

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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

**NOTICE OF FILING**

TO: Mr. John Therriault	Mr. Bradley P. Halloran
Assistant Clerk of the Board	Hearing Officer
Illinois Pollution Control Board	Illinois Pollution Control Board
100 West Randolph Street	100 West Randolph Street
Suite 11-500	Suite 11-500
Chicago, Illinois 60601	Chicago, Illinois 60601
(VIA ELECTRONIC MAIL)	(VIA FIRST CLASS MAIL)

**(SEE PERSONS ON ATTACHED SERVICE LIST)**

PLEASE TAKE NOTICE that I have today filed with the Office of the Clerk of the Illinois Pollution Control Board **PETITIONER'S MOTION FOR LEAVE TO FILE A REPLY TO RESPONDENT'S RESPONSE TO KCBX TERMINALS COMPANY'S MOTION TO SUPPLEMENT THE RECORD** and **PETITIONER'S REPLY TO RESPONDENT'S RESPONSE TO KCBX TERMINALS COMPANY'S MOTION TO SUPPLEMENT THE RECORD**, copies of which are herewith served upon you.

Respectfully submitted,

KCBX TERMINALS COMPANY,  
Petitioner,

Dated: April 15, 2014

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

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

**CERTIFICATE OF SERVICE**

I, Matthew C. Read, the undersigned, hereby certify that I have served the attached PETITIONER'S MOTION FOR LEAVE TO FILE A REPLY TO RESPONDENT'S RESPONSE TO KCBX TERMINALS COMPANY'S MOTION TO SUPPLEMENT THE RECORD and PETITIONER'S REPLY TO RESPONDENT'S RESPONSE TO KCBX TERMINALS COMPANY'S MOTION TO SUPPLEMENT THE RECORD upon:

Mr. John Therriault  
Assistant Clerk of the Board  
Illinois Pollution Control Board  
100 West Randolph Street  
Suite 11-500  
Chicago, Illinois 60601

via electronic mail on April 15, 2014 and upon:

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

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

by depositing said documents in the United States Mail, postage prepaid, in Springfield, Illinois on April 15, 2014 and upon:

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

via facsimile and by depositing said document in the United States Mail, postage prepaid, in Springfield, Illinois on April 15, 2014.

/s/ Matthew C. Read  
Matthew C. Read

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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

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

NOW COMES Petitioner, KCBX TERMINALS COMPANY ("KCBX"), a North Dakota corporation, by and through its attorneys, HODGE DWYER & DRIVER, pursuant to 35 Ill. Admin. Code § 101.500, hereby files the following Motion for Leave to File a Reply to Respondent's Response to KCBX Terminals Company's Motion to Supplement the Record. In support thereof, Petitioner states as follows:

1. On January 17, 2014, Illinois Environmental Protection Agency ("Illinois EPA") issued a Permit Denial letter to KCBX in response to KCBX's Request for Revision.
2. On February 21, 2014, KCBX initiated this proceeding by filing with the Illinois Pollution Control Board ("Board") its Petition for Review ("Petition") regarding the Permit Denial.
3. On March 24, 2014, Illinois EPA filed the Administrative Record ("Record") with the Board in this permit appeal.

4. On April 7, 2014, KCBX filed its Motion to Supplement the Record ("Motion to Supplement").

5. On April 14, 2014, Illinois EPA filed its Response to KCBX Terminals Company's Motion to Supplement the Record ("Response"), arguing that certain documents listed in the Motion to Supplement should not be added to the Record and incorporating by reference arguments in other documents.

6. At the April 14, 2014 telephonic status conference, the hearing officer indicated that the Motion to Supplement would be considered by the Board. KCBX explained that it would file its Reply to Illinois EPA's Response as soon as possible.

7. Since filing its Motion to Supplement, KCBX has taken depositions of Michael Dragovich, Robert Bernoteit, Raymond Pilapil, and Joseph Kotas, all employees of Illinois EPA.

8. In the course of taking these depositions, KCBX has learned additional information about documents addressed in the Motion to Supplement.

9. In light of these developments, and to prevent material injustice, KCBX now requests leave to File a Reply to Respondent's Response to KCBX Terminals Company's Motion to Supplement the Record (attached hereto).

WHEREFORE Petitioner, KCBX TERMINALS COMPANY, for the above stated reasons, respectfully prays that the Illinois Pollution Control Board grant it leave to file its Reply to Respondent's Response to KCBX Terminals Company's Motion to Supplement the Record (attached hereto), and that the Board award KCBX TERMINALS COMPANY all other relief just and proper in the premises.

Respectfully submitted,

KCBX TERMINALS COMPANY,  
Petitioner,

Dated: April 15, 2014

By: /s/ Matthew C. Read  
One of Its Attorneys

Katherine D. Hodge  
Edward W. Dwyer  
Matthew C. Read  
HODGE DWYER & DRIVER  
3150 Roland Avenue  
Post Office Box 5776  
Springfield, Illinois 62705-5776  
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v.	)	PCB 14-110
	)	(Air Permit Appeal)
ILLINOIS ENVIRONMENTAL	)	
PROTECTION AGENCY,	)	
	)	
Respondent.	)	

**PETITIONER'S REPLY TO RESPONDENT'S RESPONSE TO KCBX  
TERMINALS COMPANY'S MOTION TO SUPPLEMENT THE RECORD**

NOW COMES Petitioner, KCBX TERMINALS COMPANY ("KCBX"), a North Dakota corporation, by and through its attorneys, HODGE DWYER & DRIVER, pursuant to 35 Ill. Admin. Code § 101.500, hereby files the following Reply to Respondent's Response to KCBX Terminals Company's Motion to Supplement the Record. In support thereof, Petitioner states as follows:

1. On January 17, 2014, Illinois Environmental Protection Agency ("Illinois EPA") issued a Permit Denial letter to KCBX in response to KCBX's Request for Revision.
2. On February 21, 2014, KCBX initiated this proceeding by filing with the Illinois Pollution Control Board ("Board") its Petition for Review ("Petition") regarding the Permit Denial.
3. On March 24, 2014, Illinois EPA filed the Administrative Record ("Record") with the Board in this permit appeal.
4. On April 7, 2014, KCBX filed its Motion to Supplement the Record ("Motion to Supplement").

5. Since filing its Motion to Supplement, KCBX has taken depositions of Michael Dragovich, Robert Bernoteit, Raymond Pilapil, and Joseph Kotas, all employees of Illinois EPA. In addition, KCBX has noticed the deposition of Julie Armitage on April 16, 2014.

6. On April 14, 2014, Illinois EPA filed its Response to KCBX Terminals Company's Motion to Supplement the Record ("Response"), arguing that certain documents listed in the Motion to Supplement should not be added to the Record and incorporating by reference arguments in other documents.

7. During a telephonic status conference with the hearing officer, KCBX explained that it would file its Reply to Illinois EPA's Response as soon as possible.

8. KCBX replies as follows to arguments advanced by Illinois EPA in Paragraph 12 of its Response:

**A. Petition Exhibit 2 – Federally Enforceable State Operating Permit ("FESOP") issued to KCBX Terminal at 3259 East 100th Street, Chicago, Illinois 60617 ("North Terminal") on April 5, 2012.**

The FESOP for the North Terminal authorizes the operation of the equipment at issue in the Request for Revision. As described in the Motion to Supplement, KCBX alerted Illinois EPA that the equipment would be transferred from the North Terminal to the South Terminal and that the equipment was operated pursuant to the North Terminal FESOP. Illinois EPA now argues that KCBX only referenced the existence of the North Terminal FESOP in its Request for Revision in the context of a single source, and that "the person at the Illinois EPA who made the denial decision had no reason to consider any information in the FESOP and did not rely on such FESOP." Response, ¶12.A.

KCBX first referenced the North Terminal FESOP and the potential to move equipment

from the North Terminal to the South Terminal in its cover letter of the Request for Revision. Request for Revision, AR at R-000186-R000187. Some information in the cover letter of the Request for Revision related to KCBX's plan to operate two terminals as a single source. However, this single source future plan does not in any way allow Illinois EPA to disregard the information related to the North Terminal FESOP. KCBX also indicated its intent to relocate the equipment from the North Facility in other documents in the Record. *See* September 3, 2013 e-mail from Terry Steinert to Mike Dragovich (AR at R-000182); January 13, 2014 letter to Raymond E. Pilapil (AR at R-000011 – R000016). The permit engineer assigned to the Request for Revision, Michael Dragovich, explained during deposition that he did, in fact, look at permits and permit applications for the North Terminal when he reviewed the Request for Revision. Exhibit A, Discovery Deposition of Michael Dragovich, April 9, 2014 at 82-83. Therefore, Illinois EPA should have, and, in fact did, review permits for the North Terminal in the course of its review of the Request for Revision, Petition Exhibit 2. Therefore, this document was relied upon or reasonably should have been relied upon by Illinois EPA.

**B. Petition Exhibit 9 – December 20, 2012 Letter from Monica T. Rios to Lori Pennington.**

Illinois EPA argues that the above-referenced letter is irrelevant in this matter. Response, ¶12, B. However, KCBX notes that the Request for Revision requests to revise an existing construction permit, which was revised multiple times prior to this request. The transfer request letter at issue here relates to the transfer of a prior construction permit with the same application number as the existing permit. As such, it is relevant to the ongoing modification of the existing construction permit, and it was



before Illinois EPA during the permit application review period. Mr. Dragovich explained the procedure for receiving a construction permit application for review along with the file and noted that the file clerk “tries to put together a file she requests from the file room, and *there is an existing file for this place because it's a revision, so it comes together in a big file.*” Exhibit A at 34 (emphasis added). This confirms that previous construction permits and construction permit applications sharing this construction permit application number were in fact before Illinois EPA at the time of its decision.

Therefore, this document was relied upon or reasonably should have been relied upon by Illinois EPA.

**C. Petition Exhibit 10 –Full September 17, 2012 Construction Permit Application for DTE Fuels Terminal, LLC (“DTE”) for Permit at Issue in this Appeal, and December 20, 2012 Letter from Katherine D. Hodge to Edwin C. Bakowski Enclosing Same.**

Illinois EPA concedes that this application is referenced and already partially included in the Request for Revision and does not object to Tables 1-4 and 7-12 being added to the Record. Response, ¶12.C. However, Illinois EPA argues that pages not referenced in the Request for Revision should not be added to the Record and that adding such pages would “permit KCBX to supplement its construction permit application after the conclusion of the statutory review period.” *Id.* In reply to Illinois EPA’s argument, KCBX notes that the Request for Revision requests to revise an existing construction permit, which was revised multiple times prior to this request. The DTE application at issue here requested a revision of a previous version of this same construction permit. As such, it is relevant to the ongoing modification of the construction permit, and it was before Illinois EPA during the permit application review period. Mr. Dragovich

explained the procedure for receiving a construction permit application for review along with the file and noted that the file clerk “tries to put together a file she requests from the file room, and *there is an existing file for this place because it's a revision, so it comes together in a big file.*” Exhibit A at 34 (emphasis added). This confirms that previous construction permits and construction permit applications sharing this construction permit number were in fact before Illinois EPA at the time of its decision. Therefore, this document was relied upon or reasonably should have been relied upon by Illinois EPA.

**D. Petition Exhibit 11 – December 20, 2012 Letter from Edwin C. Bakowski to KCBX.**

Illinois EPA argues that the above-referenced letter is irrelevant. However, this letter explains that KCBX is subject to requirements in existing permits for the South Terminal that Illinois EPA had issued to DTE following transfer of the facility. As such, it is relevant to the ongoing obligations of the South Terminal with respect to DTE's construction permit application and any permits issued in response to that application.

**E. Petition Exhibit 12 – December 20, 2012 Letter from Edwin C. Bakowski to KCBX and Attached Construction Permit issued to KCBX on December 20, 2012.**

Illinois EPA argues that simply because a construction permit has the same application number is irrelevant to whether it should be included in the Record. The above-referenced letter and construction permit confirm the transfer of a prior version of the existing revised construction permit (same application number) to KCBX from DTE. As such, it is relevant to the ongoing modification of the construction permit. And it was before Illinois EPA during the permit application review period. Mr. Dragovich explained the procedure for receiving a construction permit application for review along

with the file and noted that the file clerk “tries to put together a file she requests from the file room, and *there is an existing file for this place because it’s a revision, so it comes together in a big file.*” Exhibit A at 34 (emphasis added). This confirms that previous construction permits and construction permit applications sharing this construction permit number were in fact before Illinois EPA at the time of its decision. Therefore, this document was relied upon or reasonably should have been relied upon by Illinois EPA.

**F. Petition Exhibit 13 – July 23, 2013 Request for Revision.**

Illinois EPA argues that the Request for Revision and the Conveyor Transfer Points Process Flow Diagram are both included in the record and that additional copies will “simply cause confusion.” Response, ¶ 12.F. However, Illinois EPA indicates that the Request for Revision (AR at R-000186-R000204) and the Conveyor Transfer Points Process Flow Diagram (AR at R000184 and R000212) appear in different locations in the Administrative Record. Response, ¶ 12.F. In reply, KCBX notes that when the contents of a permit application are at issue, as is the case here (*see* AR at R000001-R000002), it is particularly important for the record to accurately reflect the contents of the permit application. Illinois EPA specifically alleges that certain minimum data listed in 35 Ill. Admin. Code § 201.152 is missing from the Request for Revision. Therefore, it is important for the Record to reflect the full contents of the Request for Revision. Accordingly, the Record should be supplemented with Petition Exhibit 13.

- G. Petition Exhibit 31 – November 1, 2013 e-mail from Katherine D. Hodge to Kathryn Pamerter, cc: to Chris Pressnall with revised Fugitive Particulate Operating Program (“FPOP”) attached.**

Illinois EPA has no objection to including the above-referenced letter in the Record but objects to the inclusion of another copy of the November 1, 2013 FPOP. Response, ¶12.G. KCBX requests that the Record accurately reflect that the November 1, 2013 e-mail and attached FPOP were submitted simultaneously.

- H. Petition Exhibit 32 – Letter from Katherine D. Hodge to Kathryn A. Pamerter, pc: to Chris Pressnall dated November 15, 2013.**

Illinois EPA does not object, so KCBX offers no reply.

- I. January 13, 2014 Press Release from Illinois Governor’s Office and Audio Clip Imbedded in January 13, 2014 Online Press Release.**

Illinois EPA argues that KCBX failed to authenticate a press release issued by the Illinois Governor’s Office and accompanying audio clips. Response, ¶12.I. However, as reflected on the face of the press release, it was published by the Illinois Government News Network, an official website for the State of Illinois. This website provides access to all press releases from the Governor’s Press Office. *See* <https://www.illinois.gov/news/Pages/Governors-Office.aspx> (last accessed Apr. 15, 2014). This is the type of document and audio clip that are typically posted on this website, and Illinois EPA does not argue that these items are not authentic. Thus, further authentication should not be required for inclusion in the Record.

Illinois EPA further argues that the press clip and imbedded audio clips “do not constitute a written policy of the Illinois EPA” and that Illinois EPA “did not rely and reasonably should not have relied” on them. Response, ¶12.I. In reply, KCBX notes that these items reflect an understanding between the Governor’s office and the Director of

Illinois EPA that relate directly to permits such as the one requested by KCBX in its Request for Revision. The Director of Illinois EPA has authority over the entire agency, including the Bureau of Air, which is responsible for issuing this Permit Denial. *See* Illinois EPA Organizational Chart, <http://www.epa.state.il.us/about/org/org-chart.html> (last accessed Apr. 15, 2014). Such an understanding was apparently relied upon by Illinois EPA when deciding to deny the Request for Review. Accordingly, these records of the policy should be included in the Record.

**J. Documents of Conversations with Illinois Governor's Office.**

Illinois EPA appears to argue that the rules of discovery allow it to avoid its obligation to file a complete Record. Response, ¶12.J. It is clear from the press release and audio clips described above that the Governor of Illinois asked Illinois EPA to halt permit activity and that the Director of Illinois EPA acknowledged this request. It is reasonable to conclude that Illinois EPA considered this information when making its decision to deny the Request for Revision. Therefore, such documents regarding pending permitting matters at petroleum coke handling facilities should be included in the Record.

**K. Deposition Rider Documents**

Illinois EPA argues that “[g]iven the extreme time constraints,” it incorporates by reference the argument included in its Interlocutory Appeal with respect to the deposition rider documents. Response, ¶12.K. KCBX recognizes the Hearing Officer’s acknowledgement that these issues before the Board are related. As such, KCBX requests that to the extent the Board allows Illinois EPA to incorporate its argument by reference, the Board also considers all of KCBX’s related filings leading up to and in response to Illinois EPA’s Interlocutory Appeal.

**L. Privilege Log Document P000002-P000023**

Similarly, Illinois EPA incorporates by reference arguments in its Interlocutory Appeal regarding the attorney client privilege and the deliberative process privilege. KCBX recognizes the Hearing Officer's acknowledgement that these issues before the Board are related. As such, KCBX requests that to the extent the Board allows Illinois EPA to incorporate its argument by reference, the Board also considers all of KCBX's related filings leading up to and in response to Illinois EPA's Interlocutory Appeal. In addition, Illinois EPA argues that the Permit Denial governs this permit appeal. However, KCBX notes that documents such as a draft permit would indicate the type of information necessary and available to Illinois EPA to prepare a permit. Therefore, this document should be included in the Record.

WHEREFORE Petitioner, KCBX TERMINALS COMPANY, for the above stated reasons, respectfully prays that the Illinois Pollution Control Board will enter an Order granting its Motion to Supplement the Record, and mandating Respondent to promptly supplement the administrative record with the documents described and identified above, and that the Illinois Pollution Control Board award KCBX TERMINALS COMPANY all other relief just and proper in the premises.

Alternatively, to the extent that the Illinois Pollution Control Board finds that Illinois EPA has sufficiently asserted privileges recognized under Illinois law in relation to any documents listed in the Privilege Log or identified above, KCBX TERMINALS COMPANY respectfully prays that the Illinois Pollution Control Board enter an Order granting its Motion to Supplement the Record, and mandating Respondent to supplement the administrative record with those documents dealing with factual information

regarding the draft permits, but ordering all other documents described in its Motion to be provided by Respondent to be subjected to an *in camera* review to screen out the mental impressions and/or attorney work product documents.

Respectfully submitted,

KCBX TERMINALS COMPANY,  
Petitioner,

Dated: April 15, 2014

By: /s/ Matthew C. Read  
One of Its Attorneys

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

Exhibit A



BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

KCBX TERMINALS COMPANY, )  
 Petitioner, )

vs. ) FCB 14-110  
 (Permit Appeal)-Air

ILLINOIS ENVIRONMENTAL )  
 PROTECTION AGENCY, )  
 Respondent. )

Discovery Deposition of MICHAEL DRAGOVICH,  
 taken at the instance of the Petitioner, on April  
 9, 2014, scheduled for the hour of 9:30 a.m., at  
 3150 Roland Avenue, Springfield, Illinois, before  
 Donna M. Dodd, Certified Shorthand Reporter and  
 Notary Public, pursuant to the attached  
 stipulation.

DONNA M. DODD, CSR  
 donnadoddswr@aatt.net  
 (217) 552-2174  
 (217) 487-7715

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1 APPEARANCES: 2

2

3 EDWARD W. DWYER  
 4 KATHERINE D. HODGE  
 5 MATTHEW C. READ  
 6 Hodge, Dwyer & Driver  
 7 Attorneys at Law  
 8 3150 Roland Avenue  
 9 Springfield, Illinois 62701  
 10 edwyer@hddattorneys.com

11 Appeared on behalf of the Petitioner,

12

13 KATHRYN A. PAMENTER  
 14 CHRISTOPHER J. GRANT  
 15 Assistant Attorney Generals  
 16 Attorney General's Office  
 17 68 West Washington Street, 18th Floor  
 18 Chicago, Illinois 60602  
 19 (312) 814-0608  
 20 kpamenter@atg.state.il.us

21 Appeared on behalf of the Respondent.

22

23 ALSO PRESENT:  
 24 Mr. James Lee Morgan, IEPA  
 Mr. Jeff Culver, Koch Companies

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1 (Deposition Exhibit Nos.  
 2 1-13 were marked for  
 3 identification prior to the  
 4 start of the deposition.)

5 IT IS HEREBY STIPULATED AND AGREED by and  
 6 between Counsel for the Petitioner and Counsel for  
 7 the Respondent that this deposition may be taken in  
 8 shorthand by DONNA M. DODD, an Illinois Certified  
 9 Shorthand Reporter and Notary Public, and  
 10 afterwards transcribed into typewriting, and the  
 11 signature of the Witness is waived by agreement.  
 12 (The witness was sworn by the Reporter.)

13 MICHAEL DRAGOVICH,  
 14 called as a witness herein, at the instance of the  
 15 Petitioner, having been duly sworn upon his oath,  
 16 testified as follows:

17 DIRECT EXAMINATION

18 BY MR. DWYER:

19 Q. Mike, my name is Ed Dwyer. I'm an  
 20 attorney representing KCBX Terminals. I want to  
 21 let the record reflect that this is the discovery  
 22 deposition of Mr. Mike Dragovich taken pursuant to  
 23 notice to all parties and in accordance with the  
 24 Rules of the Pollution Control Board, the Code of

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1 construction permit application.

2 Q. And following that document, would you  
3 look at the record on page 191? Have you seen that  
4 document before?

5 A. Yes.

6 Q. Okay. And what do you understand that  
7 document to be?

8 A. A Construction Permit Application. It's a  
9 Fee Form.

10 Q. And, to your knowledge, were those  
11 documents filed with the agency on July 23rd, 2013?

12 A. Yes. It's stamped July 23rd, 2013.

13 Q. Okay. Now, Mike, were you assigned to  
14 review this permit?

15 A. Yes.

16 Q. Okay. If you would tell me, please, just  
17 generally, describe the process in the Bureau of  
18 Air when a permit application like the permit we're  
19 talking about right now arrives at the agency, and  
20 tell me what happens from there to the final  
21 decision.

22 A. The permit in this case looks like it was  
23 hand-delivered to the agency. Somebody stamped in  
24 the permit for July 23rd. From there, what I know

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1 about, it would go to a, probably like a file room  
2 clerk, and she might have possibly stamped this  
3 thing in. I don't know.

4 The application is probably read and  
5 decided to figure out what they're kind of asking  
6 about. In this case they asked for a revised  
7 construction permit. And on there is a permit  
8 number, so they're asking for revise construction  
9 permit 07050082, and it has an ID Number 031600GSF.

10 Q. Okay. What I asked you was to tell me  
11 what happens in that process.

12 You've described that it came in and  
13 what the application was requesting. What happens  
14 with the application after that?

15 A. The file clerk tries to put together a  
16 file she requests from the file room, and there is  
17 an existing file for this place because it's a  
18 revision, so it comes together in a big file.

19 She would take it to a Unit Manager  
20 within a certain period of time. I don't recall  
21 how long. Once we got the file, it could be that  
22 day, it could be a couple of days. I don't know.  
23 Depending on --

24 Q. Go ahead. And what happens after that,

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1 Mike?

2 A. She's basically going to give it to a Unit  
3 Manager.

4 Q. All right. And what happens with it once  
5 it gets to the Unit Manager?

6 A. The Unit Manager, we have a database  
7 system. He would look at this application and he  
8 would assign it to a Permit Engineer, and there's a  
9 database system that tracks who he's assigning it  
10 to.

11 Q. Okay. And what happens once it's assigned  
12 to a Permit Engineer?

13 A. It's dropped off in -- we have an in-house  
14 basket assigned to me.

15 MR. DWYER: And then, you know, let me  
16 take a break. I apologize. We'll take five  
17 minutes.

(Whereupon there was a recess  
taken.)

20 BY MR. DWYER:

21 Q. Mike, before we took a short break I was  
22 asking you about the process of what happens when a  
23 permit comes in, and you had indicated that the  
24 application is received, a record person gathers

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1 the file, and then that's brought to your inbox.

2 Is that --

3 A. The -- usually a Unit Manager will.

4 Q. And so your Unit Manager is the person who  
5 assigns the permit application to you?

6 A. Yes.

7 Q. Okay. And at the time that you received  
8 this permit, who was your Unit Manager, if you  
9 recall?

10 A. Baleriy Brodsky was Acting.

11 Q. And do you recall, was it Baleriy who  
12 assign the permit to you, the permit application?  
13 I'm sorry.

14 A. He could have assigned it. I'm sure he  
15 was Acting.

16 Q. Do recall?

17 A. Either Baleriy or Bob. I don't really  
18 recall.

19 Q. Okay. Do you recall when you received the  
20 permit application and was assigned it?

21 A. Not the exact date, I mean.

22 Q. Roughly, your best guess?

23 A. It wasn't -- it wasn't on the 23rd of  
24 July. It was in July.

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1 was it after that?  
 2 **A. After.**  
 3 **Q.** Okay. And do you recall approximately  
 4 when? Was it in September or was it in October?  
 5 **A. Probably more in October.**  
 6 **Q.** Okay. And did anyone else -- did you have  
 7 a conversation with anyone else at the agency about  
 8 taking a closer look at the application besides Mr.  
 9 Brodsky?  
 10 **A. Not at the time, no.**  
 11 **Q.** Okay. But later?  
 12 **A. He was my unit manager.**  
 13 **Q.** Did you have, in October or November, any  
 14 conversations with anyone else who had requested  
 15 you take a closer look at the application?  
 16 **A. Not that I remember.**  
 17 **Q.** Okay.  
 18 **A. Can I use the bathroom?**  
 19 **Q.** Absolutely. Let's take a break.  
 20 (Whereupon there was a recess  
 21 taken.)  
 22 BY MR. DWYER:  
 23 **Q.** Mike, we were talking before the break  
 24 about your decision to review the application

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1 submitted by KCBX in more detail.  
 2 You said you talked with Bob Bernoteit  
 3 about that, and you also talked with Mr. Brodsky  
 4 about it. And you said that during your discussion  
 5 with Mr. Bernoteit you talked about issues between  
 6 the KCBX North and South facility, and that they  
 7 were bringing this equipment -- they were seeking  
 8 to have this equipment from North permitted under  
 9 this permit reviewing to operate the South  
 10 facility, is that correct?  
 11 **A. Yes. Yes.**  
 12 **Q.** Okay. And in the course of this further  
 13 review of the application, did you review any other  
 14 permits or permit applications for the North  
 15 facility?  
 16 **A. Did I review any, no.**  
 17 **Q.** So you didn't review any documents --  
 18 **A. Oh -- --**  
 19 **Q.** -- any permit documents related to the  
 20 North facility?  
 21 **A. Before August? Go ahead.**  
 22 **Q.** Well, let me ask it more broadly.  
 23 In the process of reviewing the permit  
 24 application or the request for revision is what I

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1 refer to it as, did you review any permits or  
 2 permit applications for the North facility?  
 3 **A. I looked at them, yes.**  
 4 **Q.** Okay. And did you look at them in any  
 5 further detail after your discussions with Mr.  
 6 Bernoteit about this North and South facility  
 7 confusion that you were trying to clarify?  
 8 **A. I looked at them again.**  
 9 **Q.** Okay. If we look now in the record,  
 10 again, Mike, at the record page 010.  
 11 **A. Ten?**  
 12 MS. PAMENTER: Yes, it's ten.  
 13 BY MR. DWYER:  
 14 **Q.** It's page 10. I'm sorry.  
 15 **A. All right.**  
 16 **Q.** And that's called a permit review traveler  
 17 sheet. Did you prepare that or tell me what you do  
 18 with that document.  
 19 **A. Okay. This document is part of the permit**  
 20 **application. It's inside of a file. It's inside**  
 21 **of a manila folder, basically like that, along with**  
 22 **the -- with whatever information is in the**  
 23 **application. It's stapled inside of it. It goes**  
 24 **along with the file, and I prepared the -- my name**

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1 **as an analyst right here. I wrote that.**  
 2 **Q.** And so on this document, again, page 10 of  
 3 the record, it -- does that basically, you know, a  
 4 number of -- there are a number of categories on  
 5 it. They're not all filled in. Did you fill in  
 6 all of the information that is on it?  
 7 **A. No.**  
 8 **Q.** Who would have -- who else would have  
 9 filled in anything on this permit traveler sheet?  
 10 **A. The clerk, BD, Beth Davenport.**  
 11 **Q.** And are those her initials at the bottom  
 12 of the document?  
 13 **A. I recognize them, yes. That's her --**  
 14 **would be her initials.**  
 15 **Q.** Okay. And on this document, Mike, at the  
 16 bottom it's dated January 17th, 2014. Is that the  
 17 day that this document was completed and filled  
 18 out?  
 19 **A. Yes.**  
 20 **Q.** So of the entries on it would have been  
 21 made on that date, January 17th?  
 22 **A. I could only speak for the ones that I**  
 23 **entered.**  
 24 **Q.** Okay. But I think that you said the only