

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 RESPONSE IN OPPOSITION TO MOTION FOR PROTECTIVE ORDER REGARDING DEPOSITION RIDERS**, a copy of which are herewith served upon you.

Respectfully submitted,
KCBX TERMINALS COMPANY,
Petitioner,

Dated: April 4, 2014

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

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, Katherine D. Hodge, the undersigned, hereby certify that I have served the attached PETITIONER'S RESPONSE IN OPPOSITION TO MOTION FOR PROTECTIVE ORDER REGARDING DEPOSITION RIDERS 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 4, 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 4, 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 4, 2014.

/s/ Katherine D. Hodge
Katherine D. Hodge

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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)	(Air Permit Appeal)
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PETITIONER'S RESPONSE IN OPPOSITION TO MOTION FOR PROTECTIVE ORDER REGARDING DEPOSITION RIDERS

NOW COMES Petitioner, KCBX TERMINALS COMPANY ("KCBX"), a North Dakota corporation, by and through its attorneys, HODGE DWYER & DRIVER, and for its Response in Opposition to Respondent's Motion for Protective Order Regarding Deposition Riders, states as follows:

On February 21, 2014, KCBX filed with the Illinois Pollution Control Board ("Board") its Petition for Review ("Petition") of the Permit Denial issued to KCBX by the Illinois Environmental Protection Agency ("Illinois EPA") on January 17, 2014, in response to its July 23, 2013 Request for Revision to Revised Construction Permit ("Request for Revision"). The Illinois EPA filed the Administrative Record in this permit appeal with the Board on March 24, 2014.

Section 105.212 of the Board's Rules provides, in relevant part, as follows:

Agency Record

- a) The Agency must file its *entire record of its decision* with the Clerk in accordance with Section 105.116 of this Part.
- b) The record must include: * * *

5) *Any other information the Agency relied upon in making its decision.*

35 Ill. Admin. Code § 105.212(a) and (b)(5) (emphasis added).

Based upon information in the Administrative Record, Illinois EPA omitted documents directly related to the Request for Revision that contain information relied upon by Illinois EPA when making its decision.¹ For example, the record contains a sign-in sheet from a meeting with representatives of KCBX. Administrative Record, PCB 14-110 at R-0000183 (Ill.Pol.Control.Bd. Mar. 24, 2014) (hereafter cited as “AR at ___”). However, the Administrative Record does not contain any notes taken by Illinois EPA staff in attendance at that meeting. Similarly, the Permit Denial is based, in part, on observations made by the Division of Air Pollution Control’s field staff. The record contains inspection reports, but those inspection reports are directed to Illinois EPA field staff. *See* AR at R-00031. How were those observations relayed to those reviewing the Request for Revision? Presumably the inspections and other grounds for denial were discussed in meetings. Finally, Illinois EPA’s Privilege Log contains references to e-mails regarding a draft permit. *See* Privilege Log, PCB 14-110 at P000002-P000023 (Ill.Pol.Control.Bd. Mar. 24, 2014) (hereafter cited as “PL at ___”). One of those e-mails in particular is 21 pages long and, based on its length and subject name, and the length of the existing construction permit, appears to contain a draft construction permit. PL at P000002-P000022. Such a draft construction permit is relevant here, where Illinois EPA claims in its denial that it needed additional information to issue a revised construction permit. *See* Permit Denial, ¶1(b). Upon information and belief, the documents omitted

¹ As indicated by Petitioner in its status conference with the Hearing Officer, Petitioner intends to file a Motion to Supplement the Administrative Record.

from the Administrative Record included: (1) notes related to the review of the Request for Revision by Illinois EPA personnel, (2) draft permits addressing the activities described in the Request for Revision, and (3) notes taken by Illinois EPA personnel during meetings, telephone calls or discussions regarding the Request for Revision and Illinois EPA's decision to grant or deny the Request for Revision.

Due to the omission of the above-described documents from the Administrative Record, KCBX attached Deposition Riders to the Notices of Deposition issued for the following Illinois EPA employees: Michael Dragovich (deposition scheduled for April 9, 2014), Robert W. Bernoteit (deposition scheduled for April 9, 2014), Raymond Pilapil (deposition scheduled for April 10, 2014), and Joseph Kotas (deposition scheduled for April 11, 2014). See Exhibit 1, Notices of Deposition for Robert W. Bernoteit, Michael Dragovich, Raymond Pilapil, and Joseph Kotas. The KCBX Deposition Riders were narrowly tailored to seek only those documents that KCBX believes were omitted from the Administrative Record. The Notices of Deposition requested that the documents described in the KCBX Deposition Riders be produced at the time of the deposition.²

On April 2, 2014, the Illinois EPA filed a Motion for Protective Order Regarding Deposition Riders ("Motion"), which requested that the Board enter a protective order denying KCBX's request for production of the documents described in the KCBX

² The Board's Rules governing this permit appeal proceeding do not specifically address notices of deposition. Illinois Supreme Court Rule 204(a)(3) authorizes the issuance of notice of depositions to parties and provides that such notices are "sufficient to require the appearance of the deponent *and the production of any documents or tangible things listed in the notice.*" Ill. S. Ct. Rule 204(a)(3)(emphasis added); see also 35 Ill. Admin. Code § 101.100(b) ("[T]he Board may look to the Code of Civil Procedure and the Supreme Court Rules for guidance where the Board's procedural rules are silent.") While the Board's Rules do not address notices of deposition, the Rules do provide that "subpoenas may include a command to produce books, papers, documents or other tangible things designated therein and relevant to the matter under consideration." 35 Ill. Admin. Code § 101.622(d).

Deposition Riders. The Motion does not deny the existence of the documents requested in the KCBX Deposition Riders, but asks that the Board grant a protective order because the production of the documents “is not calculated to lead to relevant information, is unduly burdensome and will not expedite the resolution of the proceeding.” Motion, ¶ 5. The Motion also contends that the KCBX Deposition Riders seek “information that is not part of the Administrative Record and thus was not considered in Respondent’s denial of KCBX’s permit application.” *Id.* Finally, the Motion contends that the documents sought in the KCBX Deposition Riders are “subject to the predecisional deliberative process privilege,” citing *West Suburban Recycling and Energy Center, L.P. v. Illinois Environmental Protection Agency*, PCB Nos. 95-119 and 95-125, 1996 WL 633368 (Oct. 17, 1996), and also objects “to the extent KCBX seeks documents subject to any other privilege, including the attorney client privilege.” Motion, ¶ 6 and n.2.

The documents sought by KCBX in the Deposition Riders are documents that were created by Illinois EPA following its receipt of the Request for Revision and in connection with its review of the Request for Revision. As the Board has explained:

It is well-settled that the Board’s review of permit appeals is limited to information before the Agency during the Agency’s statutory review period, and is not based on information developed by the permit applicant, or the Agency after the Agency’s decision. [Cite omitted.] *However, it is the hearing before the Board that provides a mechanism for the petitioner to prove that operating under the permit if granted would not violate the Act or regulations. Further, the hearing affords the petitioner the opportunity “to challenge the reasons given by the Agency for denying such permit by means of cross-examination and the Board the opportunity to receive testimony which would test the validity of the information (relied upon by the Agency). [Cite omitted.]*

Community Landfill Company, et al. v. Illinois EPA, PCB No. 01-170, 2001 Ill. ENV LEXIS 553, at *8-9 (Dec. 6, 2001) (Emphasis added).

The Board addressed similar issues in *KCBX Terminals Company v. Illinois EPA*, PCB Nos. 10-110, 11-43, 2011 Ill ENV LEXIS 155 (May 19, 2011), which also involved the appeal of an air permit. In *KCBX Terminals*, KCBX filed a motion to supplement the administrative record with 45 documents that had been omitted from the administrative record. *Id.* at *6. Illinois EPA objected to the inclusion of seventeen of the documents, including a prior FESOP issued by Illinois EPA, correspondence sent by Illinois EPA to KCBX, an Illinois EPA inspection report, and e-mail messages between attorneys for Illinois EPA and KCBX. In granting KCBX leave to supplement the administrative record with all of the contested documents, the Board rejected the same argument made by Illinois EPA in this case, *i.e.*, that it did not rely on the emails between counsel for Illinois EPA and KCBX in drafting and issuing the FESOP renewal:

The Board finds that the e-mail messages at issue constitute correspondence between IEPA and KCBX concerning the air permitting application process for this facility, including reviewing and commenting on drafts and arranging meetings and teleconferences.

Id. at * 15-17.

In *KCBX Terminals*, the Board also rejected Illinois EPA's assertion that requests to admit propounded by KCBX were not calculated to lead to relevant information and were unduly burdensome, noting that:

In this interlocutory appeal, IEPA generally complains of harassment *but does not identify any specific request for admission as being irrelevant, not calculated to lead to relevant information, or unduly burdensome. . . .* KCBX represents that the requests for admission are consistent with KCBX's petition for review. IEPA does not dispute this, nor does IEPA claim that any of the requests are inconsistent with the hearing being 'based exclusively on the record before the Agency at the time the permit or decision was issued.' 35 Ill. Adm. Code 105.214(a).

Id. at *29-31 (Emphasis added.)

In this case, as in *KCBX Terminals*, Illinois EPA has provided absolutely no basis or explanation for its claim that the requested production is “not calculated to lead to relevant information, is unduly burdensome and will not expedite the resolution of the proceeding.” Motion, ¶ 5. The documents sought by KCBX in this case are Request for Revision review notes, draft permits based on the Request for Revision, and notes from meetings or discussions concerning the Request for Revision, *i.e.*, documents that were created or generated by Illinois EPA personnel in connection with their review of the Request for Revision and during the air permit application review process for this facility. It is untenable and disingenuous for Illinois EPA to claim that such documents seek “information that is not part of the Administrative Record and thus was not considered in Respondent’s denial of KCBX’s permit application.” Motion, ¶ 5; *see also Estate of Gerald Slightom v. Illinois EPA*, PCB No. 11-25, 2012 Ill. ENV LEXIS 148, *30-31 (April 19, 2012) (Board denied Illinois EPA request for interlocutory appeal of Board order mandating the inclusion of additional documents in the administrative record, noting that “[e]ach of the documents previously requested by the Board is a document submitted to the Agency, prepared by the Agency, and/or relied upon by the Agency in making its final determination of the Estate’s reimbursement claim.”)

Illinois EPA also asserts that the documents requested in Petitioner’s Deposition Riders, with the exception of notes related to observations of the KCBX facility, “are subject to the predecisional deliberative process privilege.” Motion, ¶ 6 (citing *West Suburban Recycling and Energy Center, L.P. v. Illinois Environmental Protection*

Agency, PCB Nos. 95-119 and 95-125, 1996 WL 633368, at *4-*6 (Oct. 17, 1996)).

However, Illinois EPA ignores the Illinois Supreme Court and appellate court decisions issued subsequent to the Board's *West Suburban* decision that rejected the existence and application of the predecisional deliberative process privilege in Illinois. See *People ex rel. Birkett v. City of Chicago*, 184 Ill. 2d 521 (1998); see also *Fox Moraine, LLC v. United City of Yorkville*, 2011 IL App (2d) 100017 (2011); *Thomas v. Page*, 361 Ill. App. 3d 484 (2005).

In *Birkett*, the Illinois Supreme Court considered whether “to recognize a ‘deliberative process privilege’ to protect certain advice and discussions between government officials concerning formulation of governmental decisions and policy.” *Birkett*, 184 Ill. 2d at 522. In reaching its rejection of the deliberative process privilege in Illinois, the Court acknowledged that this privilege was “[w]idely recognized in federal courts . . . [to] protect[] certain classes of intra-agency communications offered in the course of governmental decisionmaking.” *Id.* at 526. Federal courts have interpreted such classes of communications to include “intra-governmental documents reflecting advisory opinions, recommendations and deliberations comprising part of a process by which governmental decisions and policies are formulated.” *Id.* Despite the federal courts’ acceptance of the deliberative process privilege to protect such intra-governmental communications from disclosure, the *Birkett* Court instead focused on Illinois’ existing policies disfavoring privileges:

[P]rivileges are strongly disfavored because they operate to “exclude relevant evidence and thus work against the truthseeking function of legal proceedings.” Further, it is believed that governmental privileges, if created and applied indiscriminately, will undermine public trust “in the

integrity of the government and its commitment to serving the public interest.” As such, courts will not create or apply any evidentiary privilege unless it “promotes sufficiently important interests to outweigh the need for probative evidence.” For these reasons, this court has repeatedly concluded that the extension of an existing privilege or establishment of a new one is a matter best deferred to the legislature.

Id. at 527-28 (internal citations omitted).

Moreover, the Court considered and rejected the notion that the existence of a Freedom of Information Act (“FOIA”) exemption for predecisional materials was evidence of the Illinois legislature’s intent to adopt the deliberative process privilege in Illinois. The Court drew a sharp distinction between confidentiality from the general public and privilege from disclosure to a litigant:

The existence of an FOIA exemption for predecisional materials is evidence of a public policy favoring the confidentiality of such communications. However, it is not dispositive of whether the legislature sought to create an analogous evidentiary privilege. The FOIA was intended to further the citizens’ general desire or need to know about the affairs of government, thus enhancing public discourse and governmental accountability. However, the concerns underlying this purpose often differ greatly from those of a party in litigation *who needs governmental information in order to establish his case. . . .* The drafters of the Illinois FOIA also acknowledged a distinction, observing that the FOIA was “more in the *** interest of citizen involvement in public records” and that “*litigation, depositions, request for documentation*” were all “*far beyond the range*” of the bill.

Id. at 528-29 (internal citations omitted). (Emphasis added.)

Here, Illinois EPA asserts that the documents requested in KCBX’s Deposition Riders are subject to the deliberative process privilege, and cites the Board’s *West Suburban* decision in support of this assertion. Motion, ¶ 6. As explained above, subsequent to the Board’s *West Suburban* decision, the Illinois Supreme Court issued its

decision in *Birkett*, in which the Court refused to acknowledge the existence of the deliberative process privilege in Illinois. *Birkett*, 184 Ill. 2d at 522-23, 525, 534.

The Board must reject Illinois EPA's assertion of the deliberative process privilege³ in light of the Illinois Supreme Court's holding in *Birkett* that the deliberative process privilege is not recognized in Illinois.

In a footnote, Illinois EPA generally objects to KCBX's Deposition Rider production requests "to the extent KCBX seeks documents subject to any other privilege, including the attorney-client privilege." Motion, ¶ 6, n.2. To the extent that Illinois EPA objects based on "any other privilege," such an objection is vague and fails to establish with necessary particularity the reasons for such disclosures being exempt from discovery. Regarding the attorney-client privilege, Illinois EPA's merely stating the privilege in a footnote is insufficient for Illinois EPA to meet its burden of proving the attorney-client privilege applies to the requested documents. *Lake County Forest Preserve Dist. v. Neil Ostro, et al.*, PCB No. 92-80, 1993 Ill. ENV LEXIS 438, at *4-5 (Ill.Pol.Control.Bd. Apr. 22, 1993) ("A party asserting privilege has the burden of proving that privilege. The mere assertion that a matter is protected by the attorney-client privilege is insufficient to prove the existence of that privilege." (internal citations omitted)).

³ Appellate court decisions after *Birkett* have recognized a limited *judicial*-deliberation privilege, but have refused to extend the applicability of that limited privilege beyond the deliberations of judges. *See Fox Moraine*, 2011 IL App (2d) at ¶ 73 ("[Petitioner] argues that *Thomas* and *Birkett* provide *only* that judges, and not members of other branches of government, may be protected by this [deliberation] privilege. We are inclined to agree with [Petitioner] that, while the [Respondent city] council members were definitely acting in a quasi-judicial and quasi-legislative role, the supreme court's holding in *Birkett* and the narrow holding in *Thomas* would not warrant us extending the privilege to the council.") The judicial-deliberation privilege is not applicable to information sought in the KCBX Deposition Riders.

In establishing the attorney-client privilege, the Board has found that the party claiming the privilege must prove the following:

(1) Where legal advice of any kind is sought (2) from a professional legal advisor in his capacity as such, (3) the communications relating to that purpose, (4) made in confidence, (5) by the client, (6) are at his instance permanently protected, (7) from disclosure by himself or by the legal advisor, (8) except the protection be waived.

Illinois EPA v. Celotex Corp., PCB No. 79-145, 1984 Ill. ENV LEXIS 568, at *6 (Ill.Pol.Control.Bd. Dec. 6, 1984) (citing 8 Wigmore, Evidence, Sec. 2292). In addition, regarding the confidentiality requirement, the Board has held that “the factual basis for Agency decision-making on permits does not result in an expectation of confidentiality.” *Waste Management, Inc. v. Illinois EPA*, PCB Nos. 84-45, 84-61, 84-68, 1984 Ill. ENV LEXIS 221, at *3 (Ill.Pol.Control.Bd. Aug. 10, 1984). In addition to Illinois EPA’s mere assertion of the attorney-client privilege, Illinois EPA has failed to establish that the documents requested in KCBX’s Deposition Riders are subject to the attorney-client privilege because Illinois EPA has not proven that such documents fall within the Board’s criteria established in *Celotex Corp.*, or that the requested documents are not a part of the Illinois EPA’s factual basis for its decision-making on KCBX’s Request for Revision. The Board should reject Illinois EPA’s mere assertions of the attorney-client privilege or “any other privilege.”

Illinois EPA asserts that a protective order is warranted in this case to protect against the disclosure of the documents requested by KCBX in its Deposition Riders “due to the time constraints imposed by the legislature applicable to this Permit Appeal, the operational needs of Respondent and the intensive deposition schedule imposed on

Respondent's counsel" Motion, ¶ 7. However, KCBX maintains that the Deposition Riders request information from Illinois EPA that "may help to clarify and narrow issues for hearing," which is one of the primary purposes of discovery. *KCBX Terminals*, 2011 Ill. ENV LEXIS 155, at *29-30 (citing *P.R.S. International, Inc. v. Shred Pax Corp.*, 184 Ill. 2d 224, 237, 703 N.E.2d 71 (1998)).

The Deposition Riders' requests for production are consistent with KCBX's Petition for Review filed in this matter, and seek documents consistent with, and in fulfillment of, the Board's mandate that the hearing in this matter "be based exclusively on the record before the Agency at the time the permit or decision was issued" 35 Ill. Admin. Code § 105.214(a); *see also KCBX Terminals Co.*, 2011 Ill. ENV LEXIS 155, at *30-31. The documents requested in the Deposition Riders are the exact type of documents contemplated by the Board for inclusion in the record of a permit appeal. KCBX's Deposition Riders constitute reasonable discovery requests. Finally, KCBX's Deposition Riders request documents that will present the Board with the complete record before the Agency at the time of the Request for Revision denial, and will help clarify and narrow the issues for hearing. The documents sought are probative and relevant. The Illinois EPA's general assertions in paragraph 7 of its Motion in no way support the Board's issuance of a protective order prohibiting the reasonable requests for production of such probative and relevant evidence in this matter. The motion should be denied.

WHEREFORE Petitioner, KCBX TERMINALS COMPANY, respectfully prays that the Hearing Officer will enter an Order denying Respondent's Motion for Protective Order Regarding Deposition Riders, and mandating Respondent to produce the documents sought in the Deposition Riders at the times and places identified in Exhibit 1 (Notices of Deposition for Robert W. Bernoteit, Michael Dragovich, Raymond Pilapil, and Joseph Kotas).

Respectfully submitted,

KCBX TERMINALS COMPANY,
Petitioner,

Dated: April 4, 2014

By: /s/ Katherine D. Hodge
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

KCBX:004/Filings Permit Appeal/Motion for Entry of Proposed Discovery Schedule

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

KCBX TERMINALS COMPANY,)	
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Petitioner,)	
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v.)	PCB 14-110
)	(Air Permit Appeal)
ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
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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 **NOTICE OF DISCOVERY DEPOSITION**, that was served upon Mr. Joseph Kotas in care of Christopher Grant, **NOTICE OF DISCOVERY DEPOSITION**, that was served upon Mr. Robert W. Bernoteit in care of Christopher Grant, **NOTICE OF DISCOVERY DEPOSITION**, that was served upon Mr. Michael Dragovich in care of Christopher Grant, and **NOTICE OF DISCOVERY DEPOSITION**, that was served upon Mr. Raymond Pilapil in care of Christopher Grant, copies of which are herewith served upon you.

Respectfully submitted,

KCBX TERMINALS COMPANY,
Petitioner,

Dated: March 28, 2014

By: /s/ Edward W. Dwyer
Edward W. Dwyer

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

THIS FILING SUBMITTED ON RECYCLED PAPER

CERTIFICATE OF SERVICE

I, Edward W. Dwyer, the undersigned, hereby certify that I have served the attached NOTICE OF DISCOVERY DEPOSITION, that was served upon Mr. Joseph Kotas in care of Christopher Grant, NOTICE OF DISCOVERY DEPOSITION, that was served upon Mr. Robert W. Bernoteit in care of Christopher Grant, NOTICE OF DISCOVERY DEPOSITION, that was served upon Mr. Michael Dragovich in care of Christopher Grant, and NOTICE OF DISCOVERY DEPOSITION, that was served upon Mr. Raymond Pilapil in care of Christopher Grant 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 March 28, 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 March 28, 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 March 28, 2014.

/s/ Edward W. Dwyer
Edward W. Dwyer

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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

NOTICE OF DISCOVERY DEPOSITION

TO: Mr. Joseph Kotas
c/o Christopher Grant
Illinois Attorney General's Office
69 West Washington Street
Suite 1800
Chicago, Illinois 60602

PLEASE TAKE NOTICE that on April 11, 2014, at 9:30 a.m., and continuing until completion, at the offices of Illinois Attorney General, 100 West Randolph Street, Chicago, Illinois, the discovery deposition of Joseph Kotas will be taken before a certified shorthand reporter and notary public in the above-referenced cause.

You are hereby further notified pursuant to the Illinois Code of Civil Procedure and the Rules of the Supreme Court of Illinois that you are by this Notice required to have present at the date, time and place stated, the said Deponent for oral examination for the purpose of discovery.

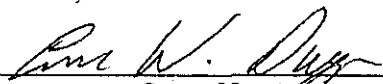
In addition, on that same day and in that same place, you are also required to produce for inspection and copying, before a notary public or other such person authorized to administer oaths, those documents listed in the attached deposition rider.

You are also commanded to produce at the deposition the following documents for

inspection and copying: (a) all documents reviewed by the deponent in preparing for this deposition; and (b) to the extent not already produced, all documents relating to the subject matters identified in the attached deposition rider.

Respectfully submitted,

KCBX TERMINALS COMPANY,
Petitioner,

By: 
One of Its Attorneys

Dated: March 28, 2014

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

KCBX:004/Fil/Permit Appeal PCB 14-110/Notice of Deposition – Joseph Kotas

KCBX Terminals Company v. Illinois Environmental Protection Agency
PCB 14-110

DEPOSITION RIDER TO JOSEPH KOTAS

1. Notes related to your review of the July 23, 2013 construction permit application ("Request for Revision").
2. Notes and reports related to your observations made at the KCBX Terminals Co. facility at 10730 South Burley Avenue, Chicago, Illinois ("Facility").
3. Notes taken during meetings, telephone calls, or discussions where your observations at the Facility, the Request for Revision, or the decision to grant or deny the Request for Revision were discussed.

KCBX:004/Filings/PCB 14-110/Notice of Deposition Rider - Kotas

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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

NOTICE OF DISCOVERY DEPOSITION

TO: Mr. Robert W. Bernoteit
c/o Christopher Grant
Illinois Attorney General's Office
69 West Washington Street
Suite 1800
Chicago, Illinois 60602

PLEASE TAKE NOTICE that on April 9, 2014, at 1:30 p.m., and continuing until completion, at the offices of HODGE DWYER & DRIVER, 3150 Roland Avenue, Springfield, Illinois, the discovery deposition of Robert W. Bernoteit will be taken before a certified shorthand reporter and notary public in the above-referenced cause.

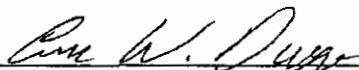
You are hereby further notified pursuant to the Illinois Code of Civil Procedure and the Rules of the Supreme Court of Illinois that you are by this Notice required to have present at the date, time and place stated, the said Deponent for oral examination for the purpose of discovery.

In addition, on that same day and in that same place, you are also required to produce for inspection and copying, before a notary public or other such person authorized to administer oaths, those documents listed in the attached deposition rider. You are also commanded to produce at the deposition the following documents for

inspection and copying: (a) all documents reviewed by the deponent in preparing for this deposition; and (b) to the extent not already produced, all documents relating to the subject matters identified in the attached deposition rider.

Respectfully submitted,

KCBX TERMINALS COMPANY,
Petitioner,

By: 
One of Its Attorneys

Dated: March 28, 2014

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

KCBX:004/Fil/Permit Appeal PCB 14-110/Notice of Deposition – Robert Bernoteit

KCBX Terminals Company v. Illinois Environmental Protection Agency
PCB 14-110

DEPOSITION RIDER TO ROBERT W. BERNOTEIT

1. Notes related to your review of the July 23, 2013 construction permit application ("Request for Revision").
2. Draft permits that address the activities described in the Request for Revision.
3. Notes taken during meetings, telephone calls, or discussions where the Request for Revision or the decision to grant or deny the Request for Revision was discussed.

KCBX:004/Filings/PCB 14-110/Notice of Deposition Rider - Bernoteit

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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

NOTICE OF DISCOVERY DEPOSITION

TO: Mr. Michael Dragovich
c/o Christopher Grant
Illinois Attorney General's Office
69 West Washington Street
Suite 1800
Chicago, Illinois 60602

PLEASE TAKE NOTICE that on April 9, 2014, at 9:00 a.m., and continuing until completion, at the offices of HODGE DWYER & DRIVER, 3150 Roland Avenue, Springfield, Illinois, the discovery deposition of Michael Dragovich will be taken before a certified shorthand reporter and notary public in the above-referenced cause.

You are hereby further notified pursuant to the Illinois Code of Civil Procedure and the Rules of the Supreme Court of Illinois that you are by this Notice required to have present at the date, time and place stated, the said Deponent for oral examination for the purpose of discovery.

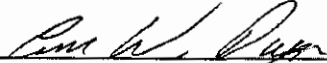
In addition, on that same day and in that same place, you are also required to produce for inspection and copying, before a notary public or other such person authorized to administer oaths, those documents listed in the attached deposition rider.

You are also commanded to produce at the deposition the following documents for

inspection and copying: (a) all documents reviewed by the deponent in preparing for this deposition; and (b) to the extent not already produced, all documents relating to the subject matters identified in the attached deposition rider.

Respectfully submitted,

KCBX TERMINALS COMPANY,
Petitioner,

By: 
One of Its Attorneys

Dated: March 28, 2014

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

KCBX:004/Fil/Permit Appeal PCB 14-110/Notice of Deposition – Michael Dragovich

KCBX Terminals Company v. Illinois Environmental Protection Agency
PCB 14-110

DEPOSITION RIDER TO MICHAEL DRAGOVICH

1. Notes related to your review of the July 23, 2013 construction permit application ("Request for Revision").
2. Draft permits that address the activities described in the Request for Revision.
3. Notes taken during meetings, telephone calls, or discussions where the Request for Revision or the decision to grant or deny the Request for Revision was discussed.

KCBX:004/Filings/PCB 14-110/Notice of Deposition Rider - Dragovich

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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

NOTICE OF DISCOVERY DEPOSITION

TO: Mr. Raymond Pilapil
c/o Christopher Grant
Illinois Attorney General's Office
69 West Washington Street
Suite 1800
Chicago, Illinois 60602

PLEASE TAKE NOTICE that on April 10, 2014, at 9:00 a.m., and continuing until completion, at the offices of HODGE DWYER & DRIVER, 3150 Roland Avenue, Springfield, Illinois, the discovery deposition of Raymond Pilapil will be taken before a certified shorthand reporter and notary public in the above-referenced cause.

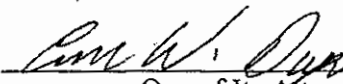
You are hereby further notified pursuant to the Illinois Code of Civil Procedure and the Rules of the Supreme Court of Illinois that you are by this Notice required to have present at the date, time and place stated, the said Deponent for oral examination for the purpose of discovery.

In addition, on that same day and in that same place, you are also required to produce for inspection and copying, before a notary public or other such person authorized to administer oaths, those documents listed in the attached deposition rider. You are also commanded to produce at the deposition the following documents for

inspection and copying: (a) all documents reviewed by the deponent in preparing for this deposition; and (b) to the extent not already produced, all documents relating to the subject matters identified in the attached deposition rider.

Respectfully submitted,

KCBX TERMINALS COMPANY,
Petitioner,

By: 
One of Its Attorneys

Dated: March 28, 2014

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

KCBX:004/Fil/Permit Appeal PCB 14-110/Notice of Deposition - Raymond Pilapil

KCBX Terminals Company v. Illinois Environmental Protection Agency
PCB 14-110

DEPOSITION RIDER TO RAYMOND PILAPIL

1. Notes related to your review of the July 23, 2013 construction permit application ("Request for Revision").
2. Draft permits that address the activities described in the Request for Revision.
3. Notes taken during meetings, telephone calls, or discussions where the Request for Revision or the decision to grant or deny the Request for Revision was discussed.

KCBX:004/Filings/PCB 14-110/Notice of Deposition Rider - Pilapil