 material handling facility like KCBX, they try to
23 move their material as efficiently as they can,
24 and they use conveyors of different types,

1 stackers of different types. But they also use
2 end loaders and bulldozers. Those function just
3 like a conveyer. They pick up the coal. They
4 take it over to the pile. They drop it. They
5 shape it.

6 They are not required to get a
7 permit for adding bulldozers and end loaders, and
8 they are required, though, in using those
9 bulldozers and end loaders to calculate emissions
10 and still stay within that emission rate. I think
11 the situation they would have is they would have
12 to operate very inefficiently to achieve the rates
13 that they were approved for in their permit.

14 And I don't disagree that this
15 doesn't say that, but, in fact, all they were
16 asking for was to achieve to be able to add the
17 necessary equipment, staying within the authorized
18 emission rates to meet the throughput material
19 handling and throughput rates that they were
20 authorized to do.

21 **Q. Is it possible to move 3,000 tons an**
22 **hour of coal using a bulldozer?**

23 A. One bulldozer?

24 **Q. Yes.**

1 A. I doubt it, but certainly if you
2 have a number of bulldozers.

3 Q. I can do this "Where is Waldo" thing
4 through the permit applications, but let me ask
5 first, and if you want to take a look at a permit,
6 let me know, but is it your understanding that as
7 of the time of submitting this permit application
8 that there were 10 portable conveyors at the --
9 let me take a look. Now I am trying to figure
10 it --

11 A. I think --

12 Q. Let's go to -- was it 130?

13 A. Okay.

14 Q. I'm sorry. I was wrong. Okay.
15 Yeah. No. I was right. If you look -- are you
16 at page 130?

17 A. Yes.

18 Q. And this is the construction permit
19 that was issued by Illinois EPA on April 18th,
20 2013, correct?

21 A. Correct.

22 Q. Okay. Do you see the reference to
23 10 portable conveyors?

24 A. Yes.

1 **Q. And in the July 23rd, 2013 permit**
2 **application they are seeking to add another 10**
3 **conveyors; isn't that correct?**

4 A. Yes.

5 **Q. Okay. So they would have 20**
6 **portable conveyors, correct?**

7 A. Yes. If they followed through with
8 that.

9 **Q. Sure. If --**

10 A. They may choose -- they aren't
11 required if they get that permit to add 10. They
12 may choose to add -- they can't add more, but they
13 may choose to add five.

14 **Q. Okay. And also -- and on page 130 I**
15 **see one portable hopper and a portable feeder.**
16 **They were also seeking to add a stacker and a box**
17 **hopper; isn't that correct?**

18 A. Yeah, a box hopper and a stacker.

19 **Q. So they would have up to 20 portable**
20 **conveyors and another box hopper and another**
21 **stacker if that had been --**

22 A. Correct, yes.

23 **Q. Now, all of these are particulate**
24 **matter emission units, aren't they?**

1 A. Yes, they are.

2 **Q. Okay. And operation of this**
3 **additional equipment would increase the potential**
4 **for additional particulate matter emissions; isn't**
5 **that true?**

6 A. That's not true.

7 **Q. Okay. So --**

8 A. It's not true, because the permit
9 application specifically said that they would not
10 exceed the throughput that was previously
11 permitted, and they would not exceed the emission
12 rate. That meant they would have to do whatever
13 they did, whatever they would have to do to stay
14 within that rate.

15 Now, keep in mind, having 20
16 portable conveyors doesn't mean they are operating
17 20 portable conveyors at full speed all the time.
18 What it means is, if you go to Google Earth and
19 take a look at the facility, you will see four or
20 five portable conveyors parked in one part of the
21 plant. That means they don't have to pick that
22 portable conveyer up and move it 100, 200 yards to
23 where they want to work. They can have equipment
24 in different locations, and it makes it much more

1 efficient for them to just put it into operation.

2 But even if they were operating
3 20, it means that they cannot exceed the monthly
4 throughput or the monthly emission rate or the
5 annual.

6 **Q. I understand your reference to the**
7 **rates. What I am talking about is not maximum**
8 **emissions. I am talking about actual emissions.**
9 **Now, if you -- 20 -- or I'm sorry. Twelve**
10 **additional emission sources at the south site**
11 **would increase potential to emit actual increased**
12 **emissions of particulate matter; isn't that true?**

13 A. Now, that's a term I have never
14 heard of, potential actual emissions, but --

15 **Q. I kind of invented it just now.**

16 A. I know what you are saying, and I
17 will be responsive to that. And correct me if I
18 can -- make sure I am answering the question you
19 are asking.

20 What you are saying is based on
21 the equipment the south facility had present,
22 present actually even right now, you are presuming
23 that with the portable feed hopper and the stacker
24 and the 10 conveyors, is it possible that they

1 could have things operating in such a way that
2 their actual emissions on any one day might be
3 more than it would be if they didn't have that
4 equipment; is that correct?

5 **Q. Yes.**

6 A. So what? They permitted a maximum
7 limit. Just because they have not been able to
8 achieve their throughput, the permit doesn't
9 say -- limits them to a daily actual emissions. I
10 mean, if it did, they would have to stay within
11 that.

12 **Q. I am not talking about a permit**
13 **violation. I am not talking about a permit limit.**
14 **I am talking about actual emissions at the site**
15 **being increased.**

16 A. But, I -- you know, yeah, sure. It
17 could be, more equipment. It's conceivable their
18 actual emissions on any given day could be more
19 than it would be without that equipment.

20 **Q. And as of September 3rd with that**
21 **e-mail it was communicated to us this was going to**
22 **come from the north site and be installed at the**
23 **south site; isn't that correct?**

24 A. So that means there would be less at

1 the north site, using your theory.

2 Q. Sure. You wouldn't expect them to
3 move the equipment from the north site to the
4 south site and not operate it, would you?

5 A. No, I wouldn't. I wouldn't
6 necessarily think they would be operating every
7 piece of equipment simultaneously; although, they
8 could. There would be nothing preventing them
9 from doing that.

10 Q. As far as the permit limits -- and
11 maybe we ought to get to them. I think that was
12 in -- permit limits we agreed it didn't change,
13 and it was page -- okay.

14 Can you turn to page 140 in the
15 record, please? If you could look at the -- well,
16 there is a table in there. It starts, coal and
17 coke, and has material throughput and PM emissions
18 and PM10 emissions. Do you see that?

19 A. I do.

20 Q. Okay. And the limits of 1.1 million
21 tons per month and 11 million tons per year, do
22 you see that?

23 A. I do.

24 Q. And I think on your direct you said

1 **they are not changing their throughput. Their**
2 **monthly or annual throughput on this; is that**
3 **correct?**

4 A. Correct.

5 **Q. Okay. How were these limits**
6 **established, or do you know?**

7 A. You are talking about the material
8 throughput?

9 **Q. Yes.**

10 A. Well, I know just from the general
11 viewpoint.

12 **Q. Okay.**

13 A. That this throughput was requested
14 by the permit applicant and the Agency agreed. I
15 don't know what went into the calculation or the
16 determination that this was a throughput that the
17 facility was requesting, I mean, in terms of their
18 business plan and such.

19 **Q. You testified -- or you mentioned**
20 **yesterday that you worked on installing conveyors**
21 **at a coal transfer facility, I think, where they**
22 **were trying to avoid NSR. Do you recall that?**

23 A. Yes, I do.

24 **Q. Okay. And when I say NSR, new**

1 **source review, you know, would you agree is a**
2 **serious of regulations that would click in at some**
3 **point, right?**

4 A. Yes.

5 **Q. Okay. Does NSR apply for facilities**
6 **such as this in the Chicago area?**

7 A. Yeah, as a general matter it would,
8 yes.

9 **Q. Are you familiar with what's the**
10 **acronym, PSD, prevention of significant**
11 **deterioration regulations?**

12 A. Yes.

13 **Q. Were these limits set to avoid the**
14 **PSD regulations?**

15 MR. DWYER: I am going to object.
16 It calls for speculation. If you can answer, go
17 ahead.

18 BY THE WITNESS:

19 A. Well, I think based on what you just
20 asked, I may have misunderstood your question
21 about throughput. The company, DTE actually,
22 wanted to avoid triggering major source status.
23 That's what we called the Clean Air Act Permit
24 Program or Title V Program.

1 And so they -- they accepted
2 Federally Enforceable State Operating Permits.
3 They, certainly being the north facility, and the
4 application that's been submitted by the -- you
5 know, for KCBX to, again, be what we call a FESOP,
6 a Federally Enforceable State Operating Permit so
7 it would not be considered a major source. So
8 there is -- even though in theory this throughput
9 could be increased substantially above the numbers
10 you've seen here, and have the plant still operate
11 within the 321 laws and other laws, the company
12 has chosen to keep the rates low enough to be
13 considered what you call a synthetic minor.

14 BY MR. GRANT:

15 **Q. And is that what these throughput**
16 **numbers represent?**

17 MR. DWYER: At this point, I am
18 going to object. We have now gone from the issues
19 in the denial letter to a discussion of new source
20 review compliance, prevention of significant
21 deterioration compliance, neither of which are
22 issues in the case. They don't relate to anything
23 in the application, and they are not involved
24 anywhere that I can see in the record in the

1 permanent denial letter.

2 HEARING OFFICER HALLORAN:

3 Mr. Grant?

4 MR. GRANT: One of the major issues
5 that has come up in KCBX's case has been, we are
6 not exceeding our permit limits. We are not
7 exceeding our permit limits. We can install
8 equipment. We are not going to exceed our permit
9 limits.

10 My question is, are these
11 Synthetic Minor Permit limits solely for the
12 purpose of avoiding either a CAAPP permit or a new
13 source review or PSD regulations? Because in that
14 case, they have absolutely nothing to do with
15 their actual emissions -- or their actual
16 throughput. Excuse me.

17 HEARING OFFICER HALLORAN: I mean,
18 objection overruled. I think I have been giving,
19 and rightfully so, the Agency a little latitude on
20 cross. I think they are allowed to explore the
21 factors that Mr. Kolaz relied on in coming to his
22 opinions. So objection overruled. I will give
23 you a little latitude. Proceed.

24 BY MR. GRANT:

1 **Q. Do you recall the question?**

2 A. No.

3 MR. GRANT: Okay. Mr. Halloran, can
4 you ask the court reporter --

5 HEARING OFFICER HALLORAN: Sure.
6 Kari?

7 (Whereupon, the record was read
8 as requested.)

9 BY MR. GRANT:

10 **Q. Yeah. Even to clarify, throughput**
11 **limits.**

12 A. You know, I am trying to be
13 responsive to the question kind of putting
14 together everything you have been talking about.
15 I have -- I really believe that those limits
16 represent a throughput that the Illinois EPA has
17 agreed would allow the facility to operate within
18 all of the rules and regulations of -- you know,
19 that are in existence.

20 **Q. And to avoid additional rules and**
21 **regulations and additional permitting**
22 **requirements?**

23 A. Yeah. I would say -- and I think
24 it's mentioned in a couple of places on -- in

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1 R140, on the page that you have mentioned, take a
2 look at (C)iii. It says, The source has requested
3 that the Illinois EPA establish conditions in this
4 permit that allow various refinements in the
5 conditions of the aforementioned permit. The
6 source has requested these revisions and has
7 addressed the applicability in compliance of Title
8 I of the Clean Air Act, specifically 35 Illinois
9 Administrative Code, Part 203, Major Stationary
10 Source Construction Modifications. These limits
11 continue to ensure that the construction and/or
12 modification addressed in this permit does not
13 constitute a new major source or major
14 modification pursuant to these rules.

15 And then I think it goes on with
16 another very important sentence to say, "These
17 limits are the primary enforcement mechanism for
18 the equipment and activities permitted in this
19 permit."

20 **Q. Okay. So they can't be exceeded?**

21 A. Exactly.

22 **Q. Right.**

23 A. I have been saying that.

24 **Q. Do you know what the actual**

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1 **throughput at the KCBX facility is?**

2 A. You know, I do not.

3 **Q. That's not required to be reported**
4 **as long as it's below this; isn't that correct?**

5 A. No. That's incorrect. There is
6 reporting -- recordkeeping and reporting
7 requirements. The company has to keep these
8 records and report.

9 **Q. Oh, yeah. I apologize. Yeah.**

10 A. I mean, that's a very -- seriously,
11 that's a very important part of an operation like
12 this is that you keep track very carefully of what
13 you are doing.

14 **Q. Sure. I want to get to -- back to**
15 **the permit application at 186, and specifically,**
16 **the references to boxes -- I am on page 196 now**
17 **and on tables five and six and initial**
18 **application. Okay?**

19 A. Yes.

20 **Q. And then I am going to ask you to**
21 **turn to -- I'm sorry -- to R213 through 18? Yeah.**
22 **R213 to 18, which we have been using in this**
23 **hearing as tables five and six referred to.**

24 A. Yes.

1 Q. Okay. We went through this in more
2 detail on direct examination, but looking at the
3 conveyer emission points, and specifically on page
4 214 to the portable conveyer emissions --

5 A. Yes.

6 Q. -- there is a list of equipment
7 there. The equipment that KCBX sought to install
8 in this permit application is not listed on there,
9 is it?

10 A. No, it is not.

11 Q. Okay. And the -- let's see.
12 Therefore, for example, the tons per hour where
13 it's got all of these existing facilities that --
14 at 2500 tons per hour, the tons per hour for the
15 new -- the 10 new portable conveyors is not listed
16 there as well; isn't that correct?

17 A. That's correct.

18 Q. Let me ask you to turn to page R220.
19 And this has the list of all of the emission units
20 at the facility. The 12 sources sought to be
21 added with this permit application are not listed
22 in this table, are they?

23 A. That's correct.

24 Q. Back to page 196, and 196 is part of

1 the current permit application. Down in the
2 material usage information where it directs to
3 pages five and six, it has pounds per hour and the
4 tons per year, doesn't it?

5 A. Yes.

6 Q. Okay. Now, the pounds per hour is
7 very important for 212.321, isn't it?

8 A. Yes.

9 Q. Isn't it -- basically it deals with
10 hourly emission rates, correct?

11 A. Correct.

12 Q. And you cannot make a determination
13 on that based on either a monthly or an annual
14 throughput figure in the permit, correct?

15 A. Correct.

16 Q. There has been a number of
17 references in this hearing, and if -- I think you
18 have talked about how the equipment that we now
19 know that KCBX wants to install through this
20 construction permit is presently located at the
21 north site, correct?

22 A. Yes.

23 Q. And the north site is covered by a
24 FESOP permit, correct?

1 A. Yes.

2 **Q. And as has been stated, this**
3 **equipment is permitted at the north facility,**
4 **correct?**

5 A. Correct.

6 **Q. To move this material, whether it's**
7 **to the south site or anyplace else, say KCBX --**

8 MR. DWYER: I am just going to
9 object. By material do you mean the equipment
10 or --

11 MR. GRANT: The equipment. Did I
12 say material?

13 MR. DWYER: Yes.

14 BY MR. GRANT:

15 **Q. I'm sorry. The 12 emission sources**
16 **that we are talking about, or the 10 conveyors,**
17 **box hopper and stacker are located at the north**
18 **facility. Does that clear it up?**

19 To move this material to any
20 other facility, to install this equipment at any
21 other facility, would require -- within Illinois
22 would require a construction permit for that
23 facility; isn't that correct?

24 A. Yes.

1 Q. Okay. If KCBX was to acquire a
2 facility in east St. Louis, Illinois, for example,
3 it would have to permit that equipment at that new
4 site; isn't that correct?

5 A. Only if they were adding to it. If
6 they were replacing like equipment, they wouldn't
7 need to.

8 Q. Sure. Okay. But, yeah, if they
9 were taking it and they were adding it to this new
10 facility that they have?

11 A. Yes.

12 Q. Okay. So the fact that it is
13 permitted and placed at the forth facility really
14 has nothing to do with the construction permit
15 application for the south facility; isn't that
16 correct?

17 A. I'm not sure what you mean by
18 nothing.

19 Q. I will withdraw the question. That
20 was a little bit vague.

21 Are you familiar with how the
22 FESOP permit for the north facility was obtained?

23 A. Well, it was obtained by a company
24 submitting a permit application and demonstrating

1 to the Illinois EPA that the equipment and
2 operations at the facility would be in compliance
3 with the law, and then the Agency issues a permit.

4 **Q. Are you aware that that permit**
5 **application was pending for approximately seven**
6 **years?**

7 A. Well, I guess the direct answer is
8 no, but I am not surprised.

9 **Q. Okay. Are you aware that it was a**
10 **subject of a permit appeal before the Pollution**
11 **Control Board?**

12 A. No.

13 **Q. Are you aware that in prosecuting**
14 **the permit appeal, KCBX engaged in substantial**
15 **litigation, deposed Illinois EPA witnesses?**

16 MR. DWYER: I am going to object to
17 the question. It's not relevant. It's
18 argumentative. There is no -- in no way on this
19 permit appeal.

20 HEARING OFFICER HALLORAN:

21 Mr. Grant?

22 MR. GRANT: KCBX both yesterday and
23 today is relying on the fact that, gee, this
24 equipment was permitted for the north facility,

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1 that -- you know, specifically, that Illinois EPA
2 did not require a specific material -- or specific
3 emission information regarding the equipment that
4 was installed, that -- you know, that the face of
5 the permit, of the south permit, has been put in
6 by them -- I'm sorry, the north permit, the FESOP,
7 has been put into evidence, and how that permit
8 was obtained I think is perfectly relevant,
9 especially since KCBX is now arguing that they
10 don't have to provide any information for this
11 permit and that Illinois EPA has erred in denying
12 the permit for lack of sufficient information.

13 HEARING OFFICER HALLORAN: Okay. I
14 am going to allow just a little latitude, but it
15 is argumentative.

16 BY MR. GRANT:

17 **Q. Okay. Are you aware that the FESOP**
18 **permit was granted as a result of settlement**
19 **discussions with Illinois EPA?**

20 MR. DWYER: Again, I just want to
21 object. It's not relevant. Just preserve the
22 objection.

23 HEARING OFFICER HALLORAN:

24 Overruled. Thank you. You may proceed.

1 BY THE WITNESS:

2 A. No.

3 BY MR. GRANT:

4 Q. Okay. Are you aware that when the
5 FESOP permit for the north facility was put out
6 for public comment that Illinois EPA received
7 negative comments from USEPA on that permit?

8 MR. DWYER: I am going to object
9 again as to the relevance. It has no bearing on
10 the permit decision here.

11 HEARING OFFICER HALLORAN:
12 Overruled. You may proceed, Mr. Grant.

13 BY MR. GRANT:

14 Q. Yes. I guess, could we get an
15 answer to the question? Were you aware of that?

16 A. No.

17 Q. KCBX is still operating the south
18 site, aren't they?

19 A. Yes.

20 Q. Okay. And they are operating it
21 under the April 13th -- well, okay. If you know,
22 are they operating it under the April construction
23 permit?

24 A. Well, maybe to clarify my answer,

1 they still have the construction permit. If you
2 are asking if they are authorized to operate, I
3 would say yes. I have not been keeping track of
4 their specific day-to-day operations. So if you
5 are asking specifically what's going on right now,
6 I couldn't tell you.

7 Q. I wanted to get into your testimony
8 about the citizen complaints. It was -- don't let
9 me misstate your testimony, but this morning I
10 think you said that the citizen complaints didn't
11 make specific reference to the types of equipment
12 that KCBX is seeking to operate, to add to the
13 south facility, correct? In other words, there
14 was no reference to stackers. There was no
15 reference to box hoppers. There was no reference
16 to portable conveyors or conveyors in the citizens
17 complaints; is that correct?

18 A. Yes, that's correct.

19 Q. Okay. Would you expect the people
20 living down in that residential area to know about
21 box hoppers or stackers or fact that there are
22 conveyors there?

23 A. Well, certainly not a box hopper. A
24 stacker or a conveyor, I think that's something

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1 that they could see, but I don't want you to take
2 my answer to say that I would expect a citizen
3 would necessarily provide a technical report in
4 the same sense that a trained field inspector
5 would. But the purpose of my stating that is that
6 I think that the Agency simply dumped those
7 complaints un -- without an evaluation on their
8 part to determine the source of the citizen
9 complaints, which I felt was grossly unfair to the
10 citizens.

11 I mean that most sincerely,
12 because these people are expecting that the Agency
13 is going to take action to relieve whatever it is
14 that's bothering them, and the Agency is simply
15 taking these complaints, dumping them into this
16 proceeding, which has no relationship, whatsoever,
17 and the people are -- in a sense are going to
18 expect that that action is somehow going to
19 alleviate their concern, and there is nothing that
20 shows there is a connection to that.

21 If there is, it hasn't been
22 established. You throw in the inspection reports
23 that we talked about, and as I mentioned before,
24 all you see is a discussion about dust from some

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1 trucks and nothing about any other gross sources
2 of emissions leaving the property.

3 Q. No. I understand. And I understand
4 that it adds a level of tension to this case and
5 distracts from things like missing information,
6 which, you know, Illinois EPA also has in its
7 permit denial.

8 But your testimony was that it
9 could not take those into consideration, and where
10 did that --

11 MR. DWYER: I am going to object to
12 the characterization of his testimony. I don't
13 think he testified that they could not.

14 MR. GRANT: No. That's fine. No.
15 I will agree.

16 HEARING OFFICER HALLORAN: Should
17 not, but sustained.

18 BY MR. GRANT:

19 Q. Yeah, I will agree. I am not trying
20 to -- I am not pretending that you don't care
21 about citizen complaints, because we discussed
22 that in your deposition.

23 A. If there is any doubt, I spent a lot
24 of my career at the Illinois EPA actually

1 addressing the kind of complaints we are talking
2 about today.

3 Q. Sure. But I want to take a look at
4 a few of these citizen complaints. I am only
5 going to go through three of them. And I will ask
6 you to turn to page 301 in the record. Have you
7 had a chance to look at it?

8 A. Yes.

9 Q. And as you mentioned, material has
10 been redacted from it. When you were at Illinois
11 EPA, did Illinois EPA disclose the names of
12 anonymous complainants or people who requested to
13 be anonymous?

14 A. No.

15 Q. Okay. Now, do you see the date of
16 the e-mail, Friday, November 15th, 2013? It
17 specifically identifies -- if you go down to owner
18 company, it specifically identifies 10730 South
19 Burley, which is the address of the south site.
20 Do you see that?

21 A. Yes.

22 Q. And the problem description down at
23 the bottom, dust from coke flying around, covering
24 the ground and air and water we eat and drink

1 from. Do you see that?

2 A. Yes.

3 Q. Okay. And is it your opinion that
4 Illinois EPA cannot take this complaint into
5 consideration in the greater denial of a permit?

6 MR. DWYER: I am going to object to
7 the form of the question. If he can answer --

8 HEARING OFFICER HALLORAN: I agree,
9 but go ahead.

10 BY THE WITNESS:

11 A. I couldn't quite hear the last part
12 of the question.

13 BY MR. GRANT:

14 Q. Okay. My question for you is, is it
15 your opinion that Illinois EPA cannot take this
16 complaint into consideration in making its permit
17 decision in the pending application or the denied
18 application?

19 A. That they cannot?

20 Q. Yes.

21 A. Well, that's an -- what I call a
22 trick question.

23 Q. Let's make it one that's not a trick
24 question, because, you know, if we are looking

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1 at -- at your Exhibit 1, and I will read from you,
2 and we will try to stick to the way that -- your
3 opinion. On your opinion number three, I will
4 read it. "The Illinois EPA should not rely upon
5 past citizen pollution complaints to support a
6 finding that a future construction project may
7 violate Section 212.301."

8 A. Right. And what I am referring to
9 there is certainly I don't want to say anything
10 that implies the Illinois EPA should not evaluate,
11 investigate and address the source -- the true
12 source of the complaint. Whether or not what's
13 presented here at face value is accurate or not
14 isn't my point, but the Illinois EPA should not
15 just throw this out as saying, and therefore, we
16 are talking this as absolute, absolutely correct,
17 that that coke -- that that is actually coke.

18 Keep in mind it's a steel mill area. There is a
19 tremendous amount of material from past industrial
20 activities there.

21 There are trains that go through
22 there with coal. There are trucks. There is a
23 variety of things, and simply putting that this is
24 KCBX and it's coke flying around may be

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1 100 percent accurate, but the Illinois EPA needs
2 to use its investigative power and all the tools
3 that it has available to -- if they really want to
4 address this person's concern to understand what
5 is going on there.

6 And as I pointed out, even the
7 five inspections the Illinois EPA did didn't point
8 to -- didn't point to coal or coke piles as being
9 a source. And we talked about how there were no
10 visible emissions. Nothing from -- I keep saying
11 it, I know, but nothing from the stacker, nothing
12 from the portable feed hopper, nothing from the
13 portable conveyors or even the fixed conveyors.
14 And these are trained inspectors.

15 The only thing they could focus
16 on was truck dust, and as I pointed out, that
17 wasn't even done accurately. So how can they take
18 this then and say, yes, we fully understand the
19 source of the problem, and if we deny this
20 permit -- but still let KCBX operate at 11 million
21 tons per year and emit 48.5, even if they have to
22 bring in a fleet of bulldozers and end loaders to
23 do it, that somehow we are addressing this citizen
24 complaint is, I think, grossly unfair to the

1 citizens who made it.

2 Q. It's -- you know, the question deals
3 only with your opinion.

4 Part of your opinion is a past
5 citizen complaint and a future installation, and I
6 note that this -- the date of this e-mail, and I
7 am not trying to authenticate it. I am not trying
8 to prove that this is true. I am not trying to
9 prove it's a violation, but the fact is that
10 Illinois EPA received these things. Now, the
11 receipt is dated November 15th, 2013.

12 Are you familiar with the new
13 water tower system, the new FPOP we have called
14 it, that was installed or that was -- we are using
15 a date of November 1st. Are you familiar with
16 that?

17 A. Yes, I have some familiarity.

18 Q. But the date of November 1st do you
19 agree with? I can pull it up in the record, if
20 you would like.

21 A. Yes, I do.

22 Q. So this complaint was at least
23 logged by Illinois EPA after that date, correct?

24 A. It was logged after that date,

1 certainly.

2 **Q. Right.**

3 A. It was logged after the public
4 meeting that was held a few days earlier.

5 MR. GRANT: Sure. Can you just give
6 me a minute?

7 (Whereupon, a discussion was had
8 off the record.)

9 MR. GRANT: We are through
10 temporarily.

11 MR. SWEDLOW: If I could just
12 clarify the record. The face of this document --

13 HEARING OFFICER HALLORAN: I am
14 sorry.

15 MR. DWYER: Can we just take five?

16 HEARING OFFICER HALLORAN: Yes.
17 Let's take five minutes.

18 (Whereupon, a short break was
19 taken.)

20 HEARING OFFICER HALLORAN: We are
21 back on the record. It's approximately 2:10,
22 Mr. Dwyer, your witness.

23

24

RE-DIRECT EXAMINATION

1
2 BY MR. DWYER:

3 Q. Thank you. Dave, I want to talk to
4 you about some of the issues you just covered
5 during your cross-examination. First of all,
6 starting with the permit application, the request
7 for revision that resulted in this appeal --

8 A. Yes.

9 Q. -- that document, were you involved
10 in preparing the permit application?

11 A. No.

12 Q. Okay. And do you know why KCBX
13 said, "to be determined," in the sections
14 regarding whether or not they were going to move
15 the equipment?

16 A. I don't know with certainty.

17 Q. Okay. Would you defer to KCBX on
18 why it said to be determined in the permit?

19 A. Yes.

20 Q. In the permit application? I'm
21 sorry.

22 A. Yes.

23 Q. Okay. If you would turn your
24 attention now, Dave, to page 191 in the record.

1 **Do you have that in front of you, Dave?**

2 A. I do.

3 **Q. And what do you understand that to**
4 **be?**

5 A. This is a form from the Illinois EPA
6 permit section titled, Construction Permit
7 Application For a FESOP Source.

8 **Q. And is that part of the application**
9 **that was filed in this case?**

10 A. Yes.

11 **Q. Okay. And looking at Box 3 of that**
12 **application form, would you read what it says**
13 **there?**

14 A. Yes. It says, "Does this
15 application request a revision to an existing
16 construction permit issued by the BOA?" And the
17 yes box is marked with an X. And the permit
18 number -- it says, if yes, provide permit number,
19 and a permit number of 07050082 is listed.

20 **Q. And what do you understand that**
21 **reference to mean?**

22 A. I understand that to mean that the
23 applicant was noting that they are asking to
24 revise the existing permit.

1 Q. Now, if you direct your attention to
2 the citizen complaint forms that you were just
3 discussing with Mr. Grant, and in particular to
4 pages 301 and 302.

5 A. Yes.

6 Q. Okay. In looking at that document,
7 I think you were asked earlier whether or not --
8 you understood whether or not the Agency as a
9 matter of practice would disclose the names of
10 complainants. Do you recall your testimony?

11 A. I do, but I recall specifically the
12 proviso was for someone who has requested to be
13 anonymous.

14 Q. Okay. And looking at this complaint
15 form at 301 and 302, if you would go to the second
16 page of it, there are a series of fields to be
17 filled in. If you would look at the third -- the
18 second to last on that page, does it read, Consent
19 to Identity Disclosure?

20 A. Yes.

21 Q. And then is there an answer after
22 that?

23 A. Yes, there is an answer.

24 Q. And what is the answer?

1 A. The answer is yes.

2 **Q. So, in fact, with respect to this**
3 **form, the individual who purportedly made this**
4 **complaint, which appears to have been received by**
5 **the Agency on November 16th, indicated they had no**
6 **objection to the disclosure of their identity?**

7 A. Yes. That's what I would take from
8 their answer.

9 **Q. Let me now direct your attention to**
10 **the permit that's dated April 28th, 2013, and it's**
11 **at page 130 of the record.**

12 A. Yes, I have it.

13 **Q. Okay. And in particular, I would**
14 **like -- well, what do you understand that document**
15 **to be?**

16 A. This document is titled,
17 Construction Permit, NSPS/NESHAP Source Revised.
18 It has an issue date of April 18, 2013, and it's
19 for the South Burley facility of KCBX.

20 **Q. And is that the south facility that**
21 **we have been talking about?**

22 A. It is.

23 **Q. Okay. And directing your attention**
24 **to the second page of that document, which is page**

1 **131, and in particular, permit condition 1(b),**
2 **would you read that and tell me what you**
3 **understand that to mean?**

4 A. Yes. Do you want me to read that
5 out loud or read it to myself?

6 **Q. Why don't you read it to yourself,**
7 **and you can summarize it. If there is further**
8 **questions, we can talk about it.**

9 A. I have finished reading it.

10 **Q. And what do you understand that**
11 **provision of this permit to provide or allow for?**

12 A. The -- this condition states that
13 the Permit E, which would be KCBX, the south
14 facility, can operate the equipment in this
15 construction permit until the Illinois EPA tech
16 takes final action on KCBX's pending FESOP, and
17 FESOP standing for Federally Enforceable State
18 Operating Permit, for their application, and that
19 it goes on further to say that the permittee can
20 operate the equipment listed in prior versions of
21 this permit. And then it lists a permit issued
22 February 13th, 2008 and a revised version issued
23 May 21st, 2009, and it can do this, again, until
24 final action is taken on the pending FESOP

1 application.

2 **Q. Now, if you would, take a look at**
3 **page 538 in the record.**

4 A. I have that page.

5 **Q. And what do you understand that**
6 **document to be?**

7 A. This is the Federally Enforceable
8 State Operating Permit for KCBX Terminals on 100th
9 Street, which we have been terming the north
10 facility.

11 **Q. And when does it indicate that**
12 **permit was issued?**

13 A. That permit was issued April 5th,
14 2012 and expires April 5th, 2022.

15 **Q. And based upon your review -- have**
16 **you reviewed that document before today?**

17 A. Yes.

18 **Q. Okay. And based upon your knowledge**
19 **and experience and upon reviewing this permit, do**
20 **you have any basis or reason to believe that this**
21 **permit was not properly granted?**

22 A. No.

23 MR. DWYER: I apologize to the
24 Hearing Officer and everybody. We are trying to

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1 get a copy of a regulation, one of the Board's
2 regulations that we don't have here, that I would
3 like to talk -- which was discussed during his
4 direct examination, but I would like -- it was not
5 offered in, and I would like to discuss that
6 document. I apologize for the delay.

7 HEARING OFFICER HALLORAN: How long
8 do you think -- we can go off record.

9 (Whereupon, a short break was
10 taken.)

11 HEARING OFFICER HALLORAN: We are
12 back on the record. I believe it's Mr. Dwyer's
13 witness. You may proceed.

14 (Whereupon, PETITIONER'S Exhibit
15 No. 3 was marked for
16 identification.)

17 BY MR. DWYER:

18 **Q. Thank you. Dave, I have just**
19 **provided you a document that I have marked as**
20 **Petitioner's Exhibit 3. Would you take a look at**
21 **that and tell me what you understand that to be?**

22 **A. Yes. The Petitioner's Exhibit 3 is**
23 **a single page that lists three regulations from**
24 **the Pollution Control Board.**

1 **Q. And in particular, let me direct**
2 **your attention to the middle of the page. Does**
3 **that appear to be a copy of one section of the**
4 **Illinois regulations at 35 Illinois Administrative**
5 **Code Section 201.158?**

6 A. It does.

7 **Q. And what is the title of that**
8 **regulation?**

9 A. The title of that regulation is,
10 Incomplete Applications.

11 **Q. And have you had a chance to review**
12 **that regulation?**

13 A. Yes. I am familiar with that
14 regulation.

15 **Q. And do you recall having some**
16 **discussion earlier during your direct testimony**
17 **with Mr. Grant about this regulation?**

18 A. Yes.

19 **Q. And would you tell me, what do you**
20 **understand 201.158 to provide?**

21 A. Well, I understand that it provides
22 a period of time for the Agency to review the
23 application sufficient to determine if it is
24 complete. It states in part that the application

1 shall not be deemed to be filed until the
2 applicant has submitted all information and
3 completed application forms, and -- and then it
4 goes on to say that if the Agency fails to notify
5 the applicant within 30 days after the filing of a
6 purported application, that the application is
7 incomplete and of the reasons the Agency deems it
8 incomplete, the application shall be deemed to
9 have been filed as of the date of such purported
10 filing.

11 **Q. So I want to clarify. What I**
12 **recalled -- and this is what I want to clarify is**
13 **when you earlier testified -- when you testified**
14 **previously -- is it your understanding that IEPA**
15 **can still deny for insufficiency after the 30-day**
16 **period referenced in 201.158?**

17 A. Yes, that's what I said.

18 **Q. But is --**

19 A. Well --

20 **Q. So is that how you understand the**
21 **regulation to apply?**

22 A. That's how I understand the way the
23 Agency applies the regulation. I -- I have had
24 many discussions when I was at the Agency as

1 bureau chief on this particular issue.

2 **Q. Okay. Thank you.**

3 A. And if I could explain for a
4 moment --

5 **Q. Not necessary.**

6 A. Not necessary?

7 MR. DWYER: That's all we have.

8 HEARING OFFICER HALLORAN: Thank
9 you. Mr. Grant?

10 MR. GRANT: No. I don't think I
11 have to ask anything.

12 HEARING OFFICER HALLORAN: All
13 right. Thank you. You may step down. I think
14 you are finished. Thank you so much.

15 (Whereupon, a short break was
16 taken.)

17 HEARING OFFICER HALLORAN: We are
18 back on the record. KCBX is going to call their
19 fourth witness, I believe.

20 MR. SWEDLOW: Fourth.

21 HEARING OFFICER HALLORAN: Fourth.
22 You may proceed. You know what, sir, could you
23 raise your right hand and the court reporter will
24 swear you in.

1 (Whereupon, the witness was duly
2 sworn.)

3 HEARING OFFICER HALLORAN: You may
4 proceed.

5 MICHAEL J. DRAGOVICH,
6 having been first duly sworn, was examined and
7 testified as follows:

8 DIRECT EXAMINATION

9 BY MR. SWEDLOW:

10 **Q. Good afternoon. Can you please**
11 **state and spell your name for the record?**

12 A. My name is Michael, M-I-C-H-A-E-L,
13 J, Dragovich; D as in dog, R-A-G-O-V, like Victor,
14 I-C-H.

15 **Q. Who is your current employer, and**
16 **what is your current job title?**

17 A. State of Illinois, Environmental
18 Protection Agency, Environmental Protection
19 Engineer III.

20 HEARING OFFICER HALLORAN: Sir, you
21 are going to have to keep your voice up. I
22 apologize. Thank you.

23 BY MR. SWEDLOW:

24 **Q. How long have you worked for the**

1 **Illinois Environmental Protection Agency?**

2 A. Twelve years.

3 Q. What is your -- has your job been
4 the same for the entire 12 years that you have
5 been there?

6 A. No.

7 Q. What job did you start with when you
8 first started with the Agency?

9 A. As an Environmental Protection
10 Engineer I.

11 Q. During your 12 years with the
12 Agency, has part of your responsibility been for
13 reviewing permits?

14 A. Correct.

15 Q. Did you do anything to prepare for
16 your testimony here today?

17 A. Yes.

18 Q. Did you review any documents?

19 A. Administrative documents that were
20 handed to me for my deposition.

21 Q. In front of you there should be two
22 binders with documents that I am going to ask you
23 to look at periodically during your testimony. Do
24 you see those binders up there?

1 A. Yes.

2 Q. The first binder, if you can open it
3 and turn to page 186, which that number should be
4 in the lower left-hand corner. Have you got that
5 page?

6 A. Yes.

7 Q. This is the request for revision to
8 revised construction permit for KCBX Terminals
9 Company relating to Permit No. 07050082. Do you
10 see that in the Re: Area?

11 A. In the right?

12 Q. On the letter there is a part that
13 says, R-E, colon, and then it says all the words I
14 just read. Do you see that there?

15 A. I see a number. What number do you
16 want me to --

17 Q. At the -- near the top of the
18 document it says, "via hand delivery." Do you see
19 that?

20 A. Yes.

21 Q. Okay. Then go down seven or eight
22 lines and it says, "Request For Revision to
23 Revised Construction Permit, KCBX Terminals
24 Company." Do you see that?

1 A. Yes.

2 Q. And then it identifies the permit
3 number as 07050082. Do you see that?

4 A. Yes.

5 Q. Did you work on reviewing this
6 permit for the Illinois Environmental Protection
7 Agency?

8 A. Yes.

9 Q. Did you make the decision as to
10 whether or not to grant or deny this permit?

11 A. No.

12 Q. Who made that decision?

13 A. I only make recommendations.

14 Q. Do you know who made the decision as
15 to whether or not to grant or deny this permit?

16 A. No.

17 Q. Did you participate at all in
18 denying this permit?

19 A. I was involved.

20 Q. What was your involvement?

21 A. I was a permit analyst.

22 Q. Did you analyze this permit for
23 completeness?

24 A. I analyzed the permit.

1 Q. Did you analyze this permit for
2 completeness?

3 A. I could have.

4 Q. Do you remember one way or another?

5 A. Remember exactly when?

6 Q. I'm not asking at any time. I am
7 saying, did you ever -- from the moment that you
8 received this permit as the permit analyst, did
9 you ever review this permit application for
10 completeness?

11 A. I reviewed it.

12 Q. Did you review it for completeness?

13 A. Yes.

14 Q. Did you notify the permit applicant
15 at any point during the process that their permit
16 was incomplete -- or excuse me -- that their
17 permit application was incomplete?

18 A. No.

19 Q. Did you complete a -- can you turn
20 to R24? Are you at R24?

21 A. Yes.

22 Q. The title on page R24 says, Air
23 Permit Application Completeness Screening
24 Checklist. Do you see that?

1 A. Yes.

2 Q. Is that your handwriting next to the
3 word "analyst"?

4 A. Yes.

5 Q. Did you complete this form?

6 A. Yes.

7 Q. When did you complete this form?

8 A. I started on it in August.

9 Q. If you look at the very next page
10 the title is, Completeness Review Worksheet For
11 Construction Permit Fees. Do you see that? On
12 R25 at the very top it says, Completeness Review
13 Worksheet For Construction Permit Fees. Do you
14 see that?

15 A. Yes.

16 Q. And then on the right-hand side it
17 says, identification for review, and then it says
18 number, and number one is circled, and the only
19 box that's filled in here, it says, initial
20 completeness review. Do you see that?

21 A. Yes.

22 Q. Did you complete this page also?

23 A. Yes.

24 Q. The date on this page at the bottom

1 **next to your name is January 16th, 2014. Do you**
2 **see that?**

3 A. Yes.

4 **Q. Is this the date that you completed**
5 **the initial completeness review?**

6 A. I completed this sheet on that day.

7 **Q. Did you complete the initial**
8 **completeness review on that date as well?**

9 MR. GRANT: Are you talking about
10 page 24?

11 MR. SWEDLOW: No. I am talking
12 about the question I just asked.

13 MR. GRANT: So you are -- this is 25
14 you are on, correct?

15 MR. SWEDLOW: I understand what you
16 are saying, but I didn't ask him a question that
17 relates to either page. I said, did you complete
18 your initial completeness review on January 16th,
19 2014?

20 MR. GRANT: There was a second
21 question. Go ahead.

22 MR. SWEDLOW: Do you -- should we
23 make objections or --

24 HEARING OFFICER HALLORAN: Just

1 repeat your question, or I can have Kari read it
2 back.

3 BY MR. SWEDLOW:

4 Q. I can just repeat it.

5 Mr. Dragovich did you complete
6 your initial completeness review on January 16th,
7 2014?

8 A. I completed this one.

9 Q. Was there another one?

10 A. Could have been.

11 Q. Do you remember whether there was
12 another one that you completed prior to
13 January 16th of 2014?

14 A. Could have been.

15 Q. Do you remember one way or the
16 other?

17 A. I think there was.

18 Q. When -- did you submit that to the
19 Agency for collecting this record in this case?

20 A. I don't know what happened to it.

21 Q. Would it be upstairs or whenever
22 your office is in your files right now?

23 A. No.

24 Q. Do you know if it exists anywhere as

1 of this date?

2 A. No.

3 Q. Can you turn to page 650 of the
4 record. This is an e-mail that I believe is from
5 your files. It's dated September 19, 2013 to
6 Chris Pressnall with copies to Valeriy Brodsky,
7 Bob Bernoteit, Robb Layman, and Julie Armitage.
8 Do you see that on the top of the e-mail?

9 A. Yes.

10 Q. This e-mail states, Chris, I have a
11 draft ready that was only reviewed by Valeriy
12 Brodsky. See attachment above. Do you see that?

13 A. Yes.

14 Q. Do you recall sending the draft
15 permit that is attached or follows this e-mail to
16 Julie Armitage, Chris Pressnall, and the other
17 people listed on September 19th, 2013?

18 A. Yes.

19 Q. If you turn to page 651, which is
20 the next page, I believe this is the draft
21 construction permit that you forwarded to those
22 people. Do you see it on the next page?

23 A. What page?

24 Q. Page 651, the very next page?

1 A. Yes.

2 **Q. Is this the draft permit that you**
3 **sent to Julie Armitage and others?**

4 A. Yes.

5 **Q. The first sentence of this draft**
6 **permit says, Permit is hereby granted to the above**
7 **designated permittee to construct emissions**
8 **sources and/or pollution control equipment**
9 **consisting of the following, and then it lists**
10 **equipment. Do you see that?**

11 A. Yes.

12 **Q. Was your recommendation to grant the**
13 **permit for the equipment that's listed in this**
14 **draft permit?**

15 A. Yes.

16 **Q. If you look at the equipment listed**
17 **below it identifies twenty portable conveyors, the**
18 **last 10 of which are identified PC-12 through**
19 **PC-22. Do you see that?**

20 A. Yes.

21 **Q. Is it your understanding that those**
22 **are the portable conveyors that KCBX identified to**
23 **you that it wanted to transfer from the north**
24 **facility to the south facility?**

1 A. Which ones?

2 Q. PC-12 through PC-22.

3 A. Yes.

4 Q. Those are the ones that KCBX
5 identified for you that they wanted to transfer
6 from the north facility to the south facility?

7 A. Yes.

8 Q. The next line identifies two
9 portable hoppers, PH-1, and PH-2. Do you see
10 that?

11 A. Yes.

12 Q. Is PH-2 the portable hopper that
13 KCBX identified for you that it wanted to transfer
14 from the north facility to the south facility?

15 A. Yes.

16 Q. Three lines down it says, five
17 stacking conveyors, and it identifies those as
18 SC-1, all the way through SC-5. Do you see that?

19 A. Yes.

20 Q. Is SC-5 the stacking conveyer that
21 KCBX identified for you that it wanted to transfer
22 from the KCBX north facility to the KCBX south
23 facility?

24 A. Yes.

1 Q. As of September 19, 2013, had you
2 notified KCBX of any aspect of its application
3 that was incomplete?

4 A. September 17th, you said?

5 Q. September 19th, the date of the
6 e-mail from the previous page.

7 A. No.

8 Q. When you were doing your permit
9 analytical work for this permit leading up to your
10 recommendation to grant the permit as we just went
11 through, did you also look at the KCBX north
12 permits?

13 A. I had access to them. I had access
14 to the north permit.

15 Q. Did you look at it? And let me ask
16 that question a little clearer.

17 In the process of reviewing the
18 permit application or request for revision, did
19 you review the permits and applications for the
20 north facility?

21 A. Yes, I looked at the permit.

22 Q. If you turn back to page 186, this
23 is the request for revision to the revised
24 construction permit. On the second page of this

1 letter KCBX indicates in the middle of the big
2 paragraph on this page that KCBX is not requesting
3 any changes to the annual and monthly throughput
4 limitations and/or the emissions limitations. Do
5 you see that sentence?

6 A. No. I lost you. What page?

7 Q. If you look at page 187.

8 A. Oh, 187.

9 Q. And then the paragraph that starts
10 with the word "instead."

11 A. Yes.

12 Q. Go down to a little bit past the
13 middle. Do you see the word underlined that says
14 "not" there?

15 A. Okay. Not requesting?

16 Q. Yes. So the sentence says, KCBX is
17 not requesting any changes to the annual and
18 monthly throughput limitations and/or the
19 emissions limitations in the revised construction
20 permit. Do you see that?

21 A. Yes.

22 Q. Did you understand that to be the
23 case at the time you were analyzing the permit?

24 A. Yes.

1 Q. If you turn to page four of that
2 record, so 000004, that's going to be what I
3 believe to be your permit calculation sheet.

4 HEARING OFFICER HALLORAN: Where are
5 we, Mr. Swedlow? I'm sorry.

6 BY MR. SWEDLOW:

7 Q. Page four. Is this your permit
8 calculation sheet for this request for revision to
9 revised construction permit for KCBX?

10 A. Yes.

11 Q. If you look on the first page, it
12 seems to list the same equipment under conveyors,
13 hopper and stacking conveyors. Do you see that?

14 A. Yes.

15 Q. And when I say the same, I mean the
16 same in your draft permit granting document; is
17 that correct?

18 A. Yes.

19 Q. At the bottom there is a heading
20 that says -- or an underlined word that says,
21 Section Four, and then below that it says AP-42
22 13.2.4, revised November 2006. Emission factor
23 was calculated. Do you see that?

24 A. Yes.

1 **Q. Did you do those calculations for**
2 **the emission factor?**

3 A. I referenced it.

4 **Q. Is this your calculation sheet?**

5 A. Yes.

6 **Q. Did you do these calculations for**
7 **the emission factor?**

8 A. 2006.

9 **Q. What I am asking is, did you do that**
10 **here for this permit calculation sheet as it**
11 **relates to the emission factor?**

12 A. Did I redo it?

13 **Q. Did you utilize it in your permit**
14 **calculation sheet?**

15 A. It's in my calculation sheet.

16 **Q. At the time you did this calculation**
17 **in your calculation sheet, did you identify any**
18 **information that you needed for emission factors**
19 **to be included and analyzed in this revised**
20 **permit?**

21 A. Repeat the question.

22 **Q. When you did your calculations for**
23 **this application in the permit calculation sheet,**
24 **was there any information that you didn't have**

1 relating to the emission factors to be included
2 for the requested revision to the permit?

3 A. I don't know.

4 Q. When you did your permit analysis
5 for this revision for this permit application, did
6 you need to do any additional calculations to
7 determine a change in annual or short-term
8 emission limits?

9 A. No, there wasn't.

10 Q. Is that because KCBX stated that it
11 didn't want to change its annual or short-term
12 emission limits?

13 A. Didn't want to change its annual
14 limits. It was in the application.

15 Q. Or the monthly limits?

16 A. Monthly. I think you said
17 short-term before that.

18 Q. I'm sorry. By short-term, I mean
19 monthly.

20 A. Okay.

21 Q. Did you need to do any other
22 calculations with respect to changes to the
23 material throughput or usage limits for analyzing
24 this revised construction permit application?

1 A. Not an annual throughput or monthly
2 throughput. They didn't request any change.

3 **Q. I'm sorry?**

4 A. Annual throughput or monthly
5 throughput, in the application there was no
6 requested change.

7 **Q. Was there any information that you
8 identified during your analysis that was missing
9 for purposes of analyzing throughput limits?**

10 A. For annual or monthly, I don't
11 remember any information missing, throughput
12 limits.

13 **Q. During your role as the permit
14 analyst for this permit, did you consider any of
15 the site inspection reports in your analysis?**

16 A. No.

17 **Q. In your role as the permit analyst
18 for this permit application, did you consider any
19 potential opacity violations that were reported
20 with respect to this site?**

21 A. No.

22 **Q. In your role as the permit analyst
23 for this permit application, did you consider any
24 citizen complaints that the Agency had received**

1 with respect to this site?

2 A. For issuing the permit?

3 Q. In your role as the permit analyst
4 for this application?

5 A. No.

6 Q. In your role as permit analyst for
7 this application, did you consider any lawsuits
8 that had been filed by the Attorney General
9 against KCBX?

10 A. No.

11 Q. In your role as the permit analyst
12 for this application, did you consider any letters
13 received by the Agency from elected officials?

14 A. Go ahead and repeat the question.

15 Q. In your role as a permit analyst for
16 this application, did you consider any letters
17 that were received by the Environmental Protection
18 Agency from politicians or elected officials?

19 A. No.

20 Q. In your role as permit analyst for
21 this application, did you consider any potential
22 violations to the fugitive dust plan for the KCBX
23 south facility?

24 A. No.

1 **Q. Just pause for one minute?**

2 HEARING OFFICER HALLORAN: We can go
3 off the record for a second.

4 (Whereupon, a short break was
5 taken.)

6 HEARING OFFICER HALLORAN: Back on
7 the record.

8 BY MR. SWEDLOW:

9 **Q. If you can turn back to -- turn to**
10 **page R191 of that record. The question number**
11 **three on this page says, Does the application**
12 **request a revision to an existing construction**
13 **permit issued by the BOA? And then the box, yes,**
14 **is checked, and the permit number 07050082 is**
15 **checked. Do you see that?**

16 A. Yes.

17 **Q. Did you look at the other permits**
18 **and revisions and applications in that file when**
19 **analyzing this revised construction permit**
20 **application?**

21 A. Yes.

22 **Q. Did you look at the DTE permit**
23 **application, who was the prior owner of this site,**
24 **when you were doing your permit analysis for this**

1 revised construction permit application?

2 A. Yes.

3 Q. If you turn to page 205, did you
4 consider this project narrative from the DTE
5 permit application when doing your analysis as the
6 permit analyst for this KCBX revised construction
7 permit application?

8 A. This narrative.

9 Q. That narrative, and specifically,
10 there is some information on page 207 that might
11 refresh your recollection for having reviewed
12 this.

13 A. Yes.

14 Q. Did you review this in the context
15 of your permit work on the KCBX permit at issue
16 here?

17 A. Yes.

18 Q. If you turn to page 213, there is a
19 table. Did you consider that table from the DTE
20 permit application in your permit analyst work for
21 this KCBX permit application?

22 A. Page 213?

23 Q. Yeah, 213.

24 A. Yes, I looked at it.

1 **Q.** **If you turn to page 217, that is the**
2 **side -- the title on the side is table six. Did**
3 **you consider this document in your permit analyst**
4 **work for the KCBX south permit application at**
5 **issue in this case?**

6 **A.** **217, you said?**

7 **Q.** **It starts at 217.**

8 **A.** **Oh. Repeat the question.**

9 **Q.** **Yes. Did you consider the table**
10 **that starts at page 217 and is called table six in**
11 **your role as the permit analyst for the KCBX south**
12 **permit application at issue in this case?**

13 **A.** **I have seen this.**

14 **Q.** **Did you consider it for your work as**
15 **the permit analyst in this case?**

16 **A.** **I am not familiar with this table**
17 **six, if it's the same one or not.**

18 **Q.** **Can you turn to R564 in that? Are**
19 **you at that page? This is DTE's construction**
20 **permit application for the site that is now known**
21 **as KCBX south. Have you seen this before?**

22 **A.** **2012, yeah. Let's see. This page**
23 **or --**

24 **Q.** **Just the whole thing.**

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1 A. Is there a page number that it ends?

2 Q. **That's a good question. I think it**
3 **ends at R646.**

4 MS. PAMENTER: Mr. Swedlow, I
5 believe it's R623, but definitely double check me.

6 BY MR. SWEDLOW:

7 Q. **Yes. It goes from R564 to R623.**

8 A. Okay. That's where I ended.

9 Yes. So do you want to repeat
10 the question? I have looked at this. Go ahead.

11 Q. **Yes. Did you have access to this**
12 **prior DTE permit application for the KCBX south**
13 **facility when you were doing your permit analyst**
14 **work for this permit?**

15 A. Yes.

16 Q. **Did you consider the information in**
17 **this prior application during your permit analyst**
18 **work for this permit?**

19 A. Yes.

20 Q. **Did somebody at the Illinois**
21 **Environmental Protection Agency tell you at some**
22 **point during your permit analyst work not to**
23 **contact KCBX?**

24 A. I would have to go through legal.

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1 Q. Let me -- let me ask the question
2 again.

3 Did anybody at the Illinois
4 Environmental Protection Agency ask you or tell
5 you at any point during your permit analyst work
6 that you were not to contact KCBX?

7 A. I don't remember right now.

8 Q. Do you recall being deposed on
9 April 9th, 2014, in this case?

10 A. Yes.

11 Q. I would like to provide you with a
12 copy of your deposition, and I am going to ask you
13 if the testimony there refreshes your
14 recollection. I only have one copy. Do you want
15 me to show it to you first?

16 It's the highlighted testimony
17 on page 92. I would like to go over this.

18 A. Page 92?

19 Q. Yes. The question says, Did you
20 contact KCBX and say there is some information I
21 need to continue reviewing their application? And
22 you said no. And the next question is, Okay. Is
23 there a reason why you didn't contact them? And
24 the answer is, I was told not to talk about permit

1 **issues. Do you see that?**

2 A. Yes.

3 **Q. Who told you not to talk about**
4 **permit issues?**

5 A. Previous permit revision that we did
6 in April of 2012.

7 **Q. Who told you not to talk to KCBX?**

8 A. Bob Bernoteit.

9 **Q. Did he tell you why?**

10 A. It says, no.

11 **Q. Okay. Thanks. Just so that -- I am**
12 **not trying to confuse you. This is -- this is**
13 **just a recording, a written recording of your**
14 **testimony. So this doesn't -- it can be the right**
15 **answer, but the fact that this says no doesn't**
16 **make no the right answer. Do you understand what**
17 **I am saying? Let me ask the question.**

18 **Do you recall why Bob Bernoteit**
19 **told you not to talk to KCBX?**

20 A. In 2012?

21 **Q. At any point during your work on**
22 **this case.**

23 A. I think there was going to be a
24 field investigation.

1 Q. Is that the reason that Bob
2 Bernoteit told you not to talk to KCBX about this
3 revised construction permit application?

4 A. In September.

5 Q. Is that September of 2013?

6 A. Yes.

7 Q. Did you consider the results of any
8 field investigation in your work as the permit
9 analyst for this revised construction permit
10 application?

11 A. Is there anything that would refresh
12 my memory?

13 Q. No. Because I don't know whether or
14 not you actually considered any field
15 investigation in the context of your permit work
16 for this appeal, for this revised construction
17 permit application. So I can't refresh your
18 recollection. I can provide you the deposition
19 testimony, but I don't have a field inspection to
20 show you.

21 A. So go ahead and repeat the question.

22 Q. Okay. Did you consider the results
23 of any field inspection with respect to the KCBX
24 south facility in your work as the permit analyst

1 on this revised construction permit application?

2 A. No.

3 Q. Do you know the results of any field
4 inspection with respect to the KCBX south facility
5 as you sit here today? Can I restate that
6 question? I think I used the wrong words.

7 HEARING OFFICER HALLORAN: Yes, you
8 may.

9 BY MR. SWEDLOW:

10 Q. Do you know the results of any field
11 investigation from KCBX's south facility that the
12 Environmental Protection Agency conducted?

13 A. I know there was inspections of it,
14 but results --

15 Q. But you don't know the results; is
16 that correct?

17 A. From what date?

18 Q. From any dates.

19 A. I know there was field inspections.

20 Q. Did you consider the results of any
21 field inspections at any time for the KCBX south
22 facility in your work as the permit analyst for
23 this revised construction permit application?

24 A. I'd say no.

1 MR. SWEDLOW: I have no further
2 questions.

3 MR. GRANT: Can I have one minute,
4 please?

5 HEARING OFFICER HALLORAN: Yes, off
6 the record for a second.

7 (Whereupon, a short break was
8 taken.)

9 MR. GRANT: No questions.

10 HEARING OFFICER HALLORAN: All
11 right. Thank you. Thank you, Mr. Dragovich. You
12 may step down. You are finished. Thank you.

13 MS. PAMENTER: Can I ask for just
14 one minute before we switch now?

15 HEARING OFFICER HALLORAN: Sure. We
16 will go off the record.

17 (Whereupon, a short break was
18 taken.)

19 HEARING OFFICER HALLORAN: We are
20 back on the record after a brief break. KCBX has
21 indicated that they have rested in their case and
22 chief. I do want to note for the record that
23 Member Burke is still present. The Agency is
24 going to present an opening and then proceed with

1 their witness.

2 You may proceed, Mr. Grant. I'm
3 sorry. Ms. Pamentor.

4 MS. PAMENTER: Thank you,
5 Mr. Halloran.

6 KCBX Terminals Company operates
7 a bulk materials terminal for petroleum coke and
8 coal at its south facility at 10730 South Burley
9 Avenue in Chicago, Illinois. The site is located
10 directly to the west of a residential neighborhood
11 and a playground, park and baseball diamond are
12 located nearby.

13 Petroleum coke and coal is
14 black, fine, particulate matter that can be picked
15 up by the wind and blown through the air. While
16 this facility, the south facility, has a
17 construction permit containing certain conditions,
18 KCBX is still required to comply with the Illinois
19 Environmental Protection Act and corresponding
20 Board regulations regarding its site and any
21 construction permit applications that it may file
22 with the Illinois EPA.

23 On July 23rd, 2013, KCBX
24 Terminals Company filed a construction permit

1 application with the Illinois EPA seeking to
2 install 10 additional conveyors, one additional
3 box hopper and one additional stacker at its south
4 site. The purpose for the application was to
5 increase the amount of petroleum coke and coal
6 going through and being stored at the south site.

7 At KCBX's request the Illinois
8 EPA met with KCBX to discuss the construction
9 permit application on August 27th, 2013. At the
10 August 27, 2013 meeting, the Illinois EPA advised
11 KCBX that environmental justice outreach needed to
12 be conducted regarding KCBX's construction permit
13 application. The Illinois EPA was considering
14 granting KCBX's construction permit application.

15 Thereafter, the Illinois EPA
16 received telephone calls that a cloud of black
17 dust from the petroleum coke and coal piles had
18 blown into the residential neighborhood near the
19 KCBX south facility. For purposes of this permit
20 appeal, it meant a careful review of the
21 construction permit application to determine
22 whether sufficient information had been provided
23 to demonstrate that the Illinois Environmental
24 Protection Act and the corresponding regulations

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1 would not be violated if the permits were granted.

2 Inspections were conducted, an
3 environmental justice outreach meeting was held.
4 The November 1st, 2013 operating program was
5 considered to -- with respect to the discussion on
6 dust controls for conveyors, box hoppers and
7 stackers. And on December 10th, 2013 a Wells
8 letter was issued to KCBX. KCBX had the
9 opportunity to respond and did so on January 13th,
10 2014, though the Illinois EPA believes without
11 sufficient information.

12 In addition to issues existing
13 outside the four corners of the application, KCBX
14 failed to disclose information readily available
15 to it in its construction permit application. The
16 most basic example is the manufacturer, model
17 number and serial number. But this case is not
18 simply about a failure to disclose the
19 manufacturer, model number and serial number.

20 For example, KCBX also simply
21 referred in its construction permit application to
22 an, "initial application." KCBX did not attach
23 anything to its construction permit application.

24 To be clear, of the 1,624 pages

1 in the administrative record currently, KCBX's
2 construction permit application can be found at
3 pages R186 to R204, 18 pages in the administrative
4 record. KCBX's construction permit application
5 does not state which initial application it is
6 referring to. The former owner, DTE, submitted a
7 construction permit application in September 2012.
8 There is no reference in KCBX's July 23rd, 2013
9 cover letter or the application specifically to
10 DTE's September 2012 construction permit
11 application.

12 Assuming that DTE's application
13 is the correct reference, we have all experienced
14 the lengthy comparison process going between
15 KCBX's and DTE's applications. KCBX could have
16 simply attached the information that it wanted the
17 Illinois EPA to consider by attaching it to its
18 July 23rd, 2013 application. But even if KCBX had
19 attached DTE's September 2012 construction permit
20 application or portions of it, DTE's application
21 does not contain any information regarding 10 new
22 conveyors, one new box hopper and one new stacker
23 that are the subject of KCBX's July 23rd, 2013
24 construction permit application.

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1 KCBX also could have updated the
2 tables contained within DTE's September 2012
3 construction permit application to address the new
4 equipment. It chose not to do so.

5 The evidence will show that upon
6 review the Illinois EPA determined that the
7 addition of more sources of fugitive dust
8 emissions at the south site could violate the Act
9 and the Board's particulate matter regulations.
10 The Illinois EPA determined that under those
11 circumstances and given the deficiencies within
12 the four corners of the application it could not
13 issue a permit based upon incomplete information.
14 As a result, on January 17th, 2014, the statutory
15 deadline, the Illinois EPA denied KCBX's
16 construction permit application.

17 Following the presentation of
18 all of the evidence in this matter, we ask that
19 the Illinois Pollution Control Board affirm the
20 Illinois EPA's determination that as of
21 January 17th, 2014 KCBX had not provided
22 sufficient information to the Illinois EPA to
23 demonstrate that neither the Illinois
24 Environmental Protection Act, nor the

1 corresponding Board regulations would be violated
2 if KCBX's July 23rd, 2013 construction permit
3 applications were granted. Thank you.

4 HEARING OFFICER HALLORAN: Thank
5 you, Ms. Pamenter.

6 (Whereupon, a discussion was had
7 off the record.)

8 HEARING OFFICER HALLORAN: All
9 right. Mr. Grant, you can call your first
10 witness.

11 MR. GRANT: Mr. Hearing Officer, the
12 State calls Mr. Joe Kotas, K-O-T-A-S, as a
13 witness.

14 HEARING OFFICER HALLORAN: Step up,
15 sir. Raise your right hand, and Kari will swear
16 you in, please.

17 (Whereupon, the witness was duly
18 sworn.)

19 JOSEPH KOTAS,
20 having been first duly sworn, was examined and
21 testified as follows:

22 DIRECT EXAMINATION

23 BY MR. GRANT:

24 **Q. Mr. Kotas, can you state and spell**

1 **your last name for the record?**

2 A. Joseph Kotas, K-O-T-A-S.

3 **Q. Okay. And where are you employed?**

4 A. Illinois EPA.

5 **Q. And what position do you hold?**

6 A. Environmental Protection Engineer,
7 III.

8 **Q. Okay. How long have you been with**
9 **Illinois EPA?**

10 A. Approximately, 23 years.

11 **Q. And how long in your current**
12 **position?**

13 A. Basically, the whole time I have
14 been -- spent in the current position.

15 **Q. Okay. When you say current**
16 **position, you mean your responsibilities on the**
17 **job?**

18 A. Yes, inspector.

19 **Q. Did you have other job titles**
20 **besides Environmental Protection --**

21 A. Environmental Protection Engineer,
22 I, Environmental Protection Engineer, II and
23 Environmental Protection Engineer, III.

24 **Q. Okay. And what sort of education do**

1 **you have?**

2 A. I have a Bachelor of Science degree
3 in mechanical engineering.

4 **Q. And when was that received?**

5 A. I matriculated in 1982.

6 **Q. And from what school?**

7 A. State University of New York at
8 Buffalo.

9 **Q. What are your current**
10 **responsibilities?**

11 A. Perform inspections and determine
12 compliance with air pollution regulations and
13 laws.

14 **Q. Are you familiar with the air**
15 **pollution regulations affecting your job?**

16 A. Yes.

17 **Q. And are you familiar with the**
18 **Environmental Protection Act air pollution**
19 **provisions?**

20 A. Yes.

21 **Q. Okay. Do you have any specialized**
22 **training?**

23 A. Yes.

24 **Q. And can you describe what that is?**

1 A. I am certified in Method 9 visible
2 emissions readings.

3 **Q. Okay. And can you explain what**
4 **Method 9 deals with?**

5 A. Method 9 deals with determining the
6 opacity of a given plume of smoke. Opacity is the
7 thickness of the smoke or amount of light that can
8 pass through it and ranges from 0 to 100 percent,
9 0 being no smoke, whatsoever, and 100 percent
10 being completely thick smoke with no light
11 transfer through it, whatsoever.

12 **Q. Is there training involved related**
13 **to Method 9?**

14 A. Yes. There is a smoke school
15 training and certification class.

16 **Q. Okay. How often are those classes**
17 **held?**

18 A. Those are held every six months by
19 the Illinois EPA.

20 **Q. Approximately, how many times have**
21 **you taken this training?**

22 A. I have taken smoke school
23 approximately 40 times.

24 **Q. Okay. Is it a requirement that you**

1 **have to be certified every six months?**

2 A. It's not a requirement, but in order
3 to stay certified in Method 9, you have to be
4 certified every six months.

5 **Q. Are you certified today?**

6 A. Yes.

7 **Q. Okay. Were you certified on**
8 **September 11th, 2013?**

9 A. Yes. I was a certified visible
10 emission reader at that time.

11 **Q. And were you certified on**
12 **September 13th, 2013?**

13 A. Yes.

14 **Q. Okay. Are you familiar with the**
15 **KCBX north facility?**

16 A. Yes.

17 **Q. Okay. And what sort of a facility**
18 **is that?**

19 A. It's a bulk terminal that handles
20 coal and coke, petroleum coke.

21 **Q. And what sort of handling equipment**
22 **is at the site?**

23 A. They have conveyors and box hoppers,
24 front end loaders, barge unloading clamshell

1 cranes, bucket elevators, et cetera.

2 **Q. Did you ever observe particulate**
3 **matter emissions leave the KCBX north facility?**

4 A. Yes.

5 **Q. Do you recall the date and time?**

6 A. On March 6th, 2012 I -- I was
7 observing at approximately 1:30 in the afternoon.

8 **Q. Okay. Did you take any pictures at**
9 **that time?**

10 A. Yes.

11 **Q. Okay. Can you turn to the record,**
12 **page 1432?**

13 **Does he have a copy? May I**
14 **approach?**

15 HEARING OFFICER HALLORAN: Yes, you
16 may.

17 (Whereupon, a discussion was had
18 off the record.)

19 BY MR. GRANT:

20 **Q. Mr. Kotas, record page 1432 has four**
21 **photographs on it. Do you recognize those?**

22 A. Yes. Those are the photos that I
23 took on March 6th, 2012.

24 **Q. Okay. Are these photos a true and**

1 **accurate representation of the facility at the**
2 **time you took the picture?**

3 A. Yes.

4 MR. DWYER: I would like to
5 interpose an objection at this point. The period
6 of time we are discussing here predates KCBX's
7 ownership of the facility. So I am not sure how
8 it's relevant.

9 HEARING OFFICER HALLORAN: Okay.
10 Well --

11 MR. GRANT: No, no. This is the
12 north site. This is the north site. KCBX owned
13 the north site at this time.

14 MR. DWYER: Okay. That said, the
15 permit that we are talking about here is for the
16 south site.

17 MR. GRANT: Sure.

18 MR. DWYER: So again, we would
19 object to the relevance of any observations he
20 made of the north facility to the extent -- I'm
21 not sure how they could in any way relate to the
22 permit decision with respect to the south
23 facility.

24 MR. GRANT: Well, first off, it's in

1 the record. Secondly, the equipment that they are
2 planning on moving or that they are intending to
3 move or they are trying to permit to move in this
4 came from -- or is material handling equipment
5 that comes from the north site.

6 HEARING OFFICER HALLORAN: I am
7 going to overrule your objection. Somehow it's
8 all interrelated, and I do find it relevant.

9 MR. GRANT: And finally, you know,
10 just because we will be discussing other issues,
11 there is a question of -- the question in this
12 case and -- is that the observations -- at least
13 for Mr. Kotas are the observations that he made of
14 particulates in the air during his inspections at
15 the south facility and the fact that he is able to
16 recognize these and knows what a particulate is
17 and knows that it -- has seen it come from an
18 almost -- well, a similar facility anyway handling
19 coal and petcoke.

20 HEARING OFFICER HALLORAN: Is this
21 part of your objection?

22 MR. GRANT: No.

23 HEARING OFFICER HALLORAN: Okay.

24 It's on the record. Thank you. You may proceed.

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1 MR. GRANT: You already overruled
2 the objection. So do I have to move that into
3 evidence? My assumption is I do not, because it's
4 in the record.

5 HEARING OFFICER HALLORAN: Well,
6 it's -- technically it's not in evidence, but the
7 Board reviews it. So it's -- yeah, if you file
8 it, it doesn't mean it's in evidence, but the
9 Board still takes a look at it.

10 MR. GRANT: Okay. I do have one
11 that I want to move in. It's not in the record.
12 So I think that I am at 3, Respondent's
13 Exhibit No. 3.

14 (Whereupon, RESPONDENT'S Exhibit
15 No. 3 was marked for
16 identification.)

17 (Whereupon, a discussion was had
18 off the record.)

19 BY MR. GRANT:

20 Q. Mr. Kotas, I have handed you a
21 picture that's marked as Respondent's Exhibit 3,
22 and I want you to compare that to the picture in
23 the bottom, lower corner of the record, page 1432.

24 Is Exhibit 3 a blow-up of the

1 **photo that's in the lower right-hand corner of**
2 **1432?**

3 A. Yes, it appears to be so.

4 MR. SWEDLOW: I think you have the
5 wrong one.

6 MR. GRANT: What?

7 MR. SWEDLOW: There is a tree in
8 one, and there is not a tree in the other. Maybe
9 it's from a different year or site or something.

10 MR. GRANT: It's cut off here.

11 MS. PAMENTER: Do you want to go off
12 the record?

13 HEARING OFFICER HALLORAN: Yeah,
14 let's go off the record.

15 (Whereupon, a discussion was had
16 off the record.)

17 BY MR. GRANT:

18 **Q. Is this a true and accurate copy of**
19 **the picture in the lower right-hand corner that**
20 **you took on March 6th, 2012?**

21 A. It looks like it.

22 **Q. Okay. It's not exactly the same**
23 **format size; is that correct?**

24 A. Yeah. It's cropped differently.

1 **Q. All right.**

2 MR. DWYER: We will continue to
3 object that this is not a --

4 HEARING OFFICER HALLORAN: It's not
5 an accurate copy, so --

6 MR. GRANT: Well, it's not format to
7 format.

8 HEARING OFFICER HALLORAN: It's not
9 an accurate copy. I mean, like Mr. Swedlow said,
10 there is a tree and then there is not a tree.

11 BY MR. GRANT:

12 **Q. Okay. Mr. Kotas, is this a true and**
13 **accurate picture of a -- of the KCBX north site**
14 **that you took on 3 -- on March 6th, 2012 without**
15 **reference to what's marked as R1432?**

16 A. Yes.

17 **Q. And does it truly and accurately**
18 **represent the site conditions at the time you took**
19 **the picture?**

20 A. Yes.

21 MR. DWYER: We continue to object.

22 MR. GRANT: Well, let me move it in
23 first. I am moving it in as Exhibit No. 3. It's
24 a photograph that he took that -- he said it's a

1 photograph that he took on that day and is a true
2 and accurate copy and truly represents the
3 conditions at the time he took the picture.

4 MR. DWYER: We object. It's not in
5 the record. We don't believe that a sufficient
6 foundation is made to demonstrate that this is a
7 true and accurate copy of anything.

8 HEARING OFFICER HALLORAN: You know,
9 I agree. I will take it as an offer of proof.
10 And we will go from there.

11 BY MR. GRANT:

12 Q. Okay. Take it away from him.

13 Mr. Kotas, turning to the
14 record, page 1432, look at the upper left-hand
15 corner. What does this picture represent?

16 A. This is a picture representing a
17 view looking south along the Calumet River in
18 Chicago on the day of March 6th, 2012 at
19 approximately 1:30. It shows industrial
20 facilities on both sides of the river, and KCBX
21 north on the right side of the photo.

22 Q. Is this the upper left-hand picture,
23 correct?

24 A. Yes.

1 **Q. Okay. Is there a visible**
2 **particulate matter that you can detect in this**
3 **picture?**

4 A. Yes. There is a visible particulate
5 matter.

6 MR. DWYER: I am going to object
7 simply that that is his characterization of what
8 the photo may represent.

9 HEARING OFFICER HALLORAN: So noted.
10 You may proceed.

11 BY MR. GRANT:

12 **Q. Okay. And looking at the lower**
13 **right-hand picture, is that the same facility?**

14 A. Yes.

15 **Q. Okay. And did you observe visual**
16 **particulate matter in the area at that time?**

17 A. Yes.

18 MR. DWYER: I am going to object to
19 the extent that the suggestion is that that's what
20 the picture depicts. He said that was what he
21 observed. He didn't say that that's what the
22 picture shows. And whatever the picture shows, it
23 speaks for itself.

24 HEARING OFFICER HALLORAN:

1 Mr. Grant, do you want to rephrase?

2 BY MR. GRANT:

3 Q. Mr. Kotas, in looking at the lower
4 right-hand picture, does that picture depict
5 visual particulate matter in the air at the time
6 you took the picture?

7 A. Yes.

8 Q. And in looking in the upper
9 right-hand corner, can you tell me where that --
10 can you tell me what that picture represents?

11 A. That's a photograph of --

12 MR. DWYER: Again, I am going to
13 object. The picture shows what it shows. If he
14 is testifying what he thinks it shows, that's
15 fine, but the pictures shows what it shows.

16 MR. GRANT: He can describe the
17 picture, Mr. Halloran. I don't understand the
18 basis of this.

19 HEARING OFFICER HALLORAN: Objection
20 overruled. It's noted in the transcript.

21 Mr. Grant, proceed.

22 BY MR. GRANT:

23 Q. Okay. Mr. Kotas, I asked you to
24 describe what the upper -- the picture in the

1 **upper right-hand corner indicates or what it**
2 **shows.**

3 A. That's a photograph of the Calumet
4 River looking north from the 100th Street bridge
5 in Chicago at approximately the same time that
6 day, 1:30 in the afternoon, and it depicts a plume
7 of particulate matter in the air blowing downwind
8 from various facilities.

9 **Q. Was that in the proximity of the**
10 **KCBX north facility?**

11 A. Yes.

12 **Q. Okay.**

13 MR. DWYER: I am going to object to
14 the extent his testimony was that it was from --
15 he testified that it was from facilities in the
16 area. He did not identify a specific facility.

17 MR. GRANT: But the question --
18 what's the objection? The question was, was this
19 in the vicinity of the KCBX north facility.

20 MR. DWYER: My objection is I think
21 you mischaracterized his earlier testimony.

22 MR. GRANT: And the answer is yes.

23 What question are you objecting
24 to?

1 HEARING OFFICER HALLORAN: Yeah, I
2 am not sure, Mr. Dwyer.

3 MR. DWYER: The question was to
4 Mr. Kotas, what does it depict? Mr. Kotas gave a
5 description that included, it was a plume from
6 facilities. The next question was, is the plume
7 proximate to the KCBX facility? That's not what
8 he said. He said, it's a plume -- he observed the
9 plume from facilities.

10 HEARING OFFICER HALLORAN: If you
11 can rephrase --

12 MR. GRANT: Well, he is
13 mischaracterizing what I said. What I said was,
14 was this picture taken --

15 HEARING OFFICER HALLORAN:
16 Mr. Grant, excuse me.

17 MR. GRANT: I'm sorry.

18 HEARING OFFICER HALLORAN:
19 Sustained. Do you want to rephrase? Thanks.

20 MR. GRANT: I guess I still don't
21 really understand what the objection is. We are
22 talking -- at this point we are talking about the
23 upper right-hand corner picture; is that correct,
24 Ed? It's your objection.

1 MR. DWYER: Yes.

2 MR. GRANT: Okay.

3 MR. DWYER: Whatever picture you
4 were asking about.

5 BY MR. GRANT:

6 Q. Okay. Were you -- at the time you
7 took this picture, were you located in the
8 vicinity of the KCBX north facility?

9 A. Yes.

10 MR. DWYER: I am going to just
11 object. In the vicinity, I don't know what that
12 means. Does that mean 200 yards away? Does that
13 mean within 30 feet?

14 BY MR. GRANT:

15 Q. I will reask the question. How far
16 from the KCBX facility in your estimate were you
17 at the time you took this upper right-hand corner
18 picture?

19 A. I would say about 200 feet away from
20 KCBX north.

21 MR. GRANT: Okay. And I don't know
22 if -- I mean, he testified that he saw particulate
23 matter in the air. Was that the subject of your
24 ruling or --

1 HEARING OFFICER HALLORAN: Yeah.

2 I -- you can proceed.

3 BY MR. GRANT:

4 Q. Yeah. Did you see particulate --
5 visible particulate matter in the air at the time
6 you took the picture in the upper right-hand
7 corner?

8 A. Yes, I did.

9 Q. What materials are handled at the
10 KCBX north facility?

11 A. Coal and petroleum coke.

12 Q. Are you familiar with the KCBX south
13 facility?

14 A. Yes.

15 Q. Okay. And are you familiar with the
16 former owner of DTE -- or the former operator of
17 the facility, DTE, prior to KCBX's acquisition?

18 A. Yes. I knew that they owned that
19 facility.

20 Q. Okay. Did you ever observe fugitive
21 emissions leave the old DTE facility?

22 A. Yes, I did.

23 Q. Okay. And when?

24 A. April 26th, 2012.

1 **Q. Where were you at the time?**

2 A. I was doing an inspection at a
3 neighboring facility, which consisted of the --
4 the LTV coke plant, and it's -- the operating
5 entity is called Chicago Coke, I believe.

6 **Q. How far were you from the border of**
7 **the DTE facility?**

8 A. I was inside of that property, the
9 ex-LTV coke plant.

10 **Q. Okay. How far were you from the**
11 **fence to the former DTE facility?**

12 A. Variant distances. I performed an
13 inspection throughout the property.

14 **Q. Okay. Do you remember the wind**
15 **speed at the time?**

16 A. It was pretty high wind. 20 miles
17 an hour, I would estimate.

18 **Q. What did you observe coming from the**
19 **DTE facility?**

20 A. As I was heading toward my car
21 finishing up an inspection of the LTV coke plant,
22 I observed particulate matter striking me in
23 the -- on the skin and on the -- on my clothes as
24 I walked within about 50 feet of the property

1 line, and there were also black, visible
2 particulates on my car that was parked about
3 75 feet from the DTE property line.

4 **Q. What direction were you from the DTE**
5 **property line at the time?**

6 A. I was south of the DTE facility.

7 **Q. Okay. Do you remember where the**
8 **wind was coming from?**

9 A. The wind was coming from the north.

10 **Q. Did you inspect the KCBX south**
11 **facility on September 11th, 2013?**

12 A. Yes.

13 **Q. Had you visited the KCBX north**
14 **facility earlier that day?**

15 A. Yes.

16 **Q. Let me ask you to turn to page 41 in**
17 **the record. Back up a little bit. Page 40,**
18 **please.**

19 A. Okay.

20 **Q. Do you have it in front of you?**

21 A. Okay.

22 **Q. What is this document?**

23 A. This is my inspection report of KCBX
24 Terminals Company south plant on the dates of

1 September 11th and September 13th, 2013.

2 Q. Okay. And did you visit the
3 facility on both those dates?

4 A. Yes.

5 Q. You can turn to page 42 to the
6 paragraph at the top of the page.

7 A. Okay.

8 Q. Did you see airborne particulates or
9 airborne dust near the entrance to the facility on
10 that day?

11 A. Yes.

12 Q. Okay. And were you able to -- were
13 you able to determine whether that was inside or
14 outside the KCBX facility?

15 A. It was by the entranceway, which
16 usually is inside the property line of the owner.

17 Q. Okay. And were you with Mr. Walker?

18 A. Yes.

19 Q. Okay. And did Mr. Walker advise in
20 the ownership of that entrance to the property?

21 MR. DWYER: I am going to object
22 that whatever Mr. Walker said is hearsay.

23 BY MR. GRANT:

24 Q. Does Mr. Walker work for

1 **KCBX Terminals?**

2 HEARING OFFICER HALLORAN:

3 Sustained.

4 BY THE WITNESS:

5 A. Yes.

6 BY MR. GRANT:

7 **Q. What's his responsibility?**

8 A. He is the environmental health and
9 safety manager.

10 **Q. And is he the person who you would**
11 **normally meet with or would accompany you on**
12 **inspections at the facility?**

13 A. Yes.

14 MR. GRANT: Okay. This is admission
15 by a representative of the party authorized to
16 deal with Illinois EPA inspectors.

17 MR. DWYER: I mean, if that's a
18 response to the hearsay objection, I don't think
19 that he has demonstrated that it is anything other
20 than hearsay at this point.

21 MR. GRANT: It's an admission of a
22 representative of a party opponent by an
23 authorized representative of a corporation.

24 HEARING OFFICER HALLORAN: Party

1 opponent.

2 MR. GRANT: Yes.

3 MR. DWYER: I don't think he has
4 made -- I don't think we have any statement that's
5 an admission.

6 MR. GRANT: Well, you objected
7 already. So, you know, you objected to him
8 answering the question.

9 HEARING OFFICER HALLORAN: Yeah. I
10 think you can proceed.

11 BY MR. GRANT:

12 **Q. Do you remember the question,**
13 **Mr. Kotas?**

14 A. Well, can you repeat it, please?

15 **Q. Sure. Did Mr. Walker advise you of**
16 **who owned the area where this truck was located?**

17 MR. DWYER: Again, I am going to
18 object to the characterization there, who owned
19 the area. We are talking about a very large
20 facility. I would ask some more clarification
21 rather than area.

22 HEARING OFFICER HALLORAN: Yeah.
23 Let's narrow the questions.

24 BY MR. GRANT:

1 **Q. Okay. That's fine. The second**
2 **paragraph of your inspection report says, "Brandon**
3 **Walker, EH & S manager of KCBX was the contact and**
4 **provided information. The entrance area roadway**
5 **was pointed out to Walker."**

6 MR. DWYER: Well, you know, we --
7 the document at page -- I assume we are referring
8 to page 42. It says what it says. If there is a
9 question about what Mr. Kotas observed or what he
10 put in his report, that's fine, but we can all
11 read.

12 HEARING OFFICER HALLORAN: You know
13 what, Mr. Dwyer, yesterday and today you guys were
14 reading exactly how Mr. Grant is reading today
15 right out of the record. So, you know, quid pro
16 quo. Objection overruled.

17 BY MR. GRANT:

18 **Q. Mr. Kotas, it then says that he**
19 **stated that this area is an easement and ownership**
20 **is unclear. Do you recall that?**

21 A. Yes.

22 **Q. Okay. Did you observe -- let's see.**
23 **You observed -- in your report you said it**
24 **states -- and it says in the last sentence of the**

1 paragraph at the top, "Official opacity readings
2 were not taken, but instantaneous opacity measured
3 four feet from the right rear of one truck was
4 estimated at 40 percent." Do you see that?

5 A. Yes.

6 Q. Okay. Did you make that
7 observation?

8 A. Yes, I did.

9 Q. Okay. And did you make it based on
10 your Method 9 training, including the six-month
11 smoke school classes?

12 A. Yes.

13 Q. Were water trucks in operation
14 during your inspection on the 11th?

15 A. Yes.

16 Q. Okay. Do you know what the function
17 of water trucks are?

18 A. Water trucks apply water to
19 roadways.

20 Q. Okay. Do you recall if the existing
21 water cannons; that is, existing as of 9/11/2013
22 were in operation during your visit?

23 A. I'm not sure what you mean by
24 existing water -- oh, water cannons?

1 Q. Yeah, there was --

2 A. I thought you were talking about
3 water trucks. I'm sorry.

4 Q. No, no. You answered the question
5 about water trucks, and the reason that I am
6 phrasing it that way is that it's my understanding
7 that at some point after September 11th, 2013 a
8 different water cannon system was installed at the
9 site, at the south site; is that correct?

10 A. Yes.

11 Q. Okay. And prior to that, that there
12 was an existing system that had been in place from
13 the DTE ownership; is that true?

14 A. Yes.

15 Q. Okay. Those are the water cannons
16 that I am talking about. Were they in operation
17 during your visit on -- this is on September 11th?

18 A. I believe so.

19 Q. Can you look to -- on page 43,
20 paragraph four? There is an observation in the
21 second sentence of what I am calling paragraph
22 four, but it's the fourth paragraph down. It
23 says, "A visible emission of particulate matter
24 was observed from the roadway under a water

1 truck." Do you see that?

2 A. Yes.

3 Q. Is that to your recollection?

4 A. Yes.

5 Q. Did you observe visible emissions
6 under the water truck on that day?

7 A. Yes.

8 Q. Okay. And there is -- the next
9 sentence there is an estimated -- it mentions an
10 estimated 10 percent opacity lasted for a few
11 seconds. Do you see that?

12 A. Yes.

13 Q. Okay. Did you make that estimate
14 based on your Method 9 training and the smoke
15 school classes?

16 A. Yes.

17 Q. If you could turn -- let's see. I
18 have got it marked as paragraph seven. In the
19 inspection reports it states that a concrete truck
20 was then observed near the barge and loading
21 station about 150 yards away to the north. This
22 truck was traveling on a roadway, and a heavy
23 plume of particulate matter was observed and
24 drained in its wake. Do you see that?

1 A. Yes.

2 **Q. Okay. Did you observe that on that**
3 **day?**

4 A. Yes.

5 **Q. And the next sentence it says,**
6 **"Estimated opacity of 60 percent followed the**
7 **concrete truck the entire distance it was**
8 **visible." Do you see that?**

9 A. Yes.

10 **Q. Okay. Is that 60 percent estimate**
11 **made on your Method 9 training and your smoke**
12 **school and your certification in Method 9?**

13 A. Yes. The 60 percent opacity was
14 based on my smoke school training.

15 **Q. Okay. Did you discuss the plume**
16 **with Mr. Walker at that point?**

17 A. Yes.

18 **Q. Okay. And what did Mr. Walker do?**

19 A. Mr. Walker promptly made a phone
20 call to the appropriate party, and they treated
21 the roadway with water pretty soon afterwards.

22 **Q. You have a notation in the next**
23 **paragraph that the conveyors were not in operation**
24 **during your visit; is that accurate?**

1 A. Yes.

2 Q. Okay. Was there any material
3 transfer going on at any time or not -- through
4 any mode at the time that you were at the site?

5 A. No.

6 Q. All right. And then down one more
7 paragraph you note, "Roadways were dry, and PM
8 emissions" -- does thought mean particulate
9 matter?

10 A. Yes.

11 Q. -- "were observed at times from the
12 rear of the pickup truck we were driving in." Do
13 you recall observing that?

14 A. Yes.

15 Q. Okay. And the next sentence it's
16 sort of a conclusion. "The two water trucks and
17 existing water cannon seemed hard-pressed to keep
18 particulate matter emissions controlled on
19 roadways under the current weather conditions."
20 Do you see that?

21 A. Yes.

22 Q. What's that conclusion based on?

23 A. That conclusion is based on the
24 conditions that I observed that day where I saw

1 various visible emissions in and around roadways
2 and vehicles.

3 Q. Okay. And it says under current
4 weather conditions -- I am going to ask you to
5 turn back to page 41, and under -- in the second
6 paragraph up from the bottom you make some
7 observations about weather.

8 "Weather conditions were as
9 follows. There was a slight five mile per hour
10 wind from the southwest. Temperature was hot, 85
11 degrees." Is that how you recall it?

12 A. Yes.

13 Q. Okay. Did you take any wind speed
14 measurements?

15 A. No.

16 Q. Was that just an estimate?

17 A. Yes.

18 Q. Okay. Turn to -- I'll have you turn
19 to page 44, and under your -- it says 9/13/13 J
20 Kotas. Were you at the KCBX south site on
21 September 13, 2013?

22 A. Yes.

23 Q. And did you perform an inspection at
24 that time?

1 A. Yes.

2 Q. Who did you meet with?

3 A. Brandon Walker and Mike Estadt.

4 Q. Did Mr. Walker accompany you on your
5 inspection?

6 A. Yes.

7 Q. Did you observe airborne particulate
8 matter on the KCBX south site that day?

9 A. Yes.

10 Q. Okay. If you could look -- page 44,
11 paragraph eight, starting at paragraph "We went
12 into the yard." You -- it's written, "One semi
13 truck traveling east kicked up a heavy plume of
14 dust for about 30 seconds estimated at 50 percent
15 opacity." Do you see that?

16 A. Yes.

17 Q. Okay. Did you see that? Did you
18 note that on that day?

19 A. Yes.

20 Q. Okay. And did you use your Method 9
21 training and smoke school training in making that
22 estimate?

23 A. Yes.

24 Q. You note that you took up a position

1 **to read opacity of trucks at this location?**

2 A. Yes.

3 **Q. Do you see that?**

4 A. Yes.

5 **Q. Did you do that?**

6 A. Yes.

7 **Q. What would that involve?**

8 A. That involved getting into a
9 position with the sun at my back in a location
10 close to the roadway where the trucks -- where the
11 truck had been observed driving.

12 **Q. Okay. Did you intend to take formal**
13 **opacity readings at this location?**

14 A. Yes.

15 **Q. Did you advise Mr. Walker of your**
16 **intention to take formal opacity readings at this**
17 **location?**

18 A. Yes.

19 **Q. What was Mr. Walker doing when you**
20 **advised him of your intention to take opacity**
21 **readings?**

22 A. Mr. Walker then used his cell phone,
23 and it looked like he was writing a text message.

24 **Q. Okay. Did truck traffic at your**

1 **intended observation point then stop?**

2 A. Yes.

3 **Q. Where were trucks then observed**
4 **traveling on the KCBX south site?**

5 A. They were then observed traveling at
6 a roadway that was farther to the north.

7 **Q. Was the road where the trucks were**
8 **observed then traveling heavily watered?**

9 A. Yes.

10 **Q. Did you observe conveyors in**
11 **operation during your September 13th, 2013,**
12 **inspection?**

13 A. I don't recall.

14 **Q. Okay. Do you recall if water**
15 **cannons were operating during your September 19th,**
16 **2013, inspection?**

17 A. I don't recall.

18 **Q. Okay. If you can look at the bottom**
19 **of page 44, it -- in your inspection report it**
20 **states -- describes a pay loader placing loads**
21 **into a truck. Do you see that?**

22 A. Yes.

23 **Q. Did you observe that at that site?**

24 A. Yes.

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1 Q. What is a pay loader?

2 A. It's also called a front end loader.
3 It's a vehicle that can scoop up a large amount of
4 material and lift it up or place it in another
5 location.

6 Q. Okay. And you noticed -- you note
7 that visible emission -- I'm sorry. Moving on,
8 the same paragraph, but on the next page. It
9 states, "Revving of engines on the roadway caused
10 an initial heavy emission." Is that an emission
11 of particulate matter?

12 A. Yes.

13 Q. Did you observe that on that date?

14 A. Yes.

15 Q. And do you then note, "After the
16 trucks reached the treated, wet roadway there were
17 no longer visible emissions;" is that correct?

18 A. Correct.

19 Q. Let me ask you about the roadway
20 where you were planning on doing the formal
21 opacity readings. Was that heavily watered?

22 A. No.

23 Q. If you can turn to page 45, you
24 have -- under emission unit information.

1 A. Okay.

2 Q. Okay. You have -- in this table you
3 have a regulation, to the right a requirement and
4 then inspection findings. Do you see that?

5 A. Yes.

6 Q. Okay. You note that there is a
7 threat of visible emissions crossing the property
8 line from storage piles, correct?

9 A. Yes.

10 Q. Is that based on your observations
11 on September 11th or September 13th?

12 A. Stock -- storage piles, no. That's
13 based on information I -- or knowledge that I have
14 about the storage piles and previous experiences
15 of storage piles.

16 Q. Okay. And is it also based on your
17 previous experience of particulate -- being struck
18 by particulate emissions off the facility?

19 A. Yes.

20 MR. DWYER: I am going to object. I
21 just want to be clear here. I thought his
22 testimony earlier was that his experience with
23 particulate matter striking him was in relation to
24 an inspection of the north facility.

1 MR. GRANT: No. That's the south
2 facility. The north facility were the pictures.
3 The south facility was him physically being
4 struck.

5 HEARING OFFICER HALLORAN: That was
6 my understanding. Mr. Grant moved on to the south
7 facility.

8 MR. DWYER: All right. My mistake.

9 BY MR. GRANT:

10 Q. In the next section down, it says --
11 storage piles, it says, "The current pole mounted
12 cannons are not positioned to control all stock
13 piles" -- this is under instruction findings. Not
14 positioned to control all stock piles. What was
15 that conclusion based on?

16 A. It was based on the locations of the
17 existing pole mounted system and the -- the extent
18 of the stock piles at the time seemed to go beyond
19 the reach of the water cannons.

20 Q. Is that based on your observations?

21 A. Yes.

22 Q. If you can go to page 46, and this
23 is a box under Section 212.314. In your
24 inspection findings you note, "Visible emissions

1 **during high wind speed events are a concern at**
2 **this source." What was that based on?**

3 A. It's based on previous experience.

4 **Q. Okay. Including the -- your**
5 **experience when --**

6 A. Including my --

7 **Q. -- you were expecting the --**

8 A. -- my experience with the KCBX north
9 where I took the photos and the experience at KCBX
10 south where I was physically hit by particulate
11 matter.

12 **Q. Okay. Turn to page 58.**

13 MR. DWYER: I'm sorry. Did you say
14 58?

15 MR. GRANT: Yes. You've got it?

16 MR. DWYER: Yes, I do. I'm sorry.

17 Go ahead.

18 BY MR. GRANT:

19 **Q. This is Section 5.0, conclusions,**
20 **recommendations. What is the purpose of this**
21 **section?**

22 A. It's a section of the report where
23 you can include a brief summary of the findings of
24 the inspection.

1 Q. Okay. You refer to -- paragraph one
2 in that section you refer to particulate matter in
3 the atmosphere generated during vehicle movement
4 on paved and unpaved roads on 9/11 and 9/13 which
5 caused or tended to cause air pollution. Do you
6 see that?

7 A. Yes.

8 Q. Was that based on the particulate
9 emission observations that you made using your
10 Method 9 and smoke school training?

11 A. Yes.

12 Q. Okay. Under number two, was it your
13 conclusion that the emissions that you observed
14 threatened air pollution?

15 MR. DWYER: I just want to be clear
16 here. All the emissions he observed on both dates
17 or a specific observation on one of the dates? I
18 just want to make sure we are clear.

19 HEARING OFFICER HALLORAN:
20 Understood. Mr. Grant?

21 MR. GRANT: Sure. Okay. I am going
22 to withdraw my question about that, because that
23 FPOP thing is a whole separate issue anyway.

24 HEARING OFFICER HALLORAN: Thank

1 you.

2 BY MR. GRANT:

3 Q. Can I have you turn to page 31?

4 Mr. Kotas, is this your inspection report?

5 A. Yes.

6 Q. And is it a report of inspections on
7 November 9th (sic) and November 19th, 2013?

8 A. It's November 6th and 19.

9 Q. I'm sorry. The 6th and 19th. If
10 you can turn to page 33 it states, "Weather
11 conditions were very wet." Is that what you
12 recall?

13 A. Yes.

14 Q. With rain. That's not a question.
15 Okay.

16 Did you observe the new water
17 towers that -- water cannons that had been
18 installed by KCBX?

19 A. Yes.

20 Q. Okay. Were they designed to operate
21 automatically?

22 A. Yes.

23 Q. Okay. Was the system completely
24 installed as of that date?

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1 MR. DWYER: Are we just talking
2 about the 6th?

3 BY MR. GRANT:

4 Q. Yes. I'm sorry. Yeah, for the --
5 on the 6th I note that you say, "The water cannon
6 system is not fully automated yet;" is that
7 correct?

8 A. Correct. All the elements of the
9 system were not yet working.

10 Q. Okay. Also -- let's see. Turn to
11 page 34 where it says, the third paragraph down,
12 "The weather station, which is used in connection
13 with the water system was observed as roughly
14 installed, but not operational." Is that what you
15 recall?

16 A. Yes.

17 Q. Okay. And in the next paragraph
18 down the last sentence it says, "The surfactant
19 system is not yet operational"?

20 A. Correct.

21 Q. Do you know what the purpose of the
22 surfactant system is?

23 A. Surfactant is applied to the piles
24 to form a crust which will prevent or reduce the

1 likelihood of emissions from the pile.

2 MR. GRANT: Can I have one second?

3 HEARING OFFICER HALLORAN: Yes.

4 (Whereupon, a short break was
5 taken.)

6 MR. GRANT: That's all I have,
7 Mr. Halloran.

8 HEARING OFFICER HALLORAN: All
9 right. Thank you. Your witness, Mr. Dwyer.

10 MR. DWYER: Can we have five?

11 HEARING OFFICER HALLORAN: Sure. We
12 are off the record.

13 (Whereupon, a short break was
14 taken.)

15 HEARING OFFICER HALLORAN:
16 Mr. Dwyer.

17 CROSS-EXAMINATION

18 BY MR. DWYER:

19 Q. Thank you. Are you okay with Joe?

20 A. Yes.

21 Q. Joe, you testified earlier about a
22 number of observations you made and some
23 inspections reports you prepared in this case.
24 The first thing that I want to talk with you about

1 is you discussed your Method 9 training. What I
2 want to ask you is, are you aware of a Board
3 regulation that specifies how opacity measurements
4 are to be conducted?

5 A. Are you talking about the referenced
6 Method 9 procedures or --

7 Q. Well, I am talking specifically, are
8 you familiar with 35 Illinois Administrative Code
9 Section 212.109, which is titled, Measurement
10 Methods for Opacity?

11 A. Correct, yes.

12 Q. Okay. Well, first, I would ask, you
13 know, the Hearing Officer to take judicial notice
14 of that Board regulation.

15 HEARING OFFICER HALLORAN: I think
16 it's official notice, but same thing.

17 BY MR. DWYER:

18 Q. I'm sorry, official notice.

19 Well, first let me read this to
20 you, and I want to show it to you just to make
21 sure that you are familiar with it.

22 A. I have seen it, yes. I am familiar
23 with it.

24 Q. Okay. And 212.109 provides, "Except

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1 as otherwise provided in this Part, and except for
2 the methods of data reduction when applied to
3 Sections 212.122 and 212.123 of this Part,
4 measurements of opacity shall be conducted in
5 accordance with Method 9, 40 CFR part 60, Appendix
6 A, and the procedures in 40 CFR 60.675(c) and (d),
7 if applicable, incorporated by reference in
8 Section 212.113 of this Subpart, except that for
9 roadways and parking areas the number of readings
10 required for each vehicle pass will be three taken
11 at 5-second intervals. The first reading shall be
12 at the point of maximum opacity and second and
13 third readings shall be made at the same point,
14 the observer standing at right angles to the plume
15 at least 15 feet away from the plume and observing
16 4 feet above the surface of the roadway or parking
17 area. After four vehicles have passed, the 12
18 readings will be averaged."

19 Is that your understanding of
20 how to take measurements of opacity pursuant to
21 this Board rule?

22 A. Yes.

23 Q. Now, directing your attention to
24 your inspection reports, let's start with the

1 **September inspection reports. My recollection is**
2 **that your testimony on direct examination was that**
3 **the observations you made with respect to fugitive**
4 **particulates and opacity were based upon -- I**
5 **thought what you said was based upon your Method 9**
6 **training; is that correct?**

7 A. Yes.

8 Q. Okay. Now, just to be clear, is it
9 **your testimony that the measurements that you**
10 **conducted on September 11th and September 13th at**
11 **the KCBX facility were conducted in accordance**
12 **with the requirements of 212.109?**

13 A. No. They were not. They were
14 unofficial readings.

15 Q. Okay. And why would you take
16 **unofficial readings?**

17 A. It's not always possible to take
18 official readings. For instance, if you have a
19 truck that drives past a roadway and then all
20 truck traffic stops on that same roadway, you
21 can't do three truck loads. You can't do four
22 trucks.

23 Q. Okay. So then I just want to
24 **understand. Is it your testimony that on those**

1 **dates when you were inspecting the facility that**
2 **you were unable to perform official measurements?**

3 A. Like I said, it's not always
4 possible to do official measurements for --

5 **Q. And -- go ahead.**

6 A. Like at the entrance roadway where I
7 saw the heavy plume behind the truck, I was caught
8 by surprise. I wasn't prepared to do official
9 readings under 212.109, and --

10 **Q. And was that the case on the other**
11 **dates when you inspected the facility?**

12 A. On September -- on the day the
13 concrete truck had a heavy plume of opacity behind
14 it, I was also unable to do an official 212.109
15 reading of the -- of that plume, because 212.109
16 specifies you should be approximately 15 feet from
17 the roadway. I was 150 yards away from the
18 roadway.

19 It's not always possible to use
20 that method. I put those estimated opacities in
21 just to give a picture of some of my observations,
22 and I specified that they were not official
23 readings.

24 **Q. Okay. Now, with respect to your**

1 involvement -- I apologize, Mr. Hearing Officer.

2 Joe, I just want to make sure I
3 understand. We are here because KCBX requested a
4 permit, and the Agency denied that permit; is that
5 your understanding?

6 A. Yes.

7 Q. Okay. And just to be clear, you
8 were not involved in the decision to grant or deny
9 this permit; is that correct?

10 A. Correct.

11 Q. Now, I want to go back to the
12 photographs that you testified regarding earlier,
13 and I believe that those photographs are at page
14 1432 of the record, and correct me if I am wrong,
15 but my recollection is that your testimony with
16 respect to the first picture up in the upper
17 left-hand corner was that that was a picture -- is
18 that a photo you took?

19 A. Yes.

20 Q. And was that on March 26th, 2012
21 (sic)?

22 A. March 6th, 2012.

23 Q. Excuse me. I stand corrected. And
24 my understanding was your testimony was that that

1 is a picture that depicts the Calumet River and
2 also the KCBX north facility?

3 A. Yes.

4 Q. Okay. And at that time I think your
5 testimony was that you believe the picture depicts
6 a haze or particulate matter; is that correct?

7 A. Yes.

8 Q. Okay. And is it also your testimony
9 that you believe that that haze or what you have
10 characterized as particulate matter was coming
11 from the KCBX north facility?

12 A. I would say the KCBX north facility
13 is contributing to that plume.

14 Q. And how did you determine that?

15 A. By my observations.

16 Q. Okay. And well, you characterized
17 it as contributing to it. So is it your opinion
18 that there may be another or other sources
19 contributing to what you have characterized as
20 fugitive particulate emissions?

21 A. Yes.

22 Q. What would those other possible
23 sources be?

24 A. Those other possible sources could

1 be Beemsterboer and S.H. Bell Company.

2 **Q. Okay. And with respect to those**
3 **observations, did you make any effort to determine**
4 **the source of those emissions?**

5 A. Yes, I did.

6 **Q. What did you do to make that**
7 **determination?**

8 A. I also took pictures from the --
9 directly east of KCBX north and the pictures
10 showed visible emissions from the stock piles at
11 KCBX north.

12 **Q. Okay. Did you -- when you took**
13 **those photographs on that date, did you make any**
14 **observations as to any other sources on the KCBX**
15 **north facility that you believed were contributing**
16 **to what you characterized as fugitive particulate**
17 **emissions?**

18 A. Well, yes. There is a picture of
19 the S.H. Bell right here, and you can see visible
20 particulate.

21 **Q. Okay. And you will help me. When**
22 **you say there is a picture right here, which**
23 **picture are you referring to?**

24 A. Okay. Top left corner.

1 Q. Okay. So we are talking about the
2 same picture, top left corner. But I meant on the
3 KCBX facility, the north facility, you indicated
4 you believe that a source was storage piles of
5 coke or petroleum coke?

6 A. Yes.

7 Q. Okay. But in addition to that, did
8 you identify any other sources you believe were
9 responsible for that fugitive particulate other
10 than the storage piles you have identified at KCBX
11 north within the KCBX north facility?

12 A. I'm not sure I understand your
13 question.

14 Q. Well, my question is, you said that
15 you believe that a source based upon your
16 additional vantage point and photograph was a
17 storage pile on the KCBX north facility. My
18 question is, did you observe whether or not a
19 stacker or a portable conveyer or another piece of
20 equipment was the source of these -- what you have
21 characterized as fugitive particulate emissions?

22 A. No. It looks like it's generally
23 blowing from the entire property.

24 Q. Well, first you, I think, earlier

1 **said you believed it was coming from a storage**
2 **pile?**

3 A. Storage piles and accumulations
4 various locations, roadways, rooftops.

5 **Q. Rooftops of buildings on the KCBX**
6 **facility?**

7 A. Yes.

8 **Q. And is that depicted in your**
9 **photograph here?**

10 A. I mean, those are all potential
11 areas where this black plume could be coming from.

12 **Q. So -- and in addition to some of the**
13 **areas, potential sources, off of the KCBX north**
14 **facility?**

15 A. Yes.

16 **Q. Okay. And with respect to the four**
17 **photographs on this page, did you provide these**
18 **photographs to anyone at the Agency after you took**
19 **them?**

20 A. No, not until I gave them to Chris.

21 **Q. And when was that?**

22 A. Just recently.

23 **Q. Did you provide these photographs to**
24 **anyone at the Agency prior to January 17th,**

1 **2013 -- 2014?**

2 A. Prior to what?

3 **Q. Prior to January 17th, 2014.**

4 A. I don't believe so.

5 **Q. Okay. Well, where were they until**
6 **you provided them to Mr. Grant?**

7 A. On disk storage.

8 **Q. But just to be clear, you did not**
9 **provide these photographs to Mr. Bernoteit at the**
10 **Agency or Ms. Armitage at the Agency prior to**
11 **January 17th, 2014?**

12 A. No.

13 **Q. Okay. And just to be clear, did you**
14 **discuss these photographs with anyone at the**
15 **Agency in relation to the permit decision here**
16 **before January 17th, 2014?**

17 A. I'm not sure.

18 **Q. So it's possible you may have, but**
19 **you don't recall?**

20 A. Correct.

21 **Q. Okay. And to the extent you might**
22 **recall, who would you have discussed these**
23 **photographs with?**

24 A. You know, perhaps NOAA.

1 Q. And at or near the time you took
2 these photographs or at any time after that, did
3 you ever notify KCBX regarding these photographs
4 that we have been talking about?

5 A. No.

6 Q. After you took them, what did you do
7 with them, Joe?

8 A. I just kept them.

9 Q. Okay. Now, if we go to the
10 inspection reports we have been talking about in
11 particular, did you prepare the inspections that
12 are in the record starting -- let's start with the
13 inspections dated September 11th and
14 September 13th, and the document is dated
15 November 26, 2013.

16 Do you have that in front of
17 you? It's at the record at page 040.

18 A. Yes.

19 Q. Okay. Did you prepare that document
20 alone?

21 A. No.

22 Q. Okay. And were there any prior
23 revisions of that document?

24 A. Yes.

1 Q. Okay. Now, let me direct your
2 attention to some documents in the record. If you
3 would look, Joe, at pages -- starting at page
4 1305. Have you been able to find that? It may be
5 in the other volume?

6 A. 1305?

7 Q. You should have two volumes up
8 there.

9 A. Yes, okay.

10 Q. Have you seen that document before?

11 A. Yes.

12 Q. Okay. And did you prepare that
13 document?

14 A. It's a draft document that I
15 prepared marked up with comments from Julie K.
16 Armitage.

17 Q. Okay. And directing your attention
18 to page 1307, there is a table on that page; is
19 that correct?

20 A. Yes.

21 Q. Okay. And that table contains
22 approximately seven rows and three columns; is
23 that correct?

24 A. Yes.

1 Q. Now, there is information in there
2 that discusses the pole mounted water cannons at
3 the KCBX south facility; is that correct?

4 A. Yes.

5 Q. And does it indicate in there that
6 under construction are 43 to 44 new 65-foot towers
7 with water spray?

8 A. Yes.

9 Q. And then going down to the next
10 column, you -- excuse me -- down to the fourth
11 column, spray bars, is there information in the
12 next column that says "unknown number of spray
13 bars"?

14 A. Yes.

15 Q. Okay. And then if we go over to
16 page 1308, there is a section titled 4.0,
17 Inspection Narrative, and if you look at the third
18 paragraph, there is a statement, "The roadway has
19 accumulations of reddish brown dust and trucks
20 going through caused some to become airborne."
21 And then in parenthesis it says, "Official
22 readings not taken."

23 A. Yes.

24 Q. Now, looking at your final

1 inspection report at page 40, is that
2 parenthetical language "official readings not
3 taken" included in your final inspection report?

4 A. Yes.

5 Q. Can you tell me where it is?

6 A. The first paragraph.

7 Q. Joe, I apologize. I am not seeing
8 it in -- on page 040 in the first paragraph.

9 A. It says, "official opacity readings
10 were not taken"?

11 HEARING OFFICER HALLORAN: Are you
12 -- I'm sorry. 040 in the record?

13 THE WITNESS: I am on 42.

14 HEARING OFFICER HALLORAN: Okay.

15 BY MR. DWYER:

16 Q. And where -- which paragraph on page
17 42, Joe?

18 A. First.

19 Q. Okay. Now, if you go down to the --
20 let's go back to page 1308, and if you look at the
21 fifth paragraph it says, In general, there
22 appeared to be a lot of activity at this 90-acre
23 site. A lot of construction is taking place.
24 They are building another rail unloading terminal,

1 a new barge unloading facility and an expensive
2 water spray system -- excuse me -- an extensive
3 water spray system.

4 And my question to you is, the
5 term -- if we look at page 1308, the term
6 "extensive" is stricken or at least there is an X
7 through it. Was that term "extensive," to modify
8 water spray system, is that included in your final
9 inspection report that starts at page 40 of the
10 record?

11 A. No. The the word "extensive" is not
12 included in the final report.

13 Q. And then if we turn to page 1309,
14 midway down the page there is a subsection titled
15 New Water Spray System Construction, and the
16 second paragraph reads, "They are currently
17 installing a major new system consisting of 44
18 pole mounted water cannons, and in the copy of
19 your draft report on page 1310, there is a strike
20 through with an X of the term "major."

21 Was that term also removed from
22 the final inspection report that's in the record
23 starting at page 40?

24 A. Yeah, it looks like the language was

1 changed around.

2 Q. And the term "major" is not included
3 in describing the new system?

4 A. I don't see the word "major" in
5 there.

6 Q. Okay. So then if we go to page
7 1310, which as you indicated is your draft
8 inspection report from September 11th and 13th,
9 the sentence begins at the bottom of 1309. It
10 says, "Unlike the existing RU-1, which rotates
11 each railcar to unload, RU-2 will be a bottom dump
12 system that uses gravity to drop materials from
13 the railcars to an underground collection and
14 transport system. The new railcar unloading will
15 be simpler and faster."

16 And then the last sentence at
17 the top of 13 -- beginning of 1310 says, "Both are
18 enclosed systems with excellent PM capture
19 efficiency, and again here, in your draft you have
20 the term "excellent," and on page 1310 it shows
21 that it's X'd out; is that correct?

22 A. Yes.

23 Q. And again, looking at your final
24 inspection report beginning at page R040 of the

1 record, was that term "excellent" removed from the
2 description of the PM capture efficiency of the
3 system at the facility?

4 A. Yes. It looks like, you know, a
5 couple sentences in their entirety were removed.

6 Q. Okay. And then looking at page
7 1311, the third full paragraph on that page of the
8 record contains the following statement, "The
9 construction of the new water spray system built
10 on knowledge gained from their northern plant,
11 according to Walker, as such, it should be
12 superior in design and accomplish the goal of
13 fugitive PM control of stock piles, roadways and
14 transfer points."

15 Now, looking at your final
16 inspection report starting at page 040; is that
17 information -- is the last clause of that sentence
18 contained anywhere in the final inspection report?

19 A. The language has been changed so
20 much it's hard to even find, you know, where that
21 sentence used to be in conjunction with the
22 report. So I am having trouble finding it.

23 Q. Okay. And looking to the next
24 section on page 1311, in the draft inspection

1 report, that's under subtitle Exit Interview, the
2 second sentence of the first paragraph says, "The
3 inspector stated that he notes that there is a lot
4 of construction going on and that it appeared they
5 are working diligently to apply water throughout
6 the plant."

7 And on page 1311 there is a line
8 indicating that that language is being stricken
9 from your inspection report; is that correct?

10 A. I believe so. Sometimes it was hard
11 to tell if it was being stricken or underlined,
12 but --

13 Q. Well, let me ask you. If you look
14 at page 1311, does it appear to you that that
15 phrase that I read is being underlined, or does it
16 appear that it's being crossed through?

17 A. Crossed through.

18 Q. Okay. And if we go then, Joe, to
19 page 1316 of the draft inspection report, this
20 is -- and the draft is titled, Section 7.0,
21 Conclusions, Recommendations and Other Comments.
22 And under the subsection for your September 11th,
23 2013 inspection report, the third paragraph says,
24 that an elaborate fugitive PM control project,

1 consisting of 43 to 44 concrete and galvanized
2 steel towers with water cannons as being
3 installed -- and the next sentence says, "This
4 will improve fugitive PM control tremendously."

5 Is that section -- is that last
6 sentence, is that included in your final
7 inspection report in the conclusions section?

8 A. No. This entire conclusion was
9 deleted.

10 Q. And then if we look down into the
11 next section, which it's a subsection on -- page
12 1316 is titled 09/13113 J Kotas. The first
13 paragraph reads, on 9/13/13 the inspector
14 returned. Observations of truck traffic on the
15 roadways showed instantaneous opacity above 10
16 percent, but six-minute average readings below
17 10 percent opacity. Method 9 specifies 24
18 consecutive readings.

19 Is that paragraph included in
20 your final inspection report for September 11th
21 and September 13th, that's in the record at page
22 40?

23 A. No. The entire conclusions were
24 changed completely.

1 Q. Okay. And so just to confirm then,
2 staying on page 1316, the next paragraph says,
3 "Note that a six-reading average (as opposed to a
4 six-minute average) is similar to that which is
5 used to evaluate coke oven capacity. Six reading
6 averages were below 10 percent also."

7 Was that included in the final
8 conclusions section of your final inspection
9 report?

10 A. No. The conclusion was all deleted,
11 and replaced with a different conclusion.

12 Q. And just one question. We talked
13 about the opacity measurement regulation and
14 what's required to take what I will call official
15 measurements. And again, directing your attention
16 to page 1316 and to the subsection titled 9/13/13
17 J Kotas, you state Method 9 specifies 24
18 consecutive readings. Is that the method required
19 to evaluate opacity for trucks?

20 A. In Illinois, we use 212.109 to
21 evaluate the truck traffic opacity.

22 Q. And does that require 24 consecutive
23 readings?

24 A. No.

1 Q. Okay. In November during your
2 inspections -- excuse me.

3 During the time of your
4 November 6th inspection -- I just want to make
5 sure I just -- I understand your earlier
6 testimony. Did you testify that on that date the
7 water cannons did not reach the piles of material
8 located at the site?

9 MR. GRANT: What date are you
10 talking about?

11 BY MR. DWYER:

12 Q. We are talking about his inspection
13 report at -- the record at 031 and then I am
14 talking about the first inspection date of
15 November 6th, 2013.

16 A. Repeat the question.

17 Q. Okay. When you inspected the site
18 on November 6th, 2013, I thought -- and that's
19 what I want to clarify -- that you testified that
20 during your inspection you observed that the water
21 cannons at the site did not reach the entire piles
22 of material; is that correct?

23 A. I think I said that, yes.

24 Q. Okay. And so you again visited the

1 **site on November 19th, 2013, and did you observe**
2 **the water cannon system in operation?**

3 A. All right. Can you go back to the
4 previous question? Were you talking about the
5 trucks or water cannons on the trucks?

6 **Q. My question -- yes. I am talking**
7 **about the water cannon system, not the trucks.**

8 A. Because the trucks have a water
9 cannon on them, too, so --

10 **Q. Right.**

11 A. So at least you are --

12 **Q. I am talking about the fixed portion**
13 **of the system?**

14 A. Okay.

15 **Q. And the question was, was your**
16 **observation that -- at least when you were there**
17 **on November 6th, your observation was that the**
18 **water cannons, the fixed water cannons, were not**
19 **able to reach all of the material storage piles?**

20 A. The existing water cannon system?

21 **Q. Yes.**

22 A. Or the new system?

23 **Q. Well, whatever you observed on that**
24 **date.**

1 A. Okay. I will have to go see where I
2 talked about it, where it's at.

3 Q. I am trying to find it, Joe. I
4 apologize. Let me just withdraw the question.

5 Joe, if you would look at your
6 inspection report --

7 HEARING OFFICER HALLORAN: Thank
8 you.

9 BY MR. DWYER:

10 Q. In particular tell me, when you
11 visited the site on November 19th, did you observe
12 the water cannon system in operation?

13 A. Yes, a portion of it was
14 demonstrated to us.

15 Q. Okay. And so your testimony today
16 would be that you did not see the system cycle
17 through entirely through all of the water cannons?

18 A. I did not.

19 Q. Okay. And did you make any
20 observations as to whether or not the system on
21 November 19, 2013, was capable of reaching or
22 providing water suppression to all of the storage
23 piles?

24 A. Are you referring to a certain

1 paragraph in my narrative?

2 Q. I am asking you if you recall and if
3 you can review your inspection report and that
4 will help you. My question is, did you make an
5 observation as to whether or not the water cannon
6 system at the site on the date of your inspection
7 in late November was capable of reaching all of
8 the storage piles at the site?

9 A. I don't believe so.

10 Q. Because you didn't make any
11 observation?

12 A. We observed that it was -- the water
13 cannon system was working on a -- on two of the
14 nozzles near the Calumet River. They were
15 working. As for the rest of them, I don't know
16 that they were working, if they were functional or
17 if they could reach all the piles.

18 Q. Subsequent to your inspection at any
19 time, were you provided any information that would
20 indicate that the water cannon system was capable
21 of providing water suppression to all of the
22 storage piles?

23 A. Well, by design it appeared that the
24 design showed that water would reach all sections

1 of the piles; although, at least one of the
2 cannons wasn't installed yet, and so whether or
3 not all those water cannons at that time could
4 reach all the piles or not is debatable.

5 Q. And is that based upon the fact that
6 you -- your testimony is that you never did see
7 the entire system fully operate and cycle through
8 every one of the cannons in operation?

9 A. Can you repeat that, please?

10 Q. I am just -- I am trying to
11 understand. You know, I thought you testified
12 that you were unable to -- you made an observation
13 and I thought you testified earlier that you
14 could -- you didn't -- you did not -- it did not
15 appear to you that the water cannon system was
16 able to cover all of the storage piles. And when
17 I say water cannon system, I mean the fixed
18 system.

19 I think that's what you
20 testified earlier with respect to your visit on
21 November 6th, 2013, and my question to you is, on
22 your subsequent inspection later in November, was
23 it still your observation that the water cannon
24 system was not capable of reaching all of the

1 **material stored at the site?**

2 A. My earlier testimony was regarding
3 the existing water cannon system, which is a
4 system of more localized water applications. So
5 that one was not capable of reaching all the
6 piles, in contrast to the new system, which was
7 designed to be more extensive and apply water
8 across the whole property.

9 Q. **And just so I understand -- that's**
10 **all we have.**

11 HEARING OFFICER HALLORAN: Okay.
12 Thank you, sir. Mr. Grant?

13 MR. GRANT: Yeah, a couple more.

14 HEARING OFFICER HALLORAN: Hold on,
15 Mr. Grant.

16 (Whereupon, a short break was
17 taken.)

18 HEARING OFFICER HALLORAN: Back on
19 the record.

20 BY MR. DWYER:

21 Q. **Joe, you testified earlier about**
22 **your observations and your conclusions with**
23 **respect to those observations, and I think those**
24 **conclusions in both your September and November**

1 reports were that you believed that there was a
2 threat of visible emissions from the storage piles
3 at the site?

4 A. I'm sorry. I thought we were done
5 already.

6 Q. We are not quite done.

7 A. Can you repeat the question?

8 Q. Earlier you testified -- and it's
9 also in your inspection reports in the record at
10 page 031 and also at page 040 that you made a
11 determination or a conclusion that there was a
12 threat of visible emissions from the storage
13 piles, and in fact, I think you go on to say that
14 it may result in a violation of the Act and
15 associated regulations.

16 Okay. Do you recall that?

17 A. Yes.

18 Q. And would that be at least a fair
19 statement of part of the observations in your
20 inspection reports?

21 A. Yes.

22 Q. Okay. So what I want to understand
23 from you is this. Is it your opinion that the
24 mere existence of a storage pile creates the

1 **threat of visible emissions?**

2 MR. GRANT: I am going to object.
3 It calls for a legal conclusion, and also he is
4 not an opinion witness.

5 MR. DWYER: He has testified at
6 length about his observations at the facility. He
7 has prepared --

8 MR. GRANT: You are asking about an
9 opinion.

10 HEARING OFFICER HALLORAN: Excuse
11 me. Mr. Dwyer is speaking.

12 MR. DWYER: He has prepared charts
13 and tables upon which the Agency relied in making
14 a determination on whether or not to grant or deny
15 this permit. In those tables he discusses in
16 specifics on page 045 in his inspection findings
17 that "There is a threat of visible emissions
18 crossing the property line from the storage
19 piles." I think we are entitled to inquire
20 whether and how he determines that, and is that
21 his opinion.

22 HEARING OFFICER HALLORAN: Do you
23 have anything else to say before I --

24 MR. GRANT: No. Go ahead.

1 HEARING OFFICER HALLORAN: Go ahead,
2 Mr. Dwyer.

3 MR. DWYER: Can you read back my
4 question, please?

5 (Whereupon, the record was read
6 as requested.)

7 BY THE WITNESS:

8 A. It's based on what I know about
9 large storage piles and the experiences I have had
10 observing them.

11 BY MR. DWYER:

12 **Q. And so is that a yes?**

13 A. Well --

14 MR. GRANT: I am going to object.
15 He answered the question.

16 MR. DWYER: I'm not sure that he
17 did.

18 MR. GRANT: I think he did.

19 MR. DWYER: He said it's based upon
20 my observations and experience. He didn't answer
21 the question.

22 HEARING OFFICER HALLORAN: A yes or
23 no question, and Mr. Grant can follow-up if he
24 would like.

1 BY THE WITNESS:

2 A. Is this a storage pile of coal or
3 petcoke that we are talking about?

4 BY MR. DWYER:

5 Q. **We can start with that, yes.**

6 MR. GRANT: I don't -- object again.
7 His observations were to a specific pile at a
8 specific facility. They weren't too general and
9 so if he wants to go to the inspection reports he
10 was just referring to and ask about the piles at
11 the KCBX facility, that's relevant.

12 MR. DWYER: I think that's exactly
13 what we are doing, and the table that I referred
14 to is a table in his inspection report. It
15 presumably contains the results and his
16 observations at 045. And it says, his inspection
17 findings, there is a threat of visible emissions
18 crossing the property line from the storage piles,
19 and so my question to --

20 MR. GRANT: And so you are talking
21 about the KCBX storage piles?

22 MR. DWYER: We can talk about the
23 KCBX storage piles. That's fine.

24 HEARING OFFICER HALLORAN: Proceed,

1 please.

2 BY THE WITNESS:

3 A. Okay. I would say, yes, the storage
4 piles at KCBX I believe are a threat of visible
5 emissions based on their mere existence.

6 BY MR. DWYER:

7 Q. Okay. And so I am going to ask you
8 now, is that only limited to your observations at
9 this facility and the storage piles at the south
10 facility?

11 A. No. It would be across the board
12 basically at any large -- at any storage pile.

13 Q. And so finally, in considering the
14 readings that are documented in your five
15 inspection reports, would you agree today, Joe,
16 that none of the opacity readings documented in
17 those reports for roadways -- and when I say
18 roadways, I mean specifically your references to
19 observations of trucks and truck traffic, would
20 you agree that those were not conducted in
21 accordance with Method 9 and Section 212.109 of
22 the Illinois Pollution Control Board regulations?

23 A. Yes.

24 MR. DWYER: Okay. I don't have

1 anything further.

2 HEARING OFFICER HALLORAN: Thank
3 you. Mr. Grant?

4 MR. GRANT: Just a few.

5 HEARING OFFICER HALLORAN: Take your
6 time.

7 RE-DIRECT EXAMINATION

8 BY MR. GRANT:

9 Q. Mr. Kotas, with the inspection
10 reports that you prepare, are they normally
11 reviewed by one or more of your supervisors?

12 A. Yes.

13 Q. And do these supervisors make
14 changes before the final document is generated?

15 A. Yes.

16 Q. Is everything in the inspection
17 reports that are the final inspection reports, is
18 every -- are your observations in there accurate?

19 A. Yes.

20 Q. Are these inspection reports true?

21 A. Yes.

22 Q. Okay. Regarding the control system
23 at the KCBX facility, did KCBX ever -- to your
24 knowledge, did KCBX ever contact anyone at

1 Illinois EPA to request an inspection to
2 demonstrate the compliance of the piles after
3 November 19th -- or I'm sorry -- get a compliance
4 of the new installed spray system after
5 November 19th?

6 MR. DWYER: I apologize. Could you
7 just repeat the question?

8 BY MR. GRANT:

9 Q. Sure, if I remember it. Did anyone
10 from KCBX, to your knowledge, ever contact
11 Illinois EPA -- and I am going to limit that to
12 Bureau of Air Compliance or Bureau of Air FOS in
13 the Des Plaines region. Did they ever contact
14 that office and request or offer an inspection of
15 the facility to demonstrate the compliance or
16 demonstrate the effectiveness of the new dust
17 control system?

18 A. No.

19 Q. Based on your knowledge of the
20 system, would the water cannons be operated below
21 freezing temperatures?

22 A. No.

23 MR. GRANT: That's all I have got.
24

RE-CROSS EXAMINATION

1
2 BY MR. DWYER:

3 Q. Well, I just have one redirect. In
4 light of the questions you were just asked, I want
5 to ask you this, Joe. Do you believe that the
6 inspection reports contained in the record, the
7 final documents that are in the record at page 030
8 and then beginning at 040, do those include all of
9 the observations you made during your inspections?

10 A. No. They can't possibly contain all
11 the --

12 Q. Do they -- and, in fact, would you
13 agree based upon your testimony earlier today that
14 observations you made were actually removed from
15 the final inspection reports before they were
16 finalized?

17 A. Well, you know, that's hard to --
18 whether the word -- whether excellent is an
19 observation, or is it a characterization which
20 doesn't belong in a report? Is it a conclusory
21 word that perhaps should not be inserted in an
22 objective report?

23 Q. So is your testimony that that
24 information would not reflect your objective

1 **assessments, and that's why it was removed?**

2 A. Yes.

3 **Q. And does that include the**
4 **conclusions that we discussed that were removed**
5 **completely from your final inspection report?**

6 A. The conclusions were removed just
7 because at some point we were told not to have any
8 conclusions in our reports.

9 **Q. But, in fact, your final reports do**
10 **contain conclusions that are in the record --**

11 A. Yeah. I left them in -- I left them
12 in, because that was just a personal preference of
13 mine, so --

14 **Q. So I want to make sure I understand**
15 **this, that before you finalized these reports, was**
16 **there a change in the policy for your reports that**
17 **said, don't put conclusions in them anymore?**

18 A. At some point, in the many drafts
19 there were -- there was a request not to put
20 conclusions in the report.

21 **Q. And did that occur prior to you**
22 **finalizing the reports, the inspection reports**
23 **that are contained in the record here today?**

24 A. Yes.

1 **Q. Okay. Do you recall when that**
2 **occurred?**

3 A. It was around like October or
4 November time frame.

5 **Q. But weren't your reports finalized**
6 **in November?**

7 A. You asked if it was done before the
8 report was finalized, and it was done before the
9 report was finalized, but I still have a
10 conclusion in there, which means that I guess I
11 didn't follow the directive.

12 MR. DWYER: Okay. I don't have
13 anything further.

14 MR. GRANT: We are done.

15 HEARING OFFICER HALLORAN: Great.
16 You may step down, sir. We are still on the
17 record.

18 Okay. We are going to continue
19 this hearing on record for tomorrow, May 1st, 2014
20 Room 9-040, and I would like to start no later
21 than 8:45.

22 (END OF PROCEEDINGS.)

23

24

April 30, 2014

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I, KARI WIEDENHAUPT, do hereby certify that the foregoing was reported by stenographic and mechanical means, which matter was held on the date, and at the time and place set out on the title page hereof and that the foregoing constitutes a true and accurate transcript of same.

I further certify that I am not related to any of the parties, nor am I an employee of or related to any of the attorneys representing the parties, and I have no financial interest in the outcome of this matter.

I have hereunder subscribed my hand on the _____ day of _____ 2014.



KARI WIEDENHAUPT, CSR



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