

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

KCBX TERMINALS COMPANY,)

Petitioner,)

v.)

ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)

Respondent.)

PCB No. 14-110
(Air Permit Appeal)

NOTICE OF ELECTRONIC FILING

To: *Via Facsimile*
Katherine D. Hodge
Edward W. Dwyer
Matthew C. Read
Hodge Dwyer & Driver
3150 Roland Avenue
Springfield, IL 62705

Via Email
Bradley P. Halloran
Hearing Officer
Illinois Pollution Control Board
James R. Thompson Center, Suite 11-500
100 W. Randolph Street
Chicago, Illinois 60601

PLEASE TAKE NOTICE that on the 22nd day of April, 2014, the Respondent's Motion in Limine to Exclude Witnesses was filed with the Illinois Pollution Control Board, a true and correct copy of which is attached hereto and is hereby served upon you.

ILLINOIS ENVIRONMENTAL PROTECTION
AGENCY

By: 
Kathryn A. Pamerter
Christopher J. Grant
Robert Petti
Assistant Attorneys General
Environmental Bureau
69 W. Washington St., 18th Floor
Chicago, IL 60602
(312) 814-0608
(312) 814-5388
(312) 814-2069

DATE: April 22, 2014

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

KCBX TERMINALS COMPANY,)

Petitioner,)

v.)

**ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY,**)

Respondent.)

**PCB No. 14-110
(Air Permit Appeal)**

RESPONDENT'S MOTION IN LIMINE TO EXCLUDE WITNESSES

Respondent, Illinois Environmental Protection Agency, pursuant to Illinois Pollution Control Board Rules 101.500, 101.502 and 101.610, and Rule 615 of the Illinois Rules of Evidence, hereby moves the Hearing Officer for an order excluding witnesses from the hearing. In support thereof, Respondent states as follows:

1. On February 21, 2014, KCBX Terminals Company ("KCBX") filed its Petition for Review of the Illinois Environmental Protection Agency's ("Illinois EPA") Permit Denial dated January 17, 2014 to the Request for Revision to Revised Construction Permit that KCBX submitted to the Illinois EPA on July 23, 2013.

2. On March 25, 2014, a Hearing Officer Order was entered scheduling the hearing in this matter on April 29, 2014 and requiring motions in limine to be filed by noon on April 22, 2014.

3. Section 10-40 of the Administrative Procedure Act requires agencies to apply the rules of evidence applicable in circuit court. 5 ILCS 100/10-40(a) (2012). In addition, Rule 101 of the Illinois Rules of Evidence, ILCS Evid. Rule 101, provides, "[t]hese rules govern proceedings in the courts of Illinois to the extent and with the exceptions stated in Rule 1101. A statutory rule of evidence is effective unless in conflict with a rule or a decision of the Illinois

Supreme Court.” The Board is Illinois’ environmental court for petitions for review of the Illinois EPA’s final determinations on permit applications (*See* 35 Ill. Adm. Code 101.106(b)), and its hearings are subject to the Illinois Rules of Evidence.

4. Rule 615 of the Illinois Rules of Evidence, ILCS Evid. Rule 615, provides that, “[a]t the request of a party the court shall order witnesses excluded so that they cannot hear the testimony of other witnesses, and it may make the order of its own motion.” Pursuant to Rule 615 of the Illinois Rules of Evidence, at the Respondent’s request, witnesses must be excluded from the hearing so that they cannot hear the testimony of other witnesses.

5. Furthermore, the Court in *Smith v. City of Chicago*, 299 Ill. App. 3d 1048 (1st Dist. 1998), explained the rationale of the court’s power to exclude witnesses as follows:

[I]t has long been recognized that trial judges have the discretion to exclude witnesses in a civil trial. *Errissman v. Errissman*, 25 Ill. 136, 137 (1860). The court’s power to enter such an order is derived from its inherent power to afford a fair trial to all parties. The purpose of an order excluding non-party witnesses from the courtroom “is to prevent the shaping of testimony by one witness to match that of another and discourage fabrication.”

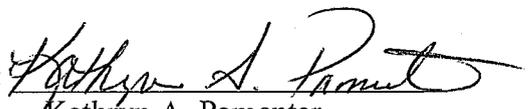
Smith, 299 Ill. App. 3d at 1053 (quoting *Friedman v. Park District of Highland Park*, 151 Ill. App. 3d 374, 390 (2d Dist. 1986)).

6. Pursuant to Illinois Rule of Evidence 615 and established Illinois case law, it is well within the Hearing Officer’s authority to exclude witnesses during hearings.

WHEREFORE, Respondent, Illinois Environmental Protection Agency, respectfully requests that the Hearing Officer grant Respondent's Motion to Exclude Witnesses, enter an order excluding witnesses from the hearing so that they cannot hear the testimony of other witnesses, and grant such other relief as the Hearing Officer deems proper.

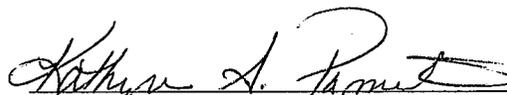
Respectfully submitted,

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

BY: 
Kathryn A. Pament
Christopher J. Grant
Robert Petti
Assistant Attorneys General
69 W. Washington Street, Suite 1800
Chicago, IL 60602
(312) 814-0608
(312) 814-5388
(312) 814-2069

CERTIFICATE OF SERVICE

I, KATHRYN A. PAMENTER, an Assistant Attorney General, do certify that I caused to be served this 22nd day of April, 2014, the attached Notice of Electronic Filing and Respondent's Motion in Limine to Exclude Witnesses upon (a) Edward W. Dwyer, Katherine D. Hodge and Matthew C. Read *via facsimile* and (b) Bradley P. Halloran *via email*.


KATHRYN A. PAMENTER