

ILLINOIS POLLUTION CONTROL BOARD  
MARCH 25, 2014

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

REPORT OF THE PROCEEDINGS had at the hearing on a motion of the above-entitled cause before the Honorable BRADLEY HALLORAN, Hearing Officer, Illinois Pollution Control Board, 100 West Randolph Street, Room 9-031, Chicago, Illinois, on the 29th day of April, 2014, at the hour of 9:02 a.m.

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1 A P P E A R A N C E S:

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17 OFFICE OF THE ATTORNEY GENERAL  
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Appeared on behalf of the Respondent;

REPORTED BY:

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THE WITNESS: MICHAEL ESTADT

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1 HEARING OFFICER HALLORAN: Good  
2 morning. My name is Bradley Halloran. I'm a  
3 Hearing Officer with the Illinois Pollution  
4 Control Board. I'm also assigned to this matter  
5 entitled KCBX Terminals Company, petitioner,  
6 versus the IEPA, respondent.

7 The case number is PCB 14-110.  
8 This hearing has been publically noticed pursuant  
9 to the Board's regulations and procedures and will  
10 be conducted in accordance with Section 101.600  
11 and Section 105.200. This is a permit appeal. In  
12 this case, the Agency issued a permit appeal  
13 denial in response to appeals under -- excuse me.  
14 Let me start over.

15 In this case, the Agency issued  
16 a permit denial in response to KCBX's request for  
17 revision to revise a construction permit for its  
18 south facility. KCBX appeals on the grounds that  
19 the Agency's decision to deny the permit was  
20 arbitrary and capricious. KCBX also argues that  
21 the Agency's decision was not supported nor  
22 required by the act or board regulations and is  
23 not necessary to prevent noncompliance with the  
24 air act or regulations.

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1 I also note for the record that  
2 I will not be making the ultimate decision in this  
3 case. That decision will be left to the four  
4 Board members. Speaking of which, it is my  
5 pleasure to introduce Member Burke and Member  
6 Zalewski and I also want to mention Melissa Reeks  
7 is here. She has been our intern doing an  
8 outstanding job and today is her last day on the  
9 Board.

10 Now, are there any members of  
11 the public out there that are not affiliated with  
12 the parties? Everybody is here. You're -- we  
13 have two people? Terrific. Do you wish to make  
14 public comment or an oral statement or anything of  
15 that sort? If you do, you can tell me later and  
16 you can make it on the record if you like. All  
17 right. We also had a motion to exclude witnesses.  
18 It was an uncontested motion by the Agency. That  
19 was granted. So, Mr. Grant, let me know when you  
20 want the exclusion to take place. Now or --

21 MR. GRANT: Yeah, I think now  
22 probably.

23 HEARING OFFICER HALLORAN: Okay. So  
24 any of the witnesses you can sit in our lovely

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1 waiting room by the elevator.

2 MR. SWEDLOW: Should I close the  
3 door?

4 HEARING OFFICER HALLORAN: Sure.  
5 Well, you know what, no. It is too hot in here.

6 MR. GRANT: If they have good  
7 hearing, they have good hearing.

8 MR. SWEDLOW: He promises not to  
9 listen.

10 HEARING OFFICER HALLORAN: With that  
11 said, I'd like to have the parties to introduce  
12 themselves. KCBX?

13 MS. HODGE: Kathy Hodge with the law  
14 firm of Hodge, Dwyer & Driver, Springfield,  
15 Illinois here today representing KCBX Terminals  
16 Company.

17 MR. READ: Matt Read from the law  
18 firm of Hodge, Dwyer & Driver representing KCBX.

19 MR. DWYER: Ed Dwyer from the law  
20 firm Hodge, Dwyer & Driver representing KCBX.

21 MR. SWEDLOW: Stephen Swedlow from  
22 Quinn Emanuel also representing KCBX.

23 MS. PAMENTER: Kathryn Pamenter with  
24 the Illinois Attorney General's Office

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1 representing the Illinois Environmental Protection  
2 Agency.

3 MR. GRANT: I'm Chris Grant with the  
4 Attorney General's Office also representing  
5 Illinois EPA.

6 MR. PETTI: Robert Petti. Illinois  
7 Attorney General's Office representing Illinois  
8 EPA.

9 HEARING OFFICER HALLORAN: And  
10 before we get started I'd kind of like to qualify  
11 some things here. We had a motion to compel filed  
12 by KCBX yesterday, production of documents  
13 responsive to a deposition rider for Julie  
14 Armitage. We had a response from Ms. Pamentter,  
15 from the Agency, and I'm not sure. Is this moot,  
16 this motion to compel? According to petitioners,  
17 the motion to compel is baseless and must be  
18 denied. I'm not sure how to read that.

19 MS. PAMENTER: I'm trying to think.  
20 I want to answer your question appropriately  
21 because I don't know that we get to determine  
22 whether their motion is moot, but to answer the  
23 question I believe that we have responded within  
24 the response with respect to the documents in the

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1 supplement that correspond to the deposition rider  
2 for Ms. Armitage.

3 HEARING OFFICER HALLORAN: Ms.  
4 Hodge?

5 MR. DWYER: I'll address this,  
6 Mr. Halloran. This is Ed Dwyer. That was the  
7 whole issue and if the state's position or  
8 representation here today is that they have  
9 complied with the Board's order which required  
10 them to provide documents that were responsive to  
11 the deposition rider and if the state's  
12 representation is they have done so, then we will  
13 withdraw the motion to compel.

14 HEARING OFFICER HALLORAN: Okay.  
15 But I guess that's yet to be seen.

16 MR. DWYER: I mean, we don't know  
17 and if the state's representation today is they  
18 have done so, then we would withdraw the motion.  
19 That is the issue that is not clear to us.

20 HEARING OFFICER HALLORAN: I'll  
21 withhold this motion to compel for later and I  
22 just want the record to reflect that KCBX also  
23 filed a second motion to supplement the record  
24 last night. Agency, do you plan -- I can't rule



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1 on it obviously. You have to take it with the  
2 cases up to the Board. Do you plan on filing a  
3 response to that?

4 MS. PAMENTER: We do. We received  
5 this at 4:15 yesterday the day before the hearing.  
6 The first two exhibits that are referred to in the  
7 motion to supplement were actually attached to  
8 their petition that was filed on February 21st of  
9 2014. They filed a supplement, a motion to  
10 supplement the record, on April 8th, 2014. So at  
11 the very least those two were available to them.  
12 With respect to additional ones, we do intend to  
13 respond that they were aware of these documents  
14 to the extent they wanted to file a motion to  
15 supplement well in advance of yesterday as a  
16 result of the depositions that were taken. So we  
17 will need an opportunity to respond to that. We  
18 feel that this was an 11th hour tactic and we just  
19 simply have not had the opportunity to spend time  
20 with those documents --

21 HEARING OFFICER HALLORAN: I  
22 understand.

23 MS. PAMENTER: -- to prepare for  
24 this hearing that is today.

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1 HEARING OFFICER HALLORAN: I  
2 understand and the Board will take that up in due  
3 course. Anything else we need to talk about  
4 before we get to opening?

5 MR. SWEDLOW: Just a procedural  
6 question on the documents that will be decided by  
7 the Board whether or not they're part of the  
8 record. Can we ask questions of witnesses of  
9 these documents and then the Board will either  
10 allow those documents to be part of the record or  
11 not?

12 HEARING OFFICER HALLORAN: Well,  
13 when that comes to pass, I'm sure the state will  
14 object. At that point, since the record is not --  
15 the supplements aren't in the record yet, we would  
16 have to, depending on my ruling, take it as an  
17 offer of proof, but if that happens I would like  
18 to make it clear where that section of the  
19 transcript is totally, you know, for the offer of  
20 proof questioning these second amended or  
21 supplements. I'm not clear, but --

22 MR. SWEDLOW: I think that's what I  
23 was going to propose. So in terms of questioning,  
24 all of these documents are documents from IEPA's

1 files and essentially what happened was when we  
2 looked for whether something was in the record or  
3 not that was produced by IEPA, if a particular  
4 permit or revision or document wasn't in the  
5 record, then we supplemented it here so it could  
6 be part of the record.

7 We can ask the questions about  
8 the interactions with IEPA separately from the  
9 document and then say "Now, look at the document"  
10 and then that part would be the offer of proof  
11 separate from the question and answer that will  
12 exist regardless of whether the document is in the  
13 record.

14 HEARING OFFICER HALLORAN: Right.  
15 And please announce that and it will give the  
16 Agency a chance to object and then I'll make my  
17 rulings.

18 MS. PAMENTER: Just to clarify for  
19 procedural purposes. To the extent they're going  
20 to make an offer of proof with respect to these  
21 exhibits that we're going to object to, we may  
22 also then ask questions so that the record is  
23 clear with respect to those exhibits, but we don't  
24 want that to be seen as a waiver of the objection

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1 that we may file after this hearing is complete.

2 HEARING OFFICER HALLORAN: Yes.

3 That's only fair.

4 MS. PAMENTER: Okay. Thank you.

5 HEARING OFFICER HALLORAN: All  
6 right. KCBX, would you like to make an opening or  
7 waive it or save it for post-hearing brief?

8 MR. SWEDLOW: We'd like to make a  
9 brief opening. So the Hearing Officer has already  
10 summarized why we're here today. The problem with  
11 the permit denial in this case is that the permit  
12 was denied for policy change reasons,  
13 unadjudicated complaint reasons and other reasons  
14 that are not permissible under Rule 39(a) for  
15 denying a permit and the reason that we know that  
16 is that the permit in this case was a revision  
17 seeking to take 12 pieces of equipment; ten  
18 conveyors, a box hopper and a stacker from a  
19 permitted facility called -- I'll call it KCBX  
20 north to another permitted facility KCBX south.  
21 Those pieces of equipment were already permitted  
22 and they were seeking to be transferred to another  
23 site that was already permitted. The fugitive  
24 dust plan for KCBX south where the equipment

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1 should have been transferred and approved under  
2 the permit was also approved.

3           The reason that we know that the  
4 only thing that was requested in this permit  
5 revision was the transfer of these pieces of  
6 equipment is the permit application at record cite  
7 187 explicitly states that. It states that  
8 nothing would be changed with respect to  
9 throughput limits either on an annual or monthly  
10 basis, nothing would change with respect to  
11 emission limitations, nothing would change with  
12 respect to testing, monitoring, recordkeeping or  
13 reporting.

14           So what we're left with is the  
15 Illinois Environmental Protection Agency changed  
16 its policy or decided to rely upon unadjudicated  
17 complaints related to a site and use that to  
18 determine that a permit should be denied, but the  
19 rule doesn't allow for that.

20           Some of the justifications that  
21 will be part of this record relate to the  
22 determination that the dust suppression system at  
23 the site was somehow inadequate, but what the  
24 Agency knew and was presented with on December 5th

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1 was that KCBX had made changes to the site for the  
2 sole purpose of improving the dust suppression  
3 system at the site. They added 42 new dust  
4 suppression water cannons, two additional water  
5 trucks, a street sweeper, an automated weather  
6 station and IEPA knew all of this because all of  
7 this was presented to IEPA a month before the  
8 permit denial.

9 IEPA also never notified KCBX  
10 that any aspect of its permit was incomplete. So  
11 as a matter of law, IEPA cannot deny the permit  
12 based on incompleteness. The December 10th letter  
13 from 2013, called a Wells letter, did not identify  
14 any incompleteness. It simply identified the  
15 unadjudicated complaints and alleged violations,  
16 but that isn't a notice of incompleteness. That  
17 is a Wells letter, which under the law is  
18 considered different. KCBX also asked the Agency  
19 twice in the context of this permit application if  
20 any additional information was needed or if any  
21 additional information would be requested and both  
22 times IEPA said "No, no additional information was  
23 needed or requested."

24 With respect to the two

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1 categories of information that IEPA is now  
2 claiming were insufficiently provided for the  
3 Agency to determine whether a violation may occur,  
4 those two categories are equipment specific  
5 emissions calculations for the 12 pieces of  
6 equipment. These pieces of equipment were already  
7 permitted by IEPA without the equipment specific  
8 emissions calculations at KCBX north and it was  
9 the same pieces of equipment that were going to be  
10 used for the same purpose after they would be  
11 transferred to South.

12                   The other category of  
13 information that was allegedly insufficient  
14 relates to the processed weight rate calculation.  
15 However, KCBX did submit sufficient information  
16 for IEPA to easily calculate compliance with  
17 212.321. In fact, the calculation for processed  
18 weight rate would result in weight rate  
19 calculations that were less than one percent of  
20 the regulated limit.

21                   So none of the information that  
22 was allegedly deficient from the application was  
23 actually needed to analyze whether a violation may  
24 occur at the site of the Illinois Environmental

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1 Protection Act and as will be made part of this  
2 record all of the remaining allegations relate to  
3 speculations of the dust plan being insufficient  
4 even though it has been approved at KCBX's South  
5 location for five years and the only changes made  
6 to that were significant improvements and those  
7 improvements were presented in an amended fugitive  
8 dust plan two months before this permit was  
9 denied.

10 HEARING OFFICER HALLORAN: Thank  
11 you, sir. Ms. Pamentner?

12 MS. PAMENTER: We'd like to reserve  
13 until the presentation of our case.

14 HEARING OFFICER HALLORAN: All  
15 right. Thank you.

16 MS. PAMENTER: Thank you.

17 HEARING OFFICER HALLORAN: Before I  
18 forget, I forgot to mention today's date is April  
19 29th, 2014, and it was approximately 9:00 a.m.  
20 when we started this hearing. KCBX, call your  
21 first witness.

22 WHEREUPON:

23 MICHAEL ESTADT

24 called as a witness herein, having been first duly



1 sworn, deposeth and saith as follows:

2 D I R E C T E X A M I N A T I O N

3 BY MR. SWEDLOW

4 **Q. Good morning. Can you state and**  
5 **spell your name for the record.**

6 A. My name is Michael Estadt. It's  
7 E-S-T-A-D-T.

8 **Q. What is your current job position**  
9 **and responsibilities?**

10 A. I'm the operations manager for KCBX  
11 Terminals. Both the north and south plant. I'm  
12 responsible for day-to-day activities at the site.

13 **Q. How long have you been the**  
14 **operations manager at the KCBX south facility?**

15 A. Since December of 2012.

16 **Q. How long have you been working with**  
17 **respect to KCBX's North facility?**

18 A. I started with KCBX in April of  
19 2009.

20 **Q. Have -- has your responsibility at**  
21 **KCBX north been continuous for that entire period**  
22 **of time?**

23 A. No, I stopped being responsible or  
24 having any responsibilities for KCBX north in

1 December 2012 and then I picked up  
2 responsibilities again for KCBX north in November  
3 of 2013.

4 **Q. Do the operations -- does the**  
5 **operations manager have any responsibilities**  
6 **related to dust suppression at KCBX north and**  
7 **South?**

8 A. Well, yes. Generally, I'm  
9 responsible for the activities at each of the  
10 sites.

11 **Q. Do those activities include dust**  
12 **suppression?**

13 A. Yes, they do.

14 **Q. Can you briefly describe your**  
15 **college education and then your jobs up to April**  
16 **2009 when you started working for KCBX north?**

17 A. Yeah. I graduated from Rowan  
18 University in Glassboro, New Jersey in 2000 with a  
19 chemical engineering degree. From there, I worked  
20 for a glass company making glass bottles,  
21 decorating glass bottles, things of that nature.  
22 I went to a company called James Hardie Boating  
23 Products where we made fiber cement siding and  
24 then worked for a concrete company where I was a

1 plant manager of a ready mix operation. We made  
2 concrete. So we dealt with stone, sand, bulk  
3 materials of that nature and then I came to KCBX.

4 **Q. So for how many years have you been**  
5 **working for companies related to the storage**  
6 **and/or handling of bulk materials?**

7 A. I've been in the industry processing  
8 for about 15 years.

9 **Q. When did KCBX acquire what we'll now**  
10 **call KCBX south?**

11 A. December 2012.

12 **Q. So from the moment KCBX south came**  
13 **into existence you've been the operations manager?**

14 A. Yes.

15 **Q. Who did KCBX purchase the south site**  
16 **from?**

17 A. From DTE.

18 **Q. Can you generally describe the --**  
19 **what happens at the site? What are the operations**  
20 **that take place there?**

21 A. Yeah, it's a coal terminal. It's a  
22 coal and petcoke terminal. So we bring coal and  
23 petcoke in through different modes. We can bring  
24 material in by barge, we can bring material in by

1 train or rail car, we can bring material in by  
2 truck and then we also load material out. So we  
3 can send it out by barge, by truck, vessel, lake  
4 vessel.

5 **Q. Is material staged at the property?**

6 A. Yes.

7 **Q. What does that mean?**

8 A. So the material comes in, the  
9 customer asks us to take the material in, we stage  
10 the material on site and then they'll let us know  
11 when they want it out. So, for instance, they'll  
12 send a train to us. We'll unload the train. The  
13 train will be staged on site and then from there  
14 when the customer wants the material at its final  
15 destination they'll ask us to ship it out whatever  
16 mode they ask for.

17 **Q. Do you have an understanding of**  
18 **approximately how long operations at KCBX north**  
19 **have been ongoing like this?**

20 A. Since 1990, I believe. Yeah.

21 **Q. Do you have any understanding as to**  
22 **how long operations at KCBX south, prior to KCBX's**  
23 **ownership, has been going?**

24 A. I think it was 2006 is when that

1 terminal opened up.

2 **Q. Can you turn to record cite 163. Do**  
3 **you recognize that as a picture of something?**

4 A. Yes, I do. It is a picture of KCBX  
5 south. It is a map.

6 MR. SWEDLOW: We blew this map up so  
7 it would be easier to see. Is it okay if I put a  
8 blown up version of 163 on the easel.

9 HEARING OFFICER HALLORAN: Any  
10 objection?

11 MS. PAMENTER: I think it's okay.

12 HEARING OFFICER HALLORAN: Thank  
13 you. Go ahead, Mr. Dwyer.

14 MR. SWEDLOW: It's already there.

15 MR. DWYER: Is there somewhere else  
16 you'd like me to put this?

17 MR. GRANT: Not in front of my face.

18 MS. PAMENTER: I'm fine with that.  
19 Thank you, though.

20 BY MR. SWEDLOW:

21 **Q. If you could, can you briefly walk**  
22 **us through what operations are shown on this map**  
23 **starting at the very bottom?**

24 MS. PAMENTER: For clarification

1 because we're going -- there may be a lot of maps.

2 Can we have a time period for what this map

3 depicts? Are you talking about today?

4 MR. SWEDLOW: Are you asking me to

5 ask him that question first?

6 MS. PAMENTER: I object. We don't

7 have a time period with respect to that.

8 BY MR. SWEDLOW:

9 Q. Starting from the bottom of the map,  
10 can you identify what operations are shown?

11 A. Okay. Well, generally just to  
12 orient --

13 HEARING OFFICER HALLORAN: I'm  
14 sorry. Is there a timeline for this?

15 MR. SWEDLOW: I wasn't going to ask  
16 him that question first. Do I have to ask him  
17 that question first?

18 HEARING OFFICER HALLORAN: You can  
19 proceed, but do ask him that.

20 MR. SWEDLOW: I will.

21 BY THE WITNESS:

22 A. Just to orient everyone on the map  
23 this is pointing north. So north is going in this  
24 direction. This would be the river and then

1 the -- from where -- this is the barge and loading  
2 area. So from there we can unload barges and then  
3 this area over here is fixed conveyance. This is  
4 a rail car unloading system. It is also referred  
5 to as a rotary dump. So we can take trains in  
6 there. We dump the rail cars and then it goes out  
7 through this fixed conveyance. And then this  
8 section right here with the semicircle is the ship  
9 loader. We can load vessels and barges to -- you  
10 know, lake vessels along this area here.

11 BY MR. SWEDLOW:

12 **Q. With respect to the fixed conveyance**  
13 **system and the ship loaders, is that an accurate**  
14 **representation of the current operations at the**  
15 **site?**

16 A. Yes.

17 **Q. Is it an accurate representation of**  
18 **the operations at the time KCBX acquired the**  
19 **facility from DTE?**

20 A. Yes, this was existing at the time  
21 of purchase.

22 **Q. At the very bottom, there is a**  
23 **backwards L, do you see that?**

24 A. Yes.

1           **Q.           What is that?**

2           A.           That is the barge unloading and then  
3 in this drawing it says "Future transfer tower,  
4 future barge and loading area, future transfer  
5 tower again." So it is clouded out. At the time  
6 of this drawing, this was proposed. It wasn't  
7 complete.

8           **Q.           What is the time of this drawing, if**  
9 **you know?**

10          A.           This was issued for review on  
11 November 1st, 2013.

12          **Q.           Do you know for what purpose this**  
13 **drawing was created?**

14          A.           This drawing was created for an FPOP  
15 that we submitted to the IEPA.

16          **Q.           Can you describe briefly what an**  
17 **FPOP is?**

18          A.           It is a Fugitive Particulate  
19 Operating Program.

20          **Q.           Does that FPOP relate to a fugitive**  
21 **dust plan?**

22          A.           Yes, it does.

23          **Q.           With respect to the area that is in**  
24 **the bubble or cloud, is that representative of the**



1 **current operations as of today?**

2 A. It is.

3 **Q. Were those proposed future**  
4 **operations permitted by EPA in the meantime?**

5 A. I don't understand.

6 **Q. Are those operations as you**  
7 **understand permitted?**

8 A. Yes, this is permitted under our  
9 permit. Yes. Sorry.

10 **Q. And then if you can move up further**  
11 **on the map and describe what else is represented.**

12 A. Okay. As we go along, as I said,  
13 this is the rotary dump rail loading and then the  
14 barge loading, going further up the map as far as  
15 operations go, this is the rail unloading area,  
16 this is the bottom dump system. Upon acquisition,  
17 this was not at the terminal. This was something  
18 that was added over time after we purchased the  
19 property.

20 **Q. What are the two gigantic circles**  
21 **and the big pile shape?**

22 A. So these areas here that you're  
23 talking about these are depicted as storage piles.  
24 Part of the permit says that on our map that

1 accompanies our fugitive particulate operating  
2 plant that we had to depict generally where  
3 storage piles are. You know, we store material,  
4 stage material along the site here. So these  
5 storage piles are just representations of  
6 generally where we would stage material. You  
7 know, it doesn't mean if you were to come to the  
8 site there would be a pile right here. I mean,  
9 there is piles that would be in this area here.  
10 So, generally, this is a storage area. That is  
11 the large circles. If you continue to move out  
12 into this bubble here, you'll see a future wheel  
13 wash which was still under construction at the  
14 time of this photo at this day.

15 **Q. When did the future wheel wash**  
16 **become functional?**

17 A. I don't remember the exact date. It  
18 was I believe the end of November.

19 **Q. Is that current wheel wash**  
20 **functional as of today?**

21 A. Yes, it is.

22 **Q. What is the purpose of a wheel wash?**

23 A. Well, I talked about one of the  
24 modes of transportation. You know, we take

1 material out by truck. So in order to reduce  
2 carry out, you know, dirt on the wheels, we have a  
3 wheel wash. So the trucks will come on site.  
4 They'll scale in, get loaded and then before they  
5 leave to go and scale out they have to go through  
6 the truck wheel wash. So it cleans the wheels and  
7 the side of the truck.

8 **Q. Are all trucks leaving the site**  
9 **required to go over the wheel wash when the wheel**  
10 **wash is functional?**

11 A. All trucks that we load are required  
12 to, yes.

13 **Q. Is a wheel wash part of the dust**  
14 **suppression system at the site today?**

15 A. Yes, it is one of the many parts of  
16 the dust suppression system.

17 **Q. Can you identify using the map other**  
18 **parts of the dust suppression system as of today?**

19 A. I can do that. Yeah, we talked  
20 about the wheel wash, which is operating today,  
21 and then if you take a look each one of these dots  
22 they represent what we call a sprinkler. A  
23 sprinkler location. You also hear them referred  
24 to as dust suppression cannons. What each one of

1 these dots represent is a cannon or sprinkler 60  
2 foot high on a galvanized pole that rotates to  
3 suppress dust on the piles. There are 42 of the  
4 dots right now that are operational with a plan  
5 for a 43rd, but that is what is depicted on this  
6 site, on this map as well. Some of these other  
7 dust suppression things that are at the facility  
8 are along the fixed conveyance here. There are  
9 spray bars that can also add water to each  
10 transfer point along that system.

11 **Q. Can you describe what a spray bar**  
12 **is?**

13 A. Yeah, a spray bar is exactly what it  
14 sounds like. It is a bar. It has nozzles on it.  
15 Water goes through it and it sprays so as material  
16 goes from one transfer point to the next along  
17 this fixed conveyance here, water will spray into  
18 the material and add moisture to help suppress  
19 dust. There is also the baghouse that was part of  
20 the original purchase. That is connected to the  
21 rotary dumper as well. So that is another dust  
22 suppression feature at the site.

23 **Q. Are there any portable water**  
24 **application devices on the site?**

1           A.       Well, yeah, there is other ways. We  
2 do have water trucks. Currently we have three  
3 water trucks at the site. They range from 5,000  
4 gallon water trucks to 8,000 gallon water tank  
5 trucks. So they carry a substantial amount of  
6 water around. We talked about the truck wash. We  
7 also use a street sweeper to treat the roads.  
8 Again, where you see the roads one, two and three  
9 we contract a third-party to sweep the roads.  
10 They also sweep out along the road where they exit  
11 out. So to supplement the wheel wash that is what  
12 we do.

13           **Q.       Are these water trucks like pickup**  
14 **trucks with tanks attached to them?**

15           A.       No. No. No. They're big off-road  
16 water trucks with large tires. They're pretty  
17 big. I don't have a picture of one on me.

18           **Q.       Does the site have the ability to**  
19 **apply surfactant to the piles?**

20           A.       Yes, we do. We supply surfactant,  
21 encrusting agents through the water trucks. That  
22 is our primary means of applying surfactant.

23           **Q.       Has KCBX had the ability and has it**  
24 **been able to apply surfactant to the site from the**

1 **moment that it purchased the site through today?**

2 A. Yes.

3 **Q. Is there an additional mode of**  
4 **delivery for surfactant that KCBX is working on?**

5 A. Yes, there is. So we talked about  
6 the cannons, right? So in each one of the houses,  
7 valve houses, that feed the system, we do have a  
8 surfactant tank and we're looking to trial  
9 applying surfactant through the cannons as well.

10 **Q. Looking back at the map, which is at**  
11 **R186 for the record, the 42 water cannons that you**  
12 **identified, were those part of the FPOP or the**  
13 **permitted dust suppression plant at the time KCBX**  
14 **acquired the south facility?**

15 A. No. No. That was something that we  
16 planned to add after the purchase. The part of  
17 the facility -- there were cannons local to the  
18 system here. That was the permitted system where  
19 the cannons that were local to the fixed  
20 conveyance and that was what was permitted at the  
21 time and that's what we operated prior to November  
22 1st.

23 **Q. At the time KCBX acquired the south**  
24 **facility on December 20th, 2012, did KCBX have any**

1 **way to apply dust suppression in the form of water**  
2 **or surfactant to the piles identified on the map?**

3 A. Yeah. Yes. As we discussed, we use  
4 a water truck to treat the piles as well as the  
5 dust suppression system that was originally at the  
6 site.

7 **Q. How does a water truck apply water,**  
8 **for example, to a 30 foot high pile?**

9 A. Well, there is a cannon on the water  
10 truck. So there is a pump that sprays water  
11 through a cannon and shoots it -- it can shoot it  
12 up to 60 foot. Even higher than that in some  
13 cases.

14 **Q. Does the water truck have the**  
15 **ability to actually drive on the pile?**

16 A. Yeah. I mean, again, these are  
17 large machines. It is not like a pickup truck  
18 like you asked. I mean, it can get up on the side  
19 of the pile. You know, some of the other dust  
20 suppression things that we do we have best  
21 management practices. So we groom piles so that  
22 water trucks can drive up the side of them and  
23 apply surfactant and water.

24 **Q. Can you explain for the record and**

1 **for those of us that might not know, what is**  
2 **grooming a pile?**

3 A. So when we talk about grooming a  
4 pile it's, you know, when we have active piles we  
5 groom them so that they don't have peaks and  
6 edges. So we try to make it so that they're  
7 turtle shelled so to speak is probably the best  
8 way to describe it.

9 **Q. Can you turn to R186 in the record.**  
10 **Are you familiar with that document?**

11 A. Yes.

12 **Q. What is it?**

13 A. Can I review it?

14 **Q. Yes.**

15 A. Yes. It is the application for  
16 the -- to move the portable conveyors from KCBX  
17 north to KCBX south.

18 **Q. On R188, is that your signature?**

19 A. Yes.

20 **Q. Did you review the information**  
21 **contained in this letter before it was submitted**  
22 **to the Illinois Environmental Protection Agency?**

23 A. Yes. Yes, I did.

24 **Q. You said that this letter is the**



1 **request to move equipment from KCBX north to KCBX**  
2 **south. Can you describe the equipment that KCBX**  
3 **was requesting to be moved?**

4 A. Yeah. It is here in this paragraph.  
5 It is ten portable conveyors, one box hopper and  
6 one stacker.

7 **Q. Can you describe what a portable**  
8 **conveyor is?**

9 A. Okay. So we talked a little bit  
10 about modes of transportation, right, and storage  
11 piles. So you see that we've got our systems over  
12 here, right, they're over on the far side of the  
13 map. I don't know how to -- I should probably say  
14 that better. You'll see these systems are on the  
15 far south. In order to get material from the  
16 south side of the site to the north side, what we  
17 need to do is have some sort of conveyance.

18 Either that or we'd have to run motors back and  
19 forth or dosers and move the material. It is not  
20 very sufficient and a much better way to transfer  
21 it is on the conveyor. So what we would do is we  
22 would use these portable conveyors. Again,  
23 they're no different than the fixed conveyor. The  
24 only difference is that they're portable and we

1 would sort of daisy chain them together. So one  
2 conveyor would feed into the next, would feed into  
3 the next and feed into the next and it could get  
4 out here to its final location.

5 **Q. And what is a box hopper?**

6 A. So we talked about ship loading and  
7 barge loading right here on the south side of the  
8 map. There is different ways to reclaim the  
9 material, but the box hopper is how we would take  
10 the material staged at this point and get it back  
11 onto a vessel. So the portable box hopper is  
12 something that -- okay. So now we've transferred  
13 this material here. Now, we need to transfer it  
14 out. So we've taken it from the south area to the  
15 north area. Now, we need to take it outbound.

16 We would set a box hopper up and  
17 we would take mobile equipment and load the  
18 hopper. The hopper is essentially a big box,  
19 hence box hopper, and it has a conveyor that feeds  
20 out of it and, again, it would work much like a  
21 portable conveyor. So the box hopper would  
22 transfer the material from the hopper through the  
23 conveyor down onto the portable conveyors, back up  
24 to the site and then out onto the vessel or barge.

1           **Q.           Finally, what is a stacker?**

2           A.           A stacker is a conveyor just like a  
3 portable conveyor that you would put at the end of  
4 your conveyance line and the stacker has the  
5 capability to move up. So that as you -- as the  
6 material is transferred off of the conveyor, we  
7 can stack the material higher. Again, it reduces  
8 the amount of time that we have to do it. It  
9 helps improve efficiencies.

10           **Q.           Were these 12 pieces of equipment at**  
11 **the time of the request, July 23rd, 2013,**  
12 **currently used and permitted at KCBX north?**

13           A.           Yes, they were.

14           **Q.           Were they being used for the same**  
15 **purpose you've just described that they would be**  
16 **used for at KCBX south?**

17           A.           Identical, yes.

18           **Q.           Was -- if you turn to 187, which**  
19 **should be the next page. Was KCBX requesting any**  
20 **change to its throughput limitations through this**  
21 **revision permit request?**

22           A.           Yes. If you read that, you can see  
23 which throughput will be -- I mean, no, there is  
24 no request for throughput.

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1           **Q.           Is KCBX requesting in this July**  
2 **23rd, 2013, permit application any revisions to**  
3 **the emissions limitations at KCBX south?**

4           A.           No. The conveyors were really just  
5 an efficiency sort of addition to the site.

6           **Q.           Can you explain what you mean by an**  
7 **efficiency addition?**

8           A.           When we talk about throughput rates  
9 so the terminal is limited upon how many hours we  
10 have just by crew and things of that nature and  
11 then if we limit ourselves on portable conveyors,  
12 the issue would be so we run one line of portable  
13 conveyors out. If we have another transfer that  
14 comes up, we have to either stop the transfer that  
15 comes up, we have to either stop the transfer that  
16 we're working on and then breakdown the line and  
17 then set it up so we can reclaim. More portable  
18 conveyance would allow us to set one line and have  
19 another line ready to go so that we'd have the  
20 opportunity to be more efficient on our transfers  
21 and it wouldn't really increase how much we're  
22 sending out. It would just increase, you know,  
23 our ability. Our efficiencies.

24           **Q.           Are you familiar with the FPOP that**

1 **was in place at the time KCBX acquired the site?**

2 A. Yeah.

3 **Q. Did that FPOP adequately describe**  
4 **the dust suppression techniques and measures that**  
5 **were utilized at that time?**

6 MS. PAMENTER: Objection. Calls for  
7 a legal conclusion.

8 MR. SWEDLOW: I'm asking the witness  
9 as the operations manager whether the FPOP  
10 adequately described what actually happened at the  
11 site.

12 HEARING OFFICER HALLORAN:  
13 Overruled.

14 BY THE WITNESS:

15 A. Can I answer the question?

16 BY MR. SWEDLOW:

17 **Q. Yes. Go ahead.**

18 A. Yeah, the FPOP adequately described.

19 **Q. Can you turn to R116. Do you**  
20 **recognize R116?**

21 A. I do.

22 **Q. Can you describe what it is?**

23 A. It is the fugitive dust plan that we  
24 operated under upon acquisition of the terminal.

1           **Q.       Does this dust plan describe how the**  
2 **site would address potential fugitive dust from**  
3 **storage piles?**

4           A.       Yes, it does.

5           **Q.       Does this dust plan address how the**  
6 **site would address potential fugitive dust from**  
7 **traffic areas?**

8           A.       Yes, it does.

9           **Q.       Does it describe the way the site**  
10 **would address potential fugitive dust from**  
11 **conveyor loading operations?**

12          A.       It does.

13          **Q.       At some point in time, did KCBX**  
14 **propose to IEPA an amended fugitive dust plan?**

15          A.       Yes.

16          **Q.       Do you recall approximately when**  
17 **that was?**

18          A.       I believe we submitted it November  
19 1st, 2013.

20          **Q.       I might tell you the wrong page, but**  
21 **I'm going to say R150. Can you turn to R150?**

22          A.       I will.

23          **Q.       Do you recognize R150, which I think**  
24 **is a 13-page document?**

1 A. I do.

2 **Q. What is R150?**

3 A. It is an FPOP, or Fugitive  
4 Particulate Operating Plan, that we submitted on  
5 November 1st, 2013.

6 **Q. Did you review this plan before it**  
7 **was submitted to the Illinois Environmental**  
8 **Protection Agency?**

9 A. Yes.

10 **Q. Does this plan include the map that**  
11 **is depicted on that easel on R163?**

12 A. Yes, it does.

13 **Q. As of November 1st, were all 42 of**  
14 **the water cannons that are depicted on the map**  
15 **functioning?**

16 A. Yes, they were.

17 **Q. Did you ever have a meeting with the**  
18 **Illinois Environmental Protection Agency to**  
19 **specifically describe the operational and**  
20 **functional dust suppression techniques and**  
21 **mechanisms that KCBX was using at KCBX's South**  
22 **facility?**

23 A. Yeah, we did.

24 **Q. Do you recall when that meeting was?**

1           A.       I believe it was December 5th.

2           **Q.       And what did you tell the Agency at**  
3 **that meeting about the dust suppression system?**

4                   MS. PAMENTER: I'm going to object  
5 to this question. The December 5th, 2013, meeting  
6 was a meeting held with respect to the matter  
7 People of the State of Illinois versus KCBX  
8 Terminals Company. It was a settlement meeting  
9 with respect to that matter and the parties to  
10 that matter agreed that it was for settlement  
11 purposes only and as such was not -- the  
12 information related was not admissible with regard  
13 to any hearings that may be held.

14                   HEARING OFFICER HALLORAN:  
15 Mr. Brickey, could you read the question back,  
16 please?

17                               (Whereupon, the record was read  
18 as requested.)

19                   HEARING OFFICER HALLORAN:  
20 Mr. Swedlow, do you have a response to  
21 Ms. Pamenter's objection?

22                   MR. SWEDLOW: Yes. In the context  
23 of discovery in this case, two Illinois  
24 Environmental Protection Agency witnesses were



1 instructed not to answer regarding questions that  
2 relate to the sufficiency of the fugitive dust  
3 plan or FPOP. The last witness who was deposed,  
4 Julie Armitage, who will testify tomorrow, was  
5 permitted to answer questions about the  
6 sufficiency of the fugitive dust plan and  
7 indicated that she considered both the allegations  
8 in that complaint as part -- and the adequacy of  
9 the dust plan that was allegedly insufficient in  
10 that complaint as part of her basis for denying  
11 the permit. KCBX needs the opportunity to  
12 demonstrate what was actually presented to the  
13 Illinois Environmental Protection Agency so that  
14 it can defend itself from the Agency relying on  
15 the filing of a complaint as a basis for denying  
16 the claim.

17 HEARING OFFICER HALLORAN: Sure.

18 MS. PAMENTER: Ms. Armitage did not  
19 attend the December 5th meeting and we have not  
20 heard any basis to eliminate the settlement  
21 purposes only that was held at that particular --  
22 that was the basis for that particular meeting.

23 HEARING OFFICER HALLORAN: Okay.

24 Your objection is on the record. I'm going to

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1 overrule. You can answer if you're able.

2 BY THE WITNESS:

3 A. Can you ask it again?

4 BY MR. SWEDLOW:

5 **Q. Yes. At the December 5th, 2013,**  
6 **meeting, what did you describe in terms of the**  
7 **dust suppression system to the Environmental**  
8 **Protection Agency?**

9 A. Well, we went through a document  
10 like this, a map like this. It was actually a  
11 presentation that we gave them where it went  
12 through a lot of things that were discussed and we  
13 talked about the water cannons, we talked about  
14 our best management practices, we talked about the  
15 water trucks and the truck wash. All these things  
16 that were either being developed or were completed  
17 at the time.

18 **Q. Do these water cannons have a radius**  
19 **for which they can apply the water?**

20 A. Yeah. The radius is -- well, there  
21 is actually two different size cannons. So there  
22 is a four-inch cannon and there is a six-inch  
23 cannon. The four-inch feed line cannons they  
24 throw water up to a radius of 170 feet and the

1 six-inch cannons throw a radius up to 250 feet.  
2 The four-inch can deliver up to 235 gallons per  
3 minute and the six-inch can deliver up to 660  
4 gallons per minute.

5 **Q. With respect to these water cannons,**  
6 **the water trucks you previously described and the**  
7 **other dust suppression techniques, do those apply**  
8 **as the dust suppression techniques for the**  
9 **portable conveyors, box hopper and stacker as they**  
10 **would be configured at KCBX south?**

11 A. Yeah. All of the parts of the dust  
12 suppression, you know, they supplement each other,  
13 you know, so the cannons can wet the area where it  
14 is transferred and the water truck can go and  
15 directly supply water or surfactant directly to an  
16 area. So, yes, they do. Wherever those pieces of  
17 equipment would be, we'd have that capability.  
18 Again, like we talked about, we store material  
19 inside this pad and if you take a look at the  
20 water cannons, the water cannons are where we  
21 store material. The portable conveyor would be  
22 inside that area. So, yeah.

23 **Q. Is there any portion of the area**  
24 **that we're referring to now for storage pads or**

1 **locations that can't be covered with water by the**  
2 **current water cannon system?**

3 A. No. With the water cannons and the  
4 water trucks, there is virtually nowhere that we  
5 can't get to on this site where we store material.

6 **Q. Now, separate and apart from the**  
7 **meeting that took place on December 5th, 2013,**  
8 **were you present for any inspections by the**  
9 **Illinois Environmental Protection Agency prior to**  
10 **the denial of this permit in 2013?**

11 A. Yes.

12 **Q. Do you recall approximately when**  
13 **those inspections took place?**

14 A. There was several of them. Some of  
15 them -- some of them I was more involved in  
16 others. In other words, I would just meet the  
17 inspectors and there was some where I actually  
18 gave the tours. I don't remember all the exact  
19 dates, but there were some in September and I  
20 believe there were some in November as well.

21 **Q. During any of these inspections, did**  
22 **you specifically describe and demonstrate the**  
23 **water cannon dust suppression system to the**  
24 **Illinois Environmental Protection Agency?**

1           A.       On more than one occasion. I mean,  
2 during construction, we had -- like I said, some  
3 of them were in September, I believe, and during  
4 construction I spent some time reviewing it with  
5 one of the inspectors, you know, as we were  
6 constructing it just to give him information on,  
7 you know, where we were and where we were going  
8 to. That was Joe Kotas and then there was a  
9 multimedia I guess you would call it inspection  
10 and at that time we had the system operational and  
11 they were able to see it and they seemed pretty  
12 impressed by what they saw in action.

13           **Q.       And when you say what they saw in**  
14 **action, what exactly did they see in action?**

15           A.       Well, we were able -- we cycled the  
16 cannons so they could see the water come out of  
17 the cannons. We took them to the valve houses,  
18 the north and south valve houses, so they could  
19 see really what the end product was. We showed  
20 them some of the screen shots and some of the  
21 controls that go along with it. The PLC or the  
22 programmable logic controller. However, you want  
23 to call that. But we were able to, you know, show  
24 it off to them a little bit.

1           **Q.       When you say you showed them the**  
2 **screen shots, the screen shots of what?**

3           A.       I apologize. So the system it has,  
4 you know, an operator interface. We were able to  
5 show them, you know, some of the different  
6 interfaces between, you know, with the weather  
7 system and, you know, some of the controls, the  
8 automation that goes along with it. So when I say  
9 a screen shot, you take a look at a screen and  
10 it's a screen shot. A shot of a screen like a  
11 picture.

12           **Q.       You have not yet described, at least**  
13 **that I recall, what you mean by automation. What**  
14 **is the automation in this?**

15           A.       Okay. So that probably would have  
16 been good when you asked me about dusters. Sorry  
17 about that. So the cannon system runs what we  
18 call assurance cycles. So it runs an automated  
19 cycle. That is setup as a baseline four times per  
20 day. We can go ahead and interact with the system  
21 and tell it to run more often. We can put it in  
22 what we would call a heavy cycle or continuous  
23 where the cannons would just continue to operate.  
24 So that is the automation part of it. The system

1 starts up and it runs.

2           There are other parts to the  
3 cannon system as well. There is a weather station  
4 that is integrated into the station and the  
5 weather station takes a look at wind speed,  
6 direction, and it can trigger the system to run  
7 based upon wind speed. So at a wind speed set  
8 point the cannon system will come on and it will  
9 apply water through the cannons. Also, it has the  
10 capability to measure barometric pressure and it  
11 looks at drops in barometric pressure for a  
12 trigger to run the system.

13           A lot of people on the lake look  
14 at barometric pressure drops as a precursor to  
15 storms or heavy winds on the way. So we've looked  
16 at that as well so that we can be proactive and be  
17 ahead of the storm. So the system will take a  
18 look at it and see there is a drop in barometric  
19 pressure. It will take a look at which way the  
20 wind is blowing and it will start the system  
21 cascading. So if the wind is coming out of the  
22 north or going to be potentially coming out of the  
23 north, it will start these cannons first so as the  
24 wind comes across and it potentially carries the

1 water, this material is already wetted down.

2 Q. Do you -- separate and apart from  
3 you meeting on December 5th, 2013, with IEPA  
4 representatives, did you describe for the IEPA  
5 inspector Mr. Kotas the weather station, the  
6 barometric pressure capabilities and the  
7 automation aspects of the water cannon system?

8 A. Yeah. I talked to Joe about it. He  
9 was around, you know, a few times during the thing  
10 and I just wanted to keep him updated on what  
11 direction we're in.

12 Q. When you say Joe, that's Joe --

13 A. Joe Kotas. Mr. Kotas.

14 Q. IEPA inspector?

15 A. IEPA inspector Joe Kotas.

16 Q. Can you take a look at R31.

17 A. Yes. I'm there.

18 Q. Have you seen this document before?

19 A. I have.

20 Q. In the basically upper right-hand  
21 corner, it says inspection date November 6th and  
22 19th, 2013?

23 A. Yes.

24 Q. Are those two inspections that you



1 **believe you were present for at the site and**  
2 **interacted with the IEPA inspector?**

3 A. I believe so. Yes.

4 Q. If you turn to the next page.  
5 **Actually, R33.**

6 A. Yes.

7 Q. There is a section entitled  
8 **"inspection narrative," do you see that?**

9 A. I do see that.

10 Q. The fourth paragraph says "Estadt  
11 **stated that the water cannon system is now capable**  
12 **of applying water suppression. He stated that the**  
13 **42 towers had been installed."**

14 Do you recall having that  
15 **discussion with Mr. Kotas?**

16 A. Yes. Yes, I do.

17 Q. Was this in the context of showing  
18 **him how these 42 towers actually function and**  
19 **apply water as dust suppression?**

20 A. Yes.

21 Q. At the very bottom, it says "Estadt  
22 **had an operator start the water cannon system," do**  
23 **you see that?**

24 A. I do see that.

1           **Q.       Do you recall having the water**  
2 **cannon system start and be operated for the IEPA**  
3 **inspector?**

4           A.       Yes.

5           **Q.       Then it says "The cannon observed in**  
6 **operation near the river had a 250 foot radius**  
7 **throw according to Estadt."**

8                       **Did you communicate to the IEPA**  
9 **inspector that the radius for that cannon was 250**  
10 **feet?**

11          A.       Yes.

12          **Q.       Can you discuss -- you said there is**  
13 **a six-inch cannon and four-inch cannon. What are**  
14 **the inches measuring?**

15          A.       The inches are measuring the size of  
16 the feed pipe to the cannon. So that is the  
17 amount of water that can go to it. So there is a  
18 line that runs underground and then it comes up  
19 the pole to the cannon head. So the six-inch pipe  
20 goes to there and then the four-inch pipe goes to  
21 other cannons.

22          **Q.       So a six-inch wide pipe is the water**  
23 **feed that leads to a radius throw of 250 feet?**

24          A.       Yes.

1           **Q.       And a four-inch wide feed pipe leads**  
2 **to the 170 foot radius?**

3           A.       Correct.  Yes.

4           **Q.       We should all know this from grade**  
5 **school, but does that mean the diameter of the**  
6 **coverage for the particular water cannon is either**  
7 **500 feet for the six-inch and 340 feet for the**  
8 **four-inch?**

9           A.       Yes.

10          **Q.       At the meeting on December 5th,**  
11 **2013, that you had with IEPA representatives, did**  
12 **you demonstrate to IEPA that this water cannon**  
13 **system provided full and complete water dust**  
14 **suppression coverage for the entire site?**

15          A.       Can you ask the question again?

16          **Q.       I can try.  At the meeting on**  
17 **December 5th, 2013, with IEPA representatives, did**  
18 **you show and demonstrate the complete coverage of**  
19 **the site with the water cannon system?**

20          A.       Yeah.  Like I said before, we had a  
21 picture -- a drawing much like this and what it  
22 did was it depicted the circles, the radius of the  
23 cannons.

24          **Q.       If you turn to page R34 of the**

1 inspection report, separate and apart from the  
2 December 5 meeting only relating to the  
3 inspection, it says "Another cannon to the east  
4 was observed in operation and had a 170 foot  
5 radius, which is the reach of the four-inch  
6 lines," do you see that?

7 A. I do see that, yes.

8 MS. PAMENTER: I don't see that.

9 Where are you?

10 MR. SWEDLOW: R34 at the very top.

11 MS. PAMENTER: Thank you.

12 BY MR. SWEDLOW:

13 Q. This report appears to identify one  
14 250 foot radius cannon and one 170 foot radius  
15 cannon. My question is are those the only two  
16 cannons that you demonstrated the functionality of  
17 for the IEPA inspector?

18 A. No, we ran a cycle. So a cycle is  
19 where it goes through all of the cannons. So we  
20 didn't just start it up and run a couple. What we  
21 do was we put the cannon in a continuous so that  
22 it would cycle all of the cannons. So it would  
23 have started with this one here and then it would  
24 have run through a cycle here and then run through

1 a cycle on the south side as well.

2 Q. So it's your testimony that the IEPA  
3 inspector visually observed all 42 cannons  
4 functioning and operating through the cycle, is  
5 that correct?

6 A. I can't speak to what he saw, but I  
7 can speak to what we did and we ran the cycle. So  
8 what I would tell you is we ran the cycle, the  
9 cannon cycle while he was there.

10 Q. And the cannon cycle is all 42  
11 cannons?

12 A. It was all 42 cannons, yes.

13 Q. And just to clarify. What you can't  
14 say is what he actually saw with his eyes as  
15 opposed to what you demonstrated?

16 A. Yeah, I can't comment to that.

17 Q. If you go down one paragraph, it  
18 says "The weather station, which is used in  
19 conjunction with the water systems, was observed.  
20 It is roughly installed, but not operational," do  
21 you see that?

22 A. I see that.

23 Q. Was the weather station operational  
24 as of November 19th?

1           A.       Yes, it was. What this speaks to, I  
2 believe, if you look back he also makes a comment  
3 about the barometric pressure system. We were  
4 working through some of the nuances of when it was  
5 going to trigger and things of that nature. So  
6 the weather system worked as far as the wind  
7 direction and things of that nature. The wind  
8 speed and the barometric pressure was there. We  
9 were just fine-tuning it so to speak.

10           **Q.       If you look at the very last**  
11 **paragraph on R35, it says "Estadt showed the data**  
12 **obtained from their wind gauge during a high wind**  
13 **event on 11/17/13," do you see that?**

14           A.       Yes.

15           **Q.       Is the data that you obtained from**  
16 **your wind gauge and shown to IEPA part of the**  
17 **weather station?**

18           A.       Yeah. Absolutely. That was the  
19 wind event where they ended up shutting down or  
20 stopping the Bears game because of the high winds.

21           **Q.       And then it says "Wind gusts**  
22 **exceeding 50 miles per hour were recorded," do you**  
23 **see that?**

24           A.       I do see that.

1           **Q.       Is that data from your operating**  
2 **weather station --**

3           A.       Yes.

4           **Q.       -- at the time? I want to discuss**  
5 **with you dust suppression techniques that can be**  
6 **utilized in freezing temperatures.**

7                           **Does KCBX reduce activity at its**  
8 **south terminal for purposes of reducing the**  
9 **potential for fugitive dust during the freezing**  
10 **season?**

11          A.       Well, our business slows down in the  
12 freezing conditions. I mean, it is just the  
13 natural course of the business. So what we do to  
14 help with that is as our plan states we treat  
15 inactive stockpiles with surfactant and encrusting  
16 agents. We also talk about best management  
17 practices. We groom the piles so if we do have a  
18 transfer and then we also have water trucks that  
19 we keep in heated garages. So we still have water  
20 available even when it is cold out in the winter.  
21 But, again, one of the things to keep in mind is  
22 when the river freezes and the lake freezes, a lot  
23 of our activity dies down. So, naturally, our  
24 business is slow.

1           **Q.       Are you familiar with a storage pile**  
2 **at the site that is called storage pile eight?**

3           A.       I am familiar with storage pile  
4 eight.

5           **Q.       What is storage pile eight?**

6           A.       Storage pile eight is coal.

7           **Q.       Who owns storage pile eight, if you**  
8 **know?**

9           A.       I believe it is C. Reiss Coal  
10 Company.

11          **Q.       Can you explain because I don't**  
12 **think it is part of this record yet how a storage**  
13 **pile on the KCBX south facility is not owned by**  
14 **KCBX?**

15          A.       Like I talked about before, we  
16 terminal. We don't own the product. The product  
17 generally is owned by our customers. They ask us  
18 to stage it for outbound shipments. So they bring  
19 it into our terminal through one of the modes of  
20 transportation we talked about. We stage it and  
21 then we send it out when they want the material.  
22 That is generally how it works.

23          **Q.       Do you know where the coal in the**  
24 **storage pile eight originally came from?**



1           A.       It was there upon acquisition. So  
2 when we took over the terminal, the material was  
3 already there.

4           **Q.       Have you during your period of**  
5 **operation transloaded any coal from pile eight off**  
6 **of the facility?**

7           A.       Yes. Yes. You know, I don't know  
8 the exact numbers. I think initially it was  
9 around 90,000 tons when we got there and I think  
10 it is probably around 8,000 to 10,000 tons that  
11 are there now. So over that period of time we've  
12 transloaded a good portion of the material.

13           **Q.       And by a good portion, you mean**  
14 **roughly 80 to 90 percent?**

15           A.       Right. Yeah. Absolutely. Yeah.

16           **Q.       Where do you send the coal from --**  
17 **where did you send the coal from pile eight when**  
18 **it left the KCBX facility and was transloaded?**

19           A.       Wherever the customer tells us to  
20 send it is where we send it. You know, it is  
21 power plants or wherever the final destination is.  
22 That's where it goes.

23           **Q.       Was some or all of the coal that was**  
24 **transloaded from pile eight sent for end use as**

1 **coal from the KCBX facility?**

2 A. Yes. To my knowledge, it has, yeah,  
3 been used as coal.

4 **Q. Have you personally seen a**  
5 **vegetative growth on pile eight during any of your**  
6 **time at the site?**

7 A. Yes, I have.

8 **Q. What is the vegetative growth on**  
9 **pile eight?**

10 A. I'll call it weeds. I guess  
11 vegetative growth is a fine determination of it,  
12 but just generally weeds or no different than you  
13 would see in your driveway between a crack, you  
14 know, where things grow where typically you  
15 wouldn't think they would.

16 **Q. In the process of your transloading**  
17 **of coal from pile eight, has any of that coal been**  
18 **rejected because it was not coal?**

19 A. No.

20 MR. SWEDLOW: I have no further  
21 questions.

22 HEARING OFFICER HALLORAN: Thank  
23 you. Ms. Pamenter?

24 MS. PAMENTER: Just one moment,

1 Mr. Halloran. May I have one moment,

2 Mr. Halloran?

3 HEARING OFFICER HALLORAN: Yes, you  
4 may. Sorry.

5 MS. PAMENTER: Thank you,  
6 Mr. Halloran.

7 HEARING OFFICER HALLORAN: You're  
8 welcome.

9 C R O S S E X A M I N A T I O N

10 BY MS. PAMENTER

11 **Q. Good morning Mr. Estadt.**

12 **A. Good morning.**

13 **Q. So you're the operations manager at**  
14 **the south site?**

15 **A. Yes.**

16 **Q. And you testified, though, that**  
17 **you're also the operations manager of the north**  
18 **site?**

19 **A. Yeah, I'm responsible for both**  
20 **terminals.**

21 **Q. And you've been the operations**  
22 **manager at the north site for some time now?**

23 **A. Since November of 2013.**

24 **Q. Okay. So with respect to the south**

1 **site, you're responsible for the day-to-day**  
2 **operations there?**

3 A. Mm-hmm. Yes. Sorry. I keep  
4 forgetting.

5 MR. SWEDLOW: I just indicated to  
6 the witness he should answer with words.

7 HEARING OFFICER HALLORAN: Thank  
8 you.

9 THE WITNESS: Sorry about that.

10 BY MS. PAMENTER:

11 Q. So you testified today quite a bit  
12 about -- you testified today quite a bit about the  
13 operations at the KCBX south site, right?

14 A. Yes.

15 Q. And you testified today about the  
16 dust suppression controls, if we can use that  
17 term, as of today also with respect to the south  
18 site, correct?

19 A. Yes.

20 Q. KCBX's construction permit  
21 application is dated July 23rd, 2013, right?

22 A. Yes.

23 Q. And the permit denial letter that is  
24 at issue in this permit appeal is dated January

1 17th, 2014, right?

2 A. Yes.

3 Q. So the time period that we're really  
4 talking about here is July 23rd, 2013, to January  
5 17th, 2014, right?

6 MR. SWEDLOW: I'll just object that  
7 that calls for a legal conclusion, but if the  
8 witness has an opinion on the relevant time  
9 period --

10 HEARING OFFICER HALLORAN:

11 Overruled.

12 BY MS. PAMENTER:

13 Q. My question is the time period that  
14 we're talking about for purposes of this appeal is  
15 July 23rd, 2013, to January 17th, 2014, correct?

16 A. I don't know. I mean, I don't know  
17 if I can -- I don't know how to answer that.

18 Q. Fair.

19 A. I guess. I don't know. Can you ask  
20 it differently?

21 Q. It's okay. If you wouldn't mind,  
22 can you please turn to pages R186 to R188 and let  
23 me know when you're there, please.

24 A. I'm there.

1           **Q.       This is KCBX's construction permit**  
2 **application dated July 23rd, 2013, correct?**

3           A.       Yes.

4           **Q.       And if you turn to page R188, that**  
5 **is your signature to the cover letter to the**  
6 **construction permit application?**

7           A.       Correct.

8           **Q.       But you don't know why Robert**  
9 **Bernoteit is the person to whom this letter is**  
10 **addressed?**

11          A.       No, I do not.

12          **Q.       And you didn't write this cover**  
13 **letter?**

14          A.       No. I reviewed it.

15          **Q.       But you didn't write this cover**  
16 **letter?**

17          A.       No, I did not.

18          **Q.       And you didn't assist in the**  
19 **preparation of this cover letter?**

20          A.       Other than the review, no.

21          **Q.       Pursuant to the construction permit**  
22 **application, can we agree KCBX wanted to install**  
23 **ten additional conveyors, one additional box**  
24 **hopper and one additional stacker at the south**

1 **site?**

2 A. Well, we wanted to relocate them  
3 from the north site.

4 **Q. Well, you would be installing that**  
5 **equipment at the south site, correct?**

6 A. Again, they're portable. So it  
7 doesn't really get installed. So they move around  
8 the site. So I think relocate is more the way  
9 we'd look at it, but if it would be considered  
10 installing, then yes.

11 **Q. The purpose of this was to achieve**  
12 **the material handling and throughput rates that**  
13 **KCBX envisioned for the south site?**

14 A. Yes.

15 **Q. KCBX envisioned up to 175,000 tons**  
16 **of petroleum coke and coal handled by truck per**  
17 **month -- excuse me. Let me strike that. Let me**  
18 **redo that.**

19 **KCBX envisioned up to 175,000**  
20 **tons per month of petroleum coke and coal handled**  
21 **by truck through the south site?**

22 A. Okay.

23 **Q. Is that true?**

24 A. Where are you getting that

1 information from?

2 Q. Let's turn to page R139, please.

3 And just for foundation purposes, let's start at

4 R130. I'm going to have you flip back,

5 Mr. Estadt.

6 A. Okay.

7 Q. If you can flip back to R130, just  
8 for foundation purposes.

9 A. Okay.

10 Q. This is the construction permit-NSPS  
11 and NESHAP source-revised that was issued to KCBX  
12 on April 18th, 2013, by the Illinois EPA for the  
13 south site, correct?

14 A. Correct.

15 Q. So then let's flip to R139 and I'm  
16 going to point you to 14(b).

17 A. Okay.

18 Q. If you'll read with me, "Materials  
19 handled by truck shall not exceed 175,000 tons per  
20 month," did I read that correctly?

21 A. Yes.

22 Q. KCBX also envisioned that the total  
23 amount of petroleum coke and coal handled through  
24 the south site may be up to 1.13 million tons per



1 **year?**

2 A. Could you show me where that is?

3 **Q. Let's look at 14(a). Please read**  
4 **with me. "The total amount of materials handled**  
5 **through the transloading facility shall not exceed**  
6 **1.3 million tons per month," did I read that**  
7 **correctly?**

8 A. I don't think so. It's 1.13.

9 **Q. Thank you for the correction. 1.13**  
10 **million tons per month.**

11 A. Correct.

12 **Q. As of July 23rd, 2013, KCBX was**  
13 **unable to meet its desired throughput rates?**

14 MR. SWEDLOW: Is that a question?

15 BY THE WITNESS:

16 A. That sounds like a statement.

17 BY MS. PAMENTER:

18 **Q. That's a question.**

19 A. Could you word it differently?

20 HEARING OFFICER HALLORAN: Can you  
21 rephrase it? I was kind of lost.

22 BY MS. PAMENTER:

23 **Q. As of July 23rd, 2013, KCBX was not**  
24 **able to meet its desired throughput rates?**

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1           A.       Well, ma'am, we're talking about  
2 rate and rate is different than throughput. Rate  
3 is more of an efficiency type thing. So if you go  
4 55 miles, you've gone a distance, but if you go 55  
5 miles per hour, that is the rate. When we talk  
6 about envisioning a throughput rate, again, it  
7 goes back to terminal available hours. We  
8 wouldn't be able to hit the rates that we need to  
9 in order to do our business without the portable  
10 conveyors. So we would need the additional  
11 portable conveyors so we take advantage of  
12 terminal hours so we can be more efficient and we  
13 can hit our throughput with our rates.

14           **Q.       Please turn to page R187.**

15           A.       Okay.

16           **Q.       The paragraph at the top of page**  
17 **R187 is actually a carryover from page R186, is**  
18 **that right?**

19           A.       Yes.

20           **Q.       And the first full sentence of the**  
21 **carryover paragraph on page R187, please read**  
22 **along with me. "Also, since the acquisition and**  
23 **the progression of the construction of the south**  
24 **facility, KCBX has discovered that the equipment**

1 included in the conveyor addition project" I'll  
2 skip the parenthetical "will not allow KCBX to  
3 achieve material handling and throughput rates  
4 envisioned for the facility," did I read that  
5 correctly?

6 A. Yes.

7 Q. So KCBX needed more equipment at the  
8 south site as of July 23rd, 2013?

9 A. Yes.

10 Q. Can we agree a conveyor at KCBX's  
11 south site is an emission source?

12 A. Yes.

13 Q. A stacker at KCBX's south site is an  
14 emission source?

15 A. Yes.

16 Q. And a box hopper at KCBX's south  
17 site is an emission source, right?

18 A. Yes.

19 Q. Petroleum coke and coal is a type of  
20 particulate matter, correct?

21 A. Well, petroleum coke and coal are  
22 products. I don't know that they are -- I mean --

23 Q. Will you please turn to page R150.

24 A. Yes.

1           Q.       This is KCBX's November 1st, 2013,  
2 operating program for fugitive particulate  
3 control, correct?

4           A.       Correct.

5           Q.       And the fugitive particulate matter  
6 that we're talking about in the November 1st,  
7 2013, operating program is petroleum coke and  
8 coal, that's what is being sought to be controlled  
9 at the south site?

10          A.       Yeah. Correct.

11          Q.       The petroleum coke and coal dust can  
12 be picked up by the wind, do you agree?

13          A.       It can be, yes.

14          Q.       And directly to the east of the KCBX  
15 south site is a residential neighborhood directly  
16 across South Burley Avenue, correct?

17          A.       Yes.

18          Q.       Because petroleum coke and coal is a  
19 type of particulate matter that may be picked up  
20 by the wind and blown into nearby residential  
21 neighborhoods, that is why KCBX has taken certain  
22 measures to control petroleum coke and coal dust  
23 that may exist at the site, is that right?

24                   MR. SWEDLOW: I'm only going to

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1 object as irrelevant for purposes of this permit  
2 appeal, but I realize we're making a record of  
3 some kind for some case here.

4 HEARING OFFICER HALLORAN:  
5 Overruled. You can answer if you're able.

6 BY THE WITNESS:

7 A. Can you rephrase the question?

8 MS. PAMENTER: Actually, I'll ask  
9 the court reporter to repeat the question.

10 HEARING OFFICER HALLORAN: I'll ask  
11 the court reporter.

12 MS. PAMENTER: I'm sorry.

13 HEARING OFFICER HALLORAN:  
14 Mr. Brickey, can you repeat the question?

15 (Whereupon, the record was read  
16 as requested.)

17 BY THE WITNESS:

18 A. Well, the measures that we took were  
19 what we wanted to do. I mean, that is what we  
20 wanted to install. The system that was permitted  
21 initially was the dust suppression system that was  
22 with the original acquisition. We chose to do  
23 what we did because that's how we want to control  
24 things. That's how we would want to do it.

1 That's the way that -- that is what we would  
2 install.

3 BY MS. PAMENTER:

4 **Q. Well, because this is a bulk**  
5 **materials terminal for petroleum coke and coal**  
6 **dust, some dust control measures are necessary for**  
7 **that type of site, would you agree?**

8 MR. SWEDLOW: Same objection. Calls  
9 for a legal conclusion.

10 HEARING OFFICER HALLORAN:

11 Overruled. You can answer.

12 BY THE WITNESS:

13 A. I'll tell you what was permitted at  
14 the site was controlled.

15 BY MS. PAMENTER:

16 **Q. Because KCBX's south site stores**  
17 **petroleum coke and coal of a certain volume, KCBX**  
18 **was required or decided to prepare the November**  
19 **1st, 2013, operating program for fugitive**  
20 **particulate control?**

21 MR. SWEDLOW: I object. I don't  
22 understand the question.

23 HEARING OFFICER HALLORAN: I don't  
24 either.

1 MS. PAMENTER: I can rephrase.

2 HEARING OFFICER HALLORAN: If you  
3 can rephrase.

4 MS. PAMENTER: Yes, Mr. Halloran.

5 BY MS. PAMENTER:

6 Q. KCBX created the November 1st  
7 operating program for fugitive particulate control  
8 because it stored a certain volume of petroleum  
9 coke and coal at the south site, right?

10 MR. SWEDLOW: Same objection.

11 HEARING OFFICER HALLORAN:

12 Overruled. You can answer.

13 BY THE WITNESS:

14 A. It is a condition of our permit.

15 BY MS. PAMENTER:

16 Q. And the reason why that is a  
17 condition of the permit is given the nature of the  
18 material that is being stored at the site,  
19 correct?

20 A. I don't know. I know it is a  
21 condition of the permit.

22 Q. The November -- we've established  
23 that the November 1st -- that the operating  
24 program for fugitive particulate control for the

1 south site at record R150 to R163 that is dated  
2 November 1st, 2013?

3 A. Correct. Yes.

4 Q. And your signature is on page two of  
5 the document?

6 A. That is correct.

7 MR. SWEDLOW: Do you have the record  
8 cite for that?

9 MS. PAMENTER: Yes, the record cite  
10 is 151.

11 MR. SWEDLOW: I was told by you to  
12 do that.

13 MS. PAMENTER: That's fair. I want  
14 to have a clean record.

15 BY MS. PAMENTER:

16 Q. So is that yes on R151 your  
17 signature to that fugitive particulate matter  
18 operating program is there?

19 A. Yes.

20 Q. Okay. KCBX's November 1st, 2013,  
21 operating program for fugitive particulate  
22 controls for the south site replaced the prior  
23 versions of KCBX's operating program, is that  
24 true?



1           A.       Yeah. Upon acquisition, as I stated  
2 before, we used the DTE plan that was in place. I  
3 don't know the record number offhand.

4           **Q.       But the November 1st plan replaced**  
5 **that DTE plan, correct?**

6           A.       Well, it was submitted to the state.

7           **Q.       The DTE plan did not accurately**  
8 **depict the KCBX south site as of November 1st,**  
9 **2013, correct?**

10          A.       I believe so, yeah. I agree with  
11 that.

12          **Q.       The plan needed to be updated as of**  
13 **November 1st, 2013, is that right?**

14          A.       Yeah, I believe so.

15          **Q.       Between November 1st, 2013, and**  
16 **January 17th, 2014, KCBX did not create a revised**  
17 **operating program for fugitive particulate control**  
18 **for the south site, is that right?**

19          A.       Not that I'm aware of.

20          **Q.       Okay. So between November 1st,**  
21 **2013, and January 17th, 2014, the November 1st,**  
22 **2013, fugitive dust program was what is being**  
23 **relied upon and utilized for purposes of the south**  
24 **site, correct?**

1           A.       Yes.

2           **Q.       KCBX did not supplement its permit**  
3 **application, though, with the November 1st, 2013,**  
4 **operating program for fugitive control, right?**

5                   MR. SWEDLOW: I'll object as calling  
6 for a legal conclusion as to what was supplemented  
7 and what wasn't.

8                   HEARING OFFICER HALLORAN:  
9 Overruled. You can answer.

10 BY THE WITNESS:

11           A.       I don't know.

12                   HEARING OFFICER HALLORAN: Fair  
13 enough.

14 BY MS. PAMENTER:

15           **Q.       To your knowledge -- I'm going to**  
16 **ask the question. You don't know whether KCBX**  
17 **sent a copy of the November 1st, 2013, operating**  
18 **program to Robert Bernoteit at the Illinois EPA?**

19           A.       I know that we submitted this. I do  
20 not know who it was sent to.

21           **Q.       So you don't know whether the**  
22 **November 1st, 2013, operating program was**  
23 **submitted to anyone in Illinois EPA's permit**  
24 **section, correct?**

1 A. I am aware that we submitted it.

2 Q. Okay. Let's look at R647, please.

3 A. Okay.

4 Q. And let me know when you're there,  
5 please.

6 A. I will. Okay.

7 Q. For the record, this is an e-mail  
8 dated November 1st, 2013, from Katherine Hodge to  
9 Kathryn Pamenter, is that right?

10 A. Yes, that's you.

11 Q. And Attorney Hodge is counsel for  
12 KCBX, is that right?

13 A. That's correct, yes.

14 Q. Before today, have you seen this  
15 e-mail?

16 A. No.

17 Q. So you don't know whether this is  
18 the e-mail pursuant to which the November 1st,  
19 2013, operating program was submitted?

20 A. Can I read the e-mail?

21 Q. Sure.

22 A. Okay. It seems as this is the  
23 e-mail in which the FPOP was submitted, yes.

24 Q. With regard to storage pile eight

1 that you testified about, as of November 6th,  
2 2013, and -- let me do this. I'm going to have  
3 you turn to R85 --

4 A. Okay.

5 Q. -- just to be clear here. Let me  
6 know when you're there.

7 A. I am on page R85.

8 Q. Okay. Are you aware that an  
9 inspection took place on November 6th of 2013?

10 A. I am.

11 Q. Are you familiar with the name  
12 Calvin Harris?

13 A. I am.

14 Q. Did you meet with him on November  
15 6th, 2013?

16 A. Yes.

17 Q. Mr. Harris conducted an inspection  
18 at the KCBX south site on that day?

19 A. Yeah, it was a multimedia  
20 inspection. It was Calvin Harris, Ricardo Ng and  
21 Joe Kotas.

22 Q. And Mr. Harris's focus was on land  
23 issues, is that right?

24 A. Yes.

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1           **Q.       So can we establish as of November**  
2 **6th, 2013, the storage pile eight at the south**  
3 **site was more than the 8,000 to 10,000 that you**  
4 **state is there now?**

5           A.       I would -- I'd have to see  
6 throughput. I'd imagine so.

7           **Q.       Do you recall when between November**  
8 **1st, 2013, and January 17th, 2014, coal was**  
9 **removed from that storage pile eight?**

10          A.       Do I recall when?

11          **Q.       Mm-hmm.**

12          A.       It was -- I don't know a specific  
13 time, but it was an ongoing process. You know,  
14 whenever the customer wanted the material we would  
15 remove it and -- yeah.

16          **Q.       Who is the customer?**

17          A.       It could be C. Reiss Coal. It is  
18 documented. When they say to ship out from that  
19 pile, we would ship out from that pile.

20          **Q.       Do you know where it actually went**  
21 **to?**

22          A.       I don't. I really don't. Again,  
23 they call for it to go on a vessel. I know it  
24 goes on a vessel. I don't know always know the

1 final destination of the product.

2 Q. And you don't actually know what  
3 that coal was used for at wherever it eventually  
4 got to?

5 A. I hope that they used it as a fuel  
6 considering what I think they paid for it, but  
7 yeah.

8 Q. But the answer to my question is,  
9 no, you don't actually know?

10 A. No, I don't actually know.

11 Q. Between November 6th, 2013, and  
12 January 17th -- so the date of the inspection and  
13 January 17th, 2014, which is the date of the  
14 permit denial letter, you didn't contact the  
15 Illinois EPA to give them information with respect  
16 to storage pile eight, correct?

17 A. I don't remember. I don't recall.

18 Q. During that same time period --  
19 Strike that. Sorry.

20 During that same time period,  
21 which if we can agree is November 6th, 2013,  
22 through January 17th, 2014, you didn't contact  
23 Illinois EPA to advise them where the coal was  
24 going to?

1 A. I don't recall.

2 Q. Let's go back to R150, if we could?

3 A. Yes, ma'am. I'm there.

4 Q. Again, this is the November 1st,  
5 2013, operating program for fugitive particulate  
6 control that corresponds to the KCBX south site,  
7 correct?

8 A. Correct.

9 Q. This operating program, the November  
10 1st, 2013, operating program, talks about the  
11 capabilities of the water cannon system, right?

12 A. It does.

13 Q. And it talks about how KCBX intends  
14 to use its water cannon system?

15 A. It does.

16 Q. It also talks about how KCBX intends  
17 to -- Strike that.

18 The November 1st, 2013,  
19 operating program also speaks to KCBX's intentions  
20 with respect to dust suppression controls at the  
21 site, right?

22 A. Yes.

23 Q. The November 1st, 2013, operating  
24 program does not provide any actual operational

1 **data, right?**

2 A. Can I review it?

3 **Q. Absolutely.**

4 A. Can you be more specific on what you  
5 mean by actual operational data?

6 **Q. Sure. Let me give you an example.**  
7 **It doesn't say, for example, whether the water**  
8 **cannon system was turned on on Wednesday, December**  
9 **11th, 2013, right?**

10 A. The plan? No.

11 MR. SWEDLOW: I'll object as it's  
12 physically impossible because that's a month and a  
13 half after the document was created. I don't  
14 really understand the question.

15 HEARING OFFICER HALLORAN: I don't  
16 either.

17 MS. PAMENTER: It's foundational,  
18 Mr. Halloran, with respect to -- this is laying  
19 foundation for additional questions.

20 HEARING OFFICER HALLORAN: Okay.  
21 You may proceed.

22 BY MS. PAMENTER:

23 **Q. We can agree then that the November**  
24 **1st, 2013, operating program does not state how**



1 much water was applied to the stockpiles on any  
2 particular date, correct?

3 A. That's not the intention of the  
4 document.

5 Q. And we can also agree then that it  
6 doesn't state for another example when water was  
7 applied on the materials on the conveyor on any  
8 particular date, right?

9 A. Again, not the intention of the  
10 document, but yes.

11 Q. You talked about freezing  
12 temperatures a little bit. The intention of KCBX  
13 pursuant to the November 1st operating program was  
14 to drain the water cannons and shut them down from  
15 the period of November 1st through March 31st to  
16 protect against freeze damage, is that right?

17 A. Yes.

18 Q. With respect to dust controls for  
19 box hoppers at the south site, the November 1st,  
20 2013, operating program also doesn't provide any  
21 what I'm terming actual operational data for dust  
22 control?

23 A. I don't really think I understand.  
24 Could you explain to me what you're asking me

1 because I just don't see the plan would tell you  
2 exactly how many gallons that we put on on a date  
3 some time in the future.

4 Q. We're in agreement, yes. In fact,  
5 if we can turn to page R155. I'm sorry. R156. I  
6 apologize.

7 A. Okay.

8 Q. No, I was right the first time.  
9 R155. The second sentence in footnote six. If  
10 you can read along with me. "Water from a spray  
11 bar on the box hopper may be used as conditions  
12 warrant to control fugitive particulate emissions  
13 at the hopper and along the conveying system," did  
14 I read that right?

15 A. It seems as if you did.

16 Q. Okay. And the same thing -- same  
17 type of question with respect to the conveyors and  
18 stackers. The November 1st, 2013, operating  
19 program doesn't speak to how the dust controls  
20 that were actually utilized with respect to  
21 materials on the conveyors were in the stackers,  
22 correct?

23 A. I don't understand that question at  
24 all.

1           **Q.           I will rephrase the question.**

2                           HEARING OFFICER HALLORAN: Thank  
3 you.

4 BY MS. PAMENTER:

5           **Q.           The November 1st, 2013, operating**  
6 **program only speaks to intentions with respect to**  
7 **dust controls for box hoppers and stackers, is**  
8 **that correct?**

9           A.           No, they're best management  
10 practices. They're not intentions. They're  
11 things that we do. They're things that workers  
12 get trained to do. So I wouldn't refer to them as  
13 intentions.

14           **Q.           But to know whether you actually**  
15 **turned on the water cannon system you'd either**  
16 **have to be at the site, correct?**

17                           MR. SWEDLOW: Objection.

18 BY MS. PAMENTER:

19           **Q.           You'd have to be at the site, yes?**

20                           HEARING OFFICER HALLORAN: What is  
21 your objection?

22                           MR. SWEDLOW: The question wasn't  
23 finished. She said either and then one thing.

24

1 BY THE WITNESS:

2 A. Well, we log our activity. So to  
3 the extent that we have operators at the site so  
4 they would go ahead and they would do it then  
5 someone else would be at the site and they would  
6 do it. So when you say you, you imply me. I  
7 would not have to be at the site in order for the  
8 cannons or the systems to run. It would be  
9 workers who were trained to do their job.

10 BY MS. PAMENTER:

11 Q. Let me rephrase my question because  
12 I understand what you're -- how you're answering  
13 the question. It wasn't very well-stated.

14 To know whether the dust  
15 suppression controls were actually utilized at the  
16 site, you would either need to be at the site or  
17 receive a spreadsheet or a log that describes how  
18 they were actually utilized, correct?

19 A. Yes.

20 Q. So we can agree KCBX does maintain  
21 logs or summaries of actual operational data with  
22 respect to its dust controls at the south site,  
23 correct?

24 A. Yes.

1           Q.       An example of that would be an  
2 emission control log, yes?

3           A.       Yes.

4           Q.       So let's turn to R65, please. This  
5 is an example of an emission control log for  
6 KCBX's south site, right?

7           A.       Yes.

8           Q.       And this example just happens to be  
9 dated August -- it is very hard to read, but there  
10 is a month, a day and a year at the top and I'm  
11 reading August 9th, 2013, am I reading that right?

12          A.       Yes.

13          Q.       KCBX maintains emission control logs  
14 for the south site on a regular basis, correct?

15          A.       Correct.

16          Q.       And so KCBX has emission control  
17 logs for the period between November 1st, 2013,  
18 and January 17th, 2014, is that right?

19          A.       Yes.

20          Q.       KCBX also maintains summaries of  
21 amounts of water that are applied at the south  
22 site from trucks, right?

23          A.       Correct.

24          Q.       And KCBX also maintains summaries of

1 the amounts of water that are applied from the  
2 water cannon system, right?

3 A. Yes.

4 Q. And I think you also talked about  
5 the weather system and so KCBX also has -- is it  
6 snapshots -- excuse me -- the weather system and  
7 the controls and you were explaining that there is  
8 snapshots that correspond to weather systems?

9 A. When I was talking about the screen  
10 shots --

11 Q. The screen shots. Thank you.

12 A. Screen shot was just a point in time  
13 sort of thing. I actually believe Joe took  
14 pictures, took a screen shot of the -- Joe Kotas,  
15 IEPA inspector Joe Kotas, took pictures of the  
16 screen shots during his visit. So, again, when I  
17 talk about a screen shot, it is generally more  
18 than just a shot of the screen.

19 Q. And can those be printed out?

20 A. To the extent that -- yeah, I would  
21 imagine, yes.

22 Q. Okay. Can you please turn to page  
23 R11 for me. This for the record starting on page  
24 R11 is a letter dated January 13th, 2014, from the

1 **firm Hodge, Dwyer & Driver to Mr. Raymond Pilapil,**  
2 **P-I-L-A-P-I-L, who is the Acting Manager, Permit**  
3 **Section of the Bureau of Air, correct?**

4 A. That is what it says right there.  
5 Yes, it does say that.

6 Q. **And in the re line it says "Response**  
7 **to December 10th, 2013, letter, correct?**

8 A. Yes.

9 Q. **And you'll see that this letter goes**  
10 **from page R11 to R16, right?**

11 A. Yes.

12 Q. **There are no emission control logs**  
13 **attached to this letter, correct?**

14 MR. SWEDLOW: I'm going to object as  
15 lack of foundation. It is impossible for him to  
16 know other than to say that this record cite  
17 doesn't then have logs, whether the logs were  
18 submitted because he neither wrote the letter, nor  
19 received the letter, nor was copied on it.

20 HEARING OFFICER HALLORAN:

21 Ms. Pamentor?

22 MS. PAMENTER: The letter is  
23 included in the administrative record. Mr. Estadt  
24 was the one who submitted the construction permit

1 application on behalf of KCBX Terminals Company.  
2 He serves as the operations manager on behalf of  
3 KCBX's Terminals Company and has been involved in  
4 the permit process since January -- since July  
5 23rd, 2013.

6 MR. SWEDLOW: Except that there is  
7 no foundation laid that he has had any  
8 participation in this letter or knows what would  
9 or wouldn't be attached. So it would be no  
10 different than asking a stranger "Does R16 have a  
11 log on it and is R17 a log" because he didn't  
12 write the letter.

13 HEARING OFFICER HALLORAN: You know,  
14 I'm going to agree with you. Lack of foundation.  
15 Sustained.

16 BY MS. PAMENTER:

17 Q. With respect to your diagram which  
18 is also attached to the November 1st, 2013,  
19 operating program at R163, am I correct on that?

20 A. Yes.

21 Q. You stated that there are 42 water  
22 cannons depicted on this diagram, right?

23 A. No, I stated that there are 42 water  
24 cannons that cycle -- that are functional right



1 now and I believe that the 43rd is proposed and it  
2 is on this drawing as well.

3 **Q. The 43rd is also?**

4 A. Yes.

5 **Q. Where is that located?**

6 A. Right there.

7 **Q. So presently is the 43rd water  
8 cannon installed?**

9 A. Not yet.

10 **Q. And that's because there is a pile  
11 there, correct?**

12 A. Yes.

13 **Q. Does the coverage diameter for the  
14 water cannons overlap each other?**

15 A. Yes, they do. And so the design  
16 throw of that would show, you know, there would be  
17 a potential spot, but what we've seen is we can  
18 supplement like we talk about. We supplement our  
19 system with a water truck and what we've seen so  
20 far in reality is the coverage has been good in  
21 this area.

22 **Q. Your diagram does not depict the  
23 location of the portable conveyors, right?**

24 A. Well, they're portable. So, again,

1 I mean, it would be difficult to show them just as  
2 this diagram -- just generally shows storage piles  
3 it would be difficult to show portable conveyors  
4 in one location because they move all around the  
5 site.

6 **Q. But the portable conveyors could be**  
7 **shown as going in between the various piles that**  
8 **are depicted on your diagram, correct?**

9 A. To the extent that we would have  
10 drawn different circles on there for storage piles  
11 as well, I guess that could be correct.

12 **Q. You testified about the water trucks**  
13 **at the site?**

14 A. Yes.

15 **Q. I just wanted to clarify. Between**  
16 **December 20th, 2012, and let's say September 1st,**  
17 **2013, there was one water truck at the KCBX south**  
18 **site, right?**

19 A. Correct.

20 **Q. And it was after some time around**  
21 **about September 1st, 2013, that KCBX added two**  
22 **additional water trucks, right?**

23 A. Yes.

24 **Q. You also testified about grooming**

1 the piles. Can you turn back to R150, please.  
2 Again, this is the November 1st, 2013, operating  
3 program and specifically on pages R152 to R153,  
4 there is a discussion with respect to stockpiles,  
5 correct?

6 A. Yes.

7 Q. Actually, now that I'm flipping  
8 pages, it appears it carries over all the way to  
9 R155.

10 Did KCBX include a discussion  
11 with respect to the grooming that you described  
12 today in the November 1st, 2013, operating  
13 program?

14 A. Can I review it?

15 Q. Yes. Absolutely.

16 A. It does not seem as if we did.

17 Q. You also testified about the ability  
18 to apply surfactant during the entire time of the  
19 winter months, is that right?

20 A. I did not say that. No. What I  
21 said is we treat inactive stock piles with  
22 surfactant and encrusting agents.

23 Q. And that was as of today, correct?

24 A. I don't understand your question.

1 Q. I'm trying to understand the time  
2 period as to when your answer applied. Is that as  
3 of today?

4 A. Yeah. I mean, today. That's --  
5 yeah, that's correct. That's what we do.

6 Q. Because in the November 1st, 2013,  
7 operating program if you can turn to page R154 and  
8 specifically I'm looking at -- it is very tiny,  
9 but I'm looking at footnote five. If you'll read  
10 along with me. "Capabilities to add surfactant  
11 through the pole mounted cannons is currently in  
12 construction," did I read that correctly?

13 A. That's correct. Yes.

14 Q. And that was as of November 1st,  
15 2013?

16 A. Yes.

17 Q. And then you also talked about the  
18 wheel wash that is at the site, right?

19 A. Yes.

20 Q. And, again, that was as of today,  
21 correct, in terms of the wheel wash?

22 A. Yes.

23 Q. Because let's turn to R156. If I'm  
24 looking at footnote seven on that page, the first

1 sentence "KCBX is constructing a wheel wash to  
2 reduce drag out of particulates from trucks  
3 leaving the facility," did I read that correctly?

4 A. Yes.

5 Q. That was as of November 1st, 2013,  
6 right?

7 A. That's correct.

8 Q. Now, you also testified with respect  
9 to some inspections that occurred in September, do  
10 you recall?

11 A. Yes.

12 Q. Okay. Let's turn back to -- well,  
13 let's turn to R31.

14 A. Okay.

15 Q. Just to be clear. When you were  
16 testifying with respect to the inspections on  
17 direct examination, looking at R31, you were  
18 talking about the inspections that occurred in  
19 November of 2013?

20 A. Okay.

21 Q. Is that right?

22 A. Yes.

23 Q. And those inspections occurred on  
24 November 6th and November 19th of 2013?

1 A. Yes.

2 Q. There were no other inspections that  
3 were done after November 19th, 2013, at the KCBX  
4 south site, to your recollection, is that right?

5 A. I don't believe so. I don't recall.

6 Q. If you'll turn to page R33 and in  
7 particular I'm looking at the fourth paragraph, do  
8 you see that?

9 A. Yes.

10 Q. It starts "Estadt stated," is that  
11 right?

12 A. Yes.

13 Q. And you were asked -- you were  
14 actually asked some specific questions with  
15 respect to this paragraph. If I go down to the  
16 fifth sentence in that paragraph, the paragraph  
17 also states "The water cannon system is not fully  
18 automated yet," did I read that correctly?

19 A. Yes, you read that correctly.

20 Q. And that is in the paragraph that is  
21 speaking about Mr. Kotas's conversation with you  
22 during the November 6th inspection, correct?

23 A. What I would state to that is it  
24 is -- that sentence alone without the rest of the

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1 words that go along with it I think don't talk to  
2 automation. I mean, to Mr. Kotas's point of view,  
3 I don't know that he stated that correctly when we  
4 talk about full automation.

5 **Q. So you believe this was more with**  
6 **respect to the weather system or the barometric**  
7 **measurement device, is that right?**

8 A. Yes. If you read the next sentence,  
9 it says "A barometric measurement device is yet to  
10 be interfaced with the weather station." So if  
11 you put those two together and if you consider the  
12 barometric as part of the full on automation, then  
13 you could put those two together. The next thing  
14 you see is the wind gauge is currently working.  
15 So, again, it goes back to the comment I made  
16 under -- during the direct about how we were just  
17 working out all the bugs and making sure we had an  
18 understanding what the barometric pressure would  
19 do.

20 **Q. If you'll please turn to pages R189**  
21 **and R190, please. This is KCBX's fee**  
22 **determination for construction permit application**  
23 **form, is that correct?**

24 A. Yes.

1           **Q.       And then on page R190, your**  
2 **signature is at the bottom of that page, yes?**

3           A.       Yes.

4           **Q.       And this document is part of KCBX's**  
5 **July 23rd, 2013, construction permit application?**

6           A.       It's like a statement. Are you  
7 asking me if it is?

8           **Q.       Yes.**

9           A.       Yes, it is.

10          **Q.       You didn't complete the information**  
11 **in the fee determination for construction permit**  
12 **application form, correct?**

13          A.       I reviewed that information, but --

14          **Q.       You didn't complete it?**

15          A.       -- I did not complete it. No, I did  
16 not.

17          **Q.       If you'll turn to pages R191 to**  
18 **R194. This for the record is KCBX's construction**  
19 **permit application for a FESOP, F-E-S-O-P, all**  
20 **caps, source, is that right?**

21          A.       Can I review the document?

22          **Q.       Yes.**

23          A.       Yes, that is what it is.

24          **Q.       On page R194, that is your signature**



1 under the number 59 authorized signature, correct?

2 A. That's correct.

3 Q. And you didn't prepare KCBX's  
4 responses to the questions in the construction  
5 permit application for a FESOP source form,  
6 correct?

7 A. Again, I reviewed the information.  
8 I did not prepare it.

9 Q. And, finally, if you'll turn to page  
10 R195 and it goes onto page R204, do you see that?

11 A. I do.

12 Q. Okay. This is KCBX's process  
13 emission unit data and information form to its  
14 July 23rd, 2013, construction permit application,  
15 correct?

16 A. Yes.

17 Q. And there is no signature  
18 requirement for you with regard to this form,  
19 right?

20 A. That's correct.

21 Q. Okay. You didn't prepare the  
22 responses to the questions in KCBX's process  
23 emission unit data and information form, correct?

24 A. I would have reviewed it, but I did

1 not prepare it.

2 MS. PAMENTER: No further questions.

3 Thank you.

4 HEARING OFFICER HALLORAN: Thank  
5 you.

6 MR. SWEDLOW: We had an agreement  
7 that I just wanted to make sure I understand after  
8 I read this note. For each witness, we're going  
9 to present them once for everybody's sake. The  
10 only question I have is whether or not we do, for  
11 example, for our witness, direct and cross and  
12 then I finish with redirect or whether we're each  
13 going to get two times with the witness and I  
14 don't care. I just want the same rules to apply.

15 HEARING OFFICER HALLORAN: We can go  
16 off the record.

17 (Whereupon, a break was taken  
18 after which the following  
19 proceedings were had.)

20 HEARING OFFICER HALLORAN:

21 Mr. Swedlow, redirect?

22 R E D I R E C T E X A M I N A T I O N

23 BY MR. SWEDLOW

24 **Q. Mr. Estadt, I think you indicated**

1 that you first started working for KCBX with  
2 respect to these facilities in April of 2009, is  
3 that right?

4 A. Yes.

5 Q. Was the part of the neighborhood  
6 adjoining these facilities residential in April of  
7 2009?

8 A. Yes.

9 Q. Has the aspects of the neighborhood  
10 in terms of residential and industrial mix changed  
11 from 2009 to 2014?

12 A. To my knowledge, it's the same.

13 Q. Was the conduct that was -- and the  
14 facilities operations that were engaged at KCBX  
15 north and DTE as far as you know in 2009 permitted  
16 activity notwithstanding the fact that there was  
17 a residential neighborhood around there?

18 A. To my knowledge, all the activities  
19 were going on in both terminals as permitted.

20 Q. Is that true for 2010?

21 A. To my knowledge, yes.

22 Q. Is that true for 2011?

23 A. Yes.

24 Q. Is that true for 2012?

1 A. Yes.

2 Q. Is that true for 2013?

3 A. Yes.

4 Q. And how about for 2014?

5 A. Yes.

6 Q. With respect to the surfactant  
7 application that we talked about during your  
8 direct examination, did KCBX at the south facility  
9 have that capacity when you first took over the  
10 site in December of 2012?

11 A. Yes. We could have applied  
12 surfactant with the water truck in 2012.

13 Q. Applying surfactant with the water  
14 truck in 2012 is the same way surfactant would  
15 have been applied in July of 2013, is that  
16 correct?

17 A. Yes, that's correct.

18 Q. And in November of 2013?

19 A. Yes.

20 Q. And today?

21 A. Correct.

22 Q. The additional footnote five  
23 surfactant application is a different and  
24 additional way to apply it, is that correct?

1           A.        Could you point me towards a  
2 footnote so I could review it, please?

3           **Q.        Page 155 of the record. You were**  
4 **asked some questions about this. It is very**  
5 **small. Excuse me. 154. It says "Capabilities to**  
6 **add surfactant through the pole mounted cannons is**  
7 **currently in construction," do you see that?**

8           A.        Yes, I do.

9           **Q.        That is an additional surfactant**  
10 **application technique on top of the existing and**  
11 **current surfactant application technique, right?**

12          A.        That's correct, yeah.

13          **Q.        And that would be a supplement to**  
14 **the current surfactant, right?**

15          A.        That is right. That is correct.

16          **Q.        Was the truck wash functional as of**  
17 **the date of the meeting that you had with IEPA**  
18 **where you described the dust suppression**  
19 **techniques currently in use on the site?**

20          A.        I believe so.

21          **Q.        With respect to the discussion you**  
22 **had regarding what coal and petcoke are, you**  
23 **called them a product, is that correct?**

24          A.        Yes.

1           **Q.       What is coal and what is petcoke?**

2           A.       They're a commodity. I guess it's  
3 the best way to call it. I mean, they're a  
4 product. They're a commodity.

5           **Q.       Coal and petcoke as those words**  
6 **indicate are not fugitive particulate dust as coal**  
7 **and petcoke, are they?**

8           A.       No, they would be no different than  
9 saying that sand is fugitive dust. I mean, it's  
10 sand, right? I mean, it's --

11          **Q.       Or limestone?**

12          A.       Or limestone.

13          **Q.       It has the capacity to emit fugitive**  
14 **dust, is that correct?**

15          A.       That's correct.

16          **Q.       I want to ask some questions**  
17 **relating to the supplement that I realize would be**  
18 **subject to objection because I see you have the**  
19 **supplements here. Is it okay if I use that copy?**  
20 **I only have two extras.**

21               MS. PAMENTER: Subject to my about  
22 to be made objection, yes.

23               MR. SWEDLOW: I'm only asking is it  
24 okay if I don't give you another set?

1 MS. PAMENTER: Yes, that's fine.

2 HEARING OFFICER HALLORAN:

3 Mr. Swedlow has indicated that these next  
4 questions pertain to the second motion to  
5 supplement that was filed yesterday.

6 BY MR. SWEDLOW:

7 Q. Mr. Estadt, I've handed you a binder  
8 that has tabs A through I, do you see that?

9 A. I see that.

10 Q. I want you to look at tab G. Are  
11 you there?

12 A. Exhibit G?

13 Q. Yes.

14 A. I'm there.

15 Q. You were asked about a November 1st  
16 e-mail from Kathy Hodge to Kathryn Pamenter, do  
17 you recall that on cross-examination?

18 A. I do.

19 Q. And you said you were not aware of  
20 that e-mail or what it was communicating, is that  
21 right?

22 A. Until I reviewed it, correct.

23 Q. This is an e-mail on --

24 MS. PAMENTER: Objection. First of

1 all, he is leading the witness. Second of all,  
2 just so that it is stated before the question is  
3 even asked this Exhibit G that is being referred  
4 to is part of the motion -- excuse me -- second  
5 motion to supplement the record that was served on  
6 us at 4:15 p.m. yesterday. We have not been  
7 provided the opportunity to respond. Obviously we  
8 couldn't to the second motion to supplement the  
9 record and we object to the introduction and use  
10 of any of the exhibits that are included in or  
11 attached to that second motion to supplement the  
12 record.

13 HEARING OFFICER HALLORAN: Okay.  
14 Anything further? We've talked about this before  
15 the hearing.

16 MR. SWEDLOW: All of these are  
17 documents that were submitted to IEPA are in their  
18 files and I think it is just going to have to be  
19 the subject of a post-hearing briefing. The  
20 reason specifically why I'm referencing this  
21 document is because he was asked a series of  
22 questions about the e-mail that he didn't author  
23 and didn't receive, but there is an e-mail four  
24 days later that he also didn't author and didn't



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1 receive that I want to make part of the same  
2 record.

3 HEARING OFFICER HALLORAN: As stated  
4 earlier, the motion to supplement is with the  
5 Board. That's their jurisdiction. So what we'll  
6 do to make a cleaner record is we'll accept  
7 Mr. Swedlow's questions under an offer of proof.  
8 That is how it is going to be. Objection  
9 sustained. It is coming in as an offer of proof.

10 MR. SWEDLOW: Okay.

11 HEARING OFFICER HALLORAN: Thank  
12 you. You may proceed.

13 BY MR. SWEDLOW:

14 **Q. This e-mail indicates --**

15 MS. PAMENTER: Again, I object as a  
16 leading question.

17 MR. SWEDLOW: I haven't asked the  
18 question.

19 MS. PAMENTER: You were starting it  
20 as a leading question.

21 MR. SWEDLOW: All I said was "This  
22 e-mail."

23 HEARING OFFICER HALLORAN:  
24 Overruled.

1 BY MR. SWEDLOW:

2 Q. This e-mail indicates that it is  
3 from Kathryn Pamenter to Katherine Hodge and  
4 ChrisPressnall@Illinois.gov, do you see that?

5 A. Yes.

6 Q. It is dated November 5th, 2013, do  
7 you see that as well?

8 A. I do.

9 Q. Have you seen this e-mail before  
10 today?

11 A. No, sir.

12 Q. You're aware of the proposed FPOP  
13 that was submitted in some form to the State of  
14 Illinois on November 1st, 2013, correct?

15 A. Yes, I'm aware of that.

16 Q. And you testified about the  
17 substance of that proposed FPOP today?

18 A. I did.

19 Q. The line right above "Sincerely,  
20 Katie Pamenter" states "We are separately  
21 reviewing the operating program for fugitive  
22 particulate control revision one that KCBX  
23 Terminals Company submitted on November 1, 2013,"  
24 do you see that?

1           A.        I do see that.

2                    HEARING OFFICER HALLORAN:   Yes.

3        Ms. Pamentner?

4                    MS. PAMENTER:   Thank you,  
5        Mr. Halloran.  I'm going to object to questions  
6        with respect to this e-mail.  The e-mail speaks  
7        for itself.  The witness has testified that before  
8        today he has not reviewed this e-mail or seen it  
9        and just as I was not permitted to ask questions  
10       with respect to the January 13th, 2014,  
11       correspondence because Mr. Estadt hadn't seen it,  
12       I would state the same objection applies with  
13       respect to the November 5th, 2013, e-mail.

14                   MR. SWEDLOW:   The necessity for  
15        these questions are that he was questioned about  
16        the November 1st e-mail which directly follows  
17        this e-mail and I'm completing the record by  
18        showing the response.  The difference between this  
19        and the January 13th correspondence was that he  
20        was specifically asked "Did you attach data to  
21        this letter" and he never sent it or saw it or  
22        received it.  I'm not asking was there something  
23        attached to this e-mail.  I'm asking are you aware  
24        of this e-mail and he is going to say "No" just

1 like he said to the first one.

2 MS. PAMENTER: If I just may, I'm  
3 sorry, Mr. Halloran. But I do want to point out  
4 that the comments that are set forth in this  
5 e-mail are to an October 3rd, 2013, fugitive  
6 operating program that we've had no discussion on  
7 so far today. The comments that are set forth in  
8 this e-mail are not to the November 1st, 2013,  
9 operating program to which the testimony has been  
10 given thus far.

11 MR. SWEDLOW: Let me respond to that  
12 objection. The first sentence says reference is  
13 made to the October 3rd FPOP. Then the next  
14 sentence says "We are separately reviewing the  
15 operating program for fugitive particulate control  
16 revision one that KCBX Terminals Company submitted  
17 on November 1 of 2013," which is the revision to  
18 the FPOP that we have discussed for much of the  
19 morning.

20 MS. PAMENTER: Sorry, Mr. Halloran.  
21 I don't mean to belabor this, but Mr. Swedlow  
22 skipped over the second sentence of this e-mail  
23 which says "Please see Illinois EPA's comments  
24 below after referencing the October 3rd, 2013,

1 operating program" and the first sentence of the  
2 e-mail below says "Set forth are Illinois EPA's  
3 comments on the fugitive particulate operating  
4 program submitted to Illinois EPA on October 3rd,  
5 2013." These simply are not comments to the  
6 November 1st, 2013, operating program.

7 MR. SWEDLOW: And I guess maybe we  
8 can short circuit this. This clearly does refer  
9 to the November 1st submission and it indicates  
10 that it is being separately reviewed and when we  
11 finish the discussion of that sentence I won't ask  
12 about the rest of the e-mail.

13 HEARING OFFICER HALLORAN: I agree.  
14 Objection overruled and, besides, it is within the  
15 offer of proof. So noted. Thank you. You may  
16 proceed, Mr. Swedlow.

17 BY MR. SWEDLOW:

18 Q. This e-mail states "We are  
19 separately reviewing the operating program for  
20 fugitive particulate control revision one that  
21 KCBX Terminals Company submitted on November 1,  
22 2013," do you see that?

23 A. I see that.

24 Q. Do you know whether and to what

1 **extent the State of Illinois actually reviewed**  
2 **that November 1 submission?**

3 A. I have no knowledge if they did or  
4 didn't.

5 **Q. If you can turn to Exhibit H.**

6 MS. PAMENTER: If I can just get the  
7 objection on the record with respect to this.  
8 Exhibit H is another exhibit that is attached to  
9 the second motion to supplement the administrative  
10 record and we object to Exhibit H to the extent  
11 that we have not had an opportunity to respond to  
12 the second motion to supplement the record. We  
13 object to the introduction of it at this hearing  
14 and we would also note that Exhibit H concerns the  
15 December 5th, 2013, settlement meeting that was  
16 held with respect to a separate action, not this  
17 permit appeal.

18 HEARING OFFICER HALLORAN: I've  
19 already made my ruling.

20 MS. PAMENTER: For appeal purposes,  
21 to the extent we actually go that far, I feel that  
22 I must state the objection.

23 HEARING OFFICER HALLORAN:  
24 Overruled.

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1 MS. PAMENTER: Thank you.

2 MR. SWEDLOW: I'm sorry. The same  
3 objection can be preserved for everything that I  
4 talk about in the supplement and we don't need  
5 to --

6 MS. PAMENTER: Fine.

7 HEARING OFFICER HALLORAN: Exactly.  
8 But she is more -- you know, I'll allow her to  
9 object.

10 MR. SWEDLOW: Yes.

11 HEARING OFFICER HALLORAN: You don't  
12 need to go into the whole thing again.

13 MS. PAMENTER: That's fine. I'll  
14 make it shorter.

15 HEARING OFFICER HALLORAN: Thank  
16 you. We could be here a long time.

17 BY MR. SWEDLOW:

18 **Q. Earlier today you were asked whether**  
19 **or not you communicated the revisions to the**  
20 **fugitive dust plan to Mr. Bernoteit at IEPA in**  
21 **permitting, do you recall that?**

22 A. Yeah.

23 **Q. This is an IEPA/KCBX meeting sign-in**  
24 **sheet dated December 5th, 2013, do you see that?**

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1 A. Yes.

2 Q. Is your name on this sheet?

3 A. It is.

4 Q. Did you write your name on this  
5 sheet?

6 A. I did.

7 Q. Do you recall attending that meeting  
8 on December 5th?

9 A. I do.

10 Q. Do you recall seeing Mr. Bernoteit's  
11 name on this sign-in sheet?

12 A. I do.

13 Q. What does he describe himself as  
14 next to his name?

15 A. He is IEPA/BOA permits.

16 Q. Do you recall him being in  
17 attendance at the meeting?

18 A. I don't know what he looks like, but  
19 I imagine so. He signed in.

20 Q. Can you turn to Exhibit I.

21 A. Okay.

22 Q. Do you recognize Exhibit I?

23 A. I do.

24 Q. What is it?



1           A.       This was the -- this looks like the  
2 presentation that we reviewed with the group on  
3 December 5th.

4                   MS. PAMENTER:   Just for the record I  
5 object with respect to Exhibit I for the same  
6 reason that I've objected to the other exhibits in  
7 the second motion to supplement the record.

8                   HEARING OFFICER HALLORAN:   So noted.  
9 Thank you.

10 BY MR. SWEDLOW:

11           **Q.       If you look on the page entitled**  
12 **presentation outline, do you see that?**

13           A.       I see it.

14           **Q.       It says "Terminal overview Estadt."**

15           A.       I see that.

16           **Q.       Did you present a terminal overview**  
17 **to IEPA?**

18           A.       I did.

19           **Q.       It says "Dust mitigation system**  
20 **overview Estadt," do you see that?**

21           A.       I see it.

22           **Q.       Did you present a dust mitigation**  
23 **system overview to IEPA?**

24           A.       I did.

1           **Q.       Were the three water trucks**  
2 **functioning as of the date of this meeting?**

3           A.       Yes.

4           **Q.       Were the 42 water cannons**  
5 **functioning as of the date of this meeting?**

6           A.       Yes.

7           **Q.       Did you describe the best practice**  
8 **management practices that were discussed earlier**  
9 **today to IEPA at this meeting?**

10          A.       I did.

11          **Q.       If you look where it says KCBX south**  
12 **overview, what are these overlapping circles all**  
13 **over the site?**

14          A.       This is the document that I was  
15 talking about with the radius of the cannons. So  
16 this shows, again, the throw radius of the dust  
17 suppression system and the coverage.

18          **Q.       So everywhere where there are two or**  
19 **three or four circles covering the same spot, that**  
20 **means two or three or four cannons can suppress**  
21 **dust at that spot?**

22          A.       Yes, they overlap.

23          **Q.       If you turn to the -- there is a lot**  
24 **of pictures in here. To a picture of a water**

1 **truck if there is one. I can't find it.**

2 A. There it is.

3 **Q. What is the title of that page?**

4 A. Water truck.

5 **Q. Is that a picture of a water truck?**

6 A. It is.

7 **Q. Is that one of the trucks that was**  
8 **operational at the site on December 5th, 2013?**

9 A. Yes.

10 **Q. The next page is the equipment wheel**  
11 **wash?**

12 A. Yes.

13 **Q. Is that a picture of the actual**  
14 **equipment wheel wash at the site as of December**  
15 **5th, 2013?**

16 A. That is.

17 **Q. If you go back a couple of pages,**  
18 **there is a picture of a site weather station, do**  
19 **you see that?**

20 A. Yes, the site weather station.

21 **Q. Is that a picture of the actual site**  
22 **weather station operational at the site as of**  
23 **December 5, 2013?**

24 A. Yes, it is.

1           **Q.       There is a picture of a water cannon**  
2 **pole?**

3           A.       Which direction?

4           **Q.       Going back to the beginning.**

5           A.       There we go.   Okay.   Yes.

6           **Q.       Is that an accurate representation**  
7 **and actual photo of a water cannon pole that was**  
8 **operational as of December 5, 2013?**

9           A.       Yes.

10          **Q.       There is a picture of pump/piping**  
11 **distribution, do you see that?**

12          A.       I do.

13          **Q.       What is that?**

14          A.       That is the -- I talked a little bit  
15 about the valve house where we took the group  
16 during the multimedia audit.   So this is the valve  
17 house.   That is representative of one of the two  
18 buildings where they feed the cannon.

19          **Q.       Is that an actual picture of the**  
20 **actual valve house that was operational as of**  
21 **December 5, 2013?**

22          A.       That is an actual picture of the  
23 actual valve house.

24          **Q.       If you go further into the**

1 **presentation, there is a slide entitled system**  
2 **data tracking, do you see that?**

3 A. Yes.

4 **Q. Did you present and display this to**  
5 **the Illinois Environmental Protection Agency at**  
6 **the December 5, 2013, meeting?**

7 A. Yes.

8 **Q. What does it show?**

9 A. Let's see. This one is showing  
10 pressure and flow rate.

11 **Q. The next picture is of weather**  
12 **system data monitoring/collection, do you see**  
13 **that?**

14 A. I do.

15 **Q. Was this displayed to the IEPA at**  
16 **the meeting?**

17 A. Yes.

18 **Q. What does it show?**

19 A. This shows the tracking of the  
20 weather wind speed and direction and it also shows  
21 the rainfall data and some of the set points and  
22 things of that nature in the system. When I  
23 talked about screen shots, this is what I was  
24 referring to. Screen shots.

1           **Q.       The next slide -- let me ask an**  
2 **overall question. Was every single slide in this**  
3 **presentation that relates to Estadt's name**  
4 **displayed and discussed at the meeting with IEPA**  
5 **that included Bob Bernoteit on December 5, 2013?**

6           A.       Yes.

7           **Q.       The next slide says "proactive**  
8 **system operation"?**

9           A.       There it is, yes.

10          **Q.       Were all of those topics discussed**  
11 **with IEPA at the meeting?**

12          A.       Yes.

13          **Q.       And what is a daily weather forecast**  
14 **review?**

15          A.       What we do is, you know, generally  
16 the supervisors will take a look at the weather  
17 and sort of forecast what weather is coming at us  
18 and take a look at operations versus that.

19          **Q.       Was that discussed at the meeting?**

20          A.       Yeah, we did.

21          **Q.       Was it operational as of the date of**  
22 **the meeting?**

23          A.       It's an activity. So, yeah, I mean,  
24 to that extent, yeah.

1           **Q.       The next slide is entitled**  
2 **"training". Did you discuss training given to**  
3 **employees, truck drivers and contractors?**

4           A.       Mm-hmm.

5           **Q.       Was all that discussed at the**  
6 **meeting?**

7           A.       Yeah. Absolutely.

8           **Q.       The next slide is entitled "recap**  
9 **system components," do you see that?**

10          A.       Yes.

11          **Q.       It discusses -- it says water cannon**  
12 **sprays, do you see that?**

13          A.       I do.

14          **Q.       Then it says automation system. Did**  
15 **you represent to IEPA that the automation system**  
16 **was functioning as of December 5, 2013?**

17          A.       Yes, we did.

18          **Q.       And how about for the proactive**  
19 **weather monitoring --**

20          A.       Yes.

21          **Q.       -- did you represent it was**  
22 **functioning as of that date?**

23          A.       Yes.

24          **Q.       How about the surfactant and**

1 **encrusting product addition?**

2 A. Yeah. I mean, that was part of what  
3 we discussed.

4 **Q. Did you discuss the additional**  
5 **surfactant application technique that was under**  
6 **construction at the time?**

7 A. I don't recall. I believe we did  
8 talk about it and we mentioned that it was under  
9 construction.

10 **Q. And then to short circuit this.**  
11 **Were all of the rest of these bullet points**  
12 **discussed and presented to IEPA?**

13 A. Yeah. Like I said, this is the  
14 presentation that we used.

15 **Q. You were asked under the best**  
16 **management practices on cross-examination about**  
17 **pile management and grooming and whether that was**  
18 **included in some record site documents that you**  
19 **were looking at, do you recall that?**

20 A. I do.

21 **Q. This says pile management and**  
22 **grooming under best management practices?**

23 A. Right.

24 **Q. Did you discuss that with IEPA at**



1 **the December 5, 2013, meeting?**

2 A. Yeah, we discussed all these with  
3 the IEPA.

4 **Q. Did you explain to IEPA, including**  
5 **Bob Bernoteit, what is meant by pile management**  
6 **and grooming?**

7 A. Well, we talked about it. So if he  
8 was in the room, he heard it.

9 **Q. The next slide says "winter**  
10 **operation dust mitigation," do you see that?**

11 A. Yes.

12 **Q. Did you discuss all of these topics**  
13 **with IEPA at the meeting?**

14 A. We did.

15 **Q. Including reduced traffic?**

16 A. Yes.

17 **Q. Including treating inactive piles**  
18 **before onset of freezing?**

19 A. Yes.

20 **Q. In terms of typically draining and**  
21 **winterizing the cannon system as per FPOP?**

22 A. Yes.

23 **Q. What about the use of the water**  
24 **truck as needed in winter operation?**

1           A.       It was the same operation we had  
2 today.

3           **Q.       And what about suspending operations**  
4 **as needed?**

5           A.       Yeah. We talked about that as well.

6           **Q.       Can you explain to me what the best**  
7 **management practice is with respect to suspending**  
8 **operations as needed not only for winter, but for**  
9 **year around?**

10          A.       You know, every worker at KCBX is  
11 expected -- they're empowered and expected to stop  
12 operations if they feel as though there is a  
13 compliance concern or potential concern or  
14 potential issue to stop the situation and address  
15 it as necessary. That goes with, you know, dust.  
16 It goes with safety. That is just how we have  
17 trained our people. So that's it. I mean,  
18 anybody from the temporary worker who has just  
19 been safety training and working out in the field  
20 all the way up to me has that sort of expectation.

21                   Same thing with contractors as  
22 well. You know, we talk to them about the same  
23 thing. They're out there on the site. We expect  
24 the same sort of interaction. If they see an

1 issue, talk to us and that's part of the reason  
2 why we do the training for the truck drivers, too.  
3 Anybody who comes on site, we want to make sure  
4 that they need to stop things that aren't right.

5 **Q. If I understand your testimony**  
6 **correctly, anybody who works at the site or comes**  
7 **to the site as a contractor has the ability to**  
8 **suspend operations for purposes of dust control**  
9 **and management, is that right?**

10 A. Yes.

11 **Q. You were asked questions going back**  
12 **to --**

13 MR. SWEDLOW: And outside of the  
14 offer of proof.

15 HEARING OFFICER HALLORAN: Wait a  
16 minute. We're outside the offer of proof now?

17 MR. SWEDLOW: We're outside the  
18 offer of proof.

19 HEARING OFFICER HALLORAN: Are you  
20 going to go back inside the offer of proof? This  
21 is what I'm trying to avoid because it's really  
22 hard for the members to jump in and out.

23 MR. SWEDLOW: I understand.

24 HEARING OFFICER HALLORAN: Keep

1 it --

2 MR. SWEDLOW: We're out.

3 HEARING OFFICER HALLORAN: We're out  
4 of it now for good or as far as you are?

5 MR. SWEDLOW: We're good.

6 MS. PAMENTER: Do you want me to ask  
7 questions now with respect to the offer of proof?

8 HEARING OFFICER HALLORAN: You know  
9 what, that might be better. That would be  
10 cleaner, but thanks for letting me know. We're  
11 still in the offer of proof. Ms. Pamenter is  
12 going to cross and this is regarding petitioner's  
13 second motion to supplement the record. You may  
14 proceed.

15 BY MS. PAMENTER:

16 Q. Let's turn to Exhibit H. So keep  
17 that in front of you, please.

18 A. Will do.

19 Q. Julie Armitage did not attend the  
20 December 5th, 2013, meeting, right?

21 A. I don't know. I don't see her on  
22 the sign-in sheet.

23 Q. She is not on the sign-in sheet,  
24 correct?

1 A. Correct.

2 Q. I'm going to turn to Exhibit I and  
3 let's see if I can short circuit this a little  
4 bit. Can we agree that there are no emission  
5 control logs included in this presentation,  
6 Exhibit I?

7 A. Can I look through it?

8 Q. Sure.

9 A. No.

10 Q. And there is no summaries of the  
11 application of water from water trucks in the  
12 presentation?

13 A. Yeah, I'd agree with that.

14 Q. And there is no application -- there  
15 is no summaries in the presentation of  
16 applications of water from water cannons, can we  
17 agree to that as well?

18 A. I wouldn't say there is a summary,  
19 but there is, you know, the chart that shows that  
20 they ran the cycles when we --

21 Q. Is that the screen shot that you're  
22 referring to?

23 A. Yes.

24 Q. So with the exception of the screen

1 shot --

2 A. Right.

3 Q. -- I was going to ask a question  
4 about that. So we'll do that now. So with  
5 exception of the screen shot, there is no summary  
6 of the application of water from the water cannon,  
7 true?

8 A. That's correct.

9 Q. So the screen shot that you're  
10 referring to in the presentation is an example of  
11 actual data that KCBX can print out regarding the  
12 amount of water that is applied from the water  
13 cannons?

14 A. Yes.

15 Q. Can we agree that the information  
16 that is in this material is as of December 5th,  
17 2013, because that's the date it was presented?

18 A. Yes.

19 Q. Can we also agree that the  
20 information in the materials and what you  
21 presented that day describe the intentions that  
22 KCBX has for how it would operate its dust  
23 suppression systems at the KCBX south site?

24 A. I disagree with intentions only

1 because we do it.

2 **Q. It sets forth the capabilities of**  
3 **the system and I'm seeing Mr. Swedlow shake his**  
4 **head, but I want to make sure you answer the**  
5 **question.**

6 A. I am answering the question and I  
7 corrected you before when you asked me about  
8 intentions. This is what we do.

9 **Q. My question was about capabilities,**  
10 **though.**

11 A. Yes, this describes the capability  
12 of the system.

13 **Q. Can we agree at the beginning of the**  
14 **December 5th, 2013, settlement meeting it was**  
15 **discussed that that was, in fact, a meeting for**  
16 **settlement purposes?**

17 A. I think I can agree to that, yes.

18 MS. PAMENTER: We don't have  
19 anything else for purposes of the offer of proof  
20 part of this.

21 HEARING OFFICER HALLORAN: Any  
22 redirect, Mr. Swedlow, within the offer of proof?

23 MR. SWEDLOW: Yes.

24

1 BY MR. SWEDLOW:

2 Q. When you referred to the  
3 descriptions contained in that Power Point and you  
4 referred to them as capabilities, were those  
5 capabilities actually being implemented at the  
6 site as of that date?

7 A. Yes.

8 Q. With respect to everything that was  
9 described to IEPA?

10 A. Yes.

11 MR. SWEDLOW: Nothing else.

12 HEARING OFFICER HALLORAN:

13 Ms. Pamentner?

14 MS. PAMENTER: No.

15 HEARING OFFICER HALLORAN: We're  
16 outside the offer of proof. That concludes the  
17 offer of proof.

18 BY MR. SWEDLOW:

19 Q. With respect to the dust suppression  
20 system additions that we've been discussing today  
21 that KCBX installed and implemented at the south  
22 site, do you know how much that cost?

23 A. It is in the neighborhood of \$10  
24 million. It is at least \$10 million.



1           **Q.           Was that expenditure as far as you**  
2 **know required by the Agency to maintain its**  
3 **permits?**

4           A.           Like I said, the original system was  
5 permitted. So I would imagine that we could have  
6 continued to operate that original system.

7           **Q.           I'd like you to turn back to R130.**  
8 **You were asked earlier questions about a**  
9 **construction permit that is dated April 18th,**  
10 **2013, do you see that?**

11          A.           Mm-hmm. I mean, yes.

12          **Q.           This was the construction permit**  
13 **that governed the KCBX south facility as of the**  
14 **date of the application to move the portable**  
15 **conveyors to south, is that correct?**

16          A.           That's correct.

17          **Q.           And you were asked questions on page**  
18 **R139 about throughput limits, do you recall that?**

19          A.           Yes, I do.

20          **Q.           14(a) contains a throughput limit**  
21 **that says "Shall not exceed 1.13 million tons per**  
22 **month and 11.25 million tons per year as measured**  
23 **by the amount of material shipped from the**  
24 **facility," do you see that?**

1 A. Yes, I do.

2 Q. Is it your understanding that that  
3 was the throughput limit before the application to  
4 move this equipment was filed with IEPA?

5 A. Yes.

6 Q. Is it your understanding that that  
7 was the same throughput limit that would apply if  
8 the permit had been granted?

9 A. Absolutely, yes.

10 Q. Was there any requested change to  
11 that throughput limit through the application?

12 A. No.

13 Q. You were also asked about 14(b) .  
14 "Materials handled by truck shall not exceed  
15 175,000 tons per month and 1.75 million tons per  
16 year," it includes coal inbound and outbound by  
17 truck, do you see that?

18 A. I do see that.

19 Q. Was it your understanding that that  
20 was the limit on inbound and outbound trucks in  
21 terms of throughput before the permit application?

22 A. Yes.

23 Q. Is it your understanding that KCBX  
24 intended and disclosed the same throughput limits

1 **would apply if the permit had been granted?**

2 A. Yeah, we would not have increased.

3 **Q. Can you explain once again the**  
4 **difference between these throughput limits and**  
5 **throughput rates?**

6 A. The best way I can think about it is  
7 if you're limited to go 55 miles, you know, you  
8 can go 55 miles, but you can go as fast as you  
9 want. You can go 55 miles per hour. You can go  
10 70 miles per hour. So, again, the difference  
11 between a rate is just how -- you know, the speed  
12 at which you do something or the time it takes you  
13 to do something versus an amount, which is, you  
14 know, what this document is talking about.

15 MR. SWEDLOW: No further questions.

16 HEARING OFFICER HALLORAN: Thank  
17 you. Ms. Pamentner?

18 MS. PAMENTER: I'll try to be brief.  
19 I promise.

20 R E C R O S S E X A M I N A T I O N

21 BY MS. PAMENTER

22 **Q. To short circuit this, let's stick**  
23 **with R139, please.**

24 A. Okay.

1 Q. As of July 23rd, 2013, KCBX south  
2 was not handling 1.13 million tons per month of  
3 materials through the transloading facility,  
4 correct?

5 A. Correct.

6 Q. As of July 23rd, 2013, KCBX was not  
7 handling 11.25 million tons per year of materials  
8 through the transloading facility, correct?

9 A. Correct.

10 Q. And it is -- it is -- because KCBX  
11 wasn't meeting its envisioned throughput, you're,  
12 through this permit application, seeking to add  
13 more equipment at the site, correct? Let me  
14 rephrase the question.

15 Through the July 23rd, 2013,  
16 construction permit application, KCBX was seeking  
17 to add additional equipment to the site, correct?

18 A. Yes, we were looking to add  
19 additional equipment to the site.

20 Q. Even though a site has the permit,  
21 it is still required to comply with the Illinois  
22 Environmental Protection Act and its regulations,  
23 right?

24 MR. SWEDLOW: I'm going to object.

1 This calls for a legal conclusion, but he is free  
2 to answer.

3 HEARING OFFICER HALLORAN:  
4 Overruled. You can answer if you're able.

5 BY THE WITNESS:

6 A. Can you restate the question?

7 BY MS. PAMENTER:

8 **Q. Sure. Even though a site has a**  
9 **permit, it is still required, for example, not to**  
10 **cause air pollution, correct?**

11 MR. SWEDLOW: Same objection.

12 HEARING OFFICER HALLORAN:  
13 Overruled.

14 BY THE WITNESS:

15 A. I would imagine so. Yeah, you have  
16 to comply with your permit.

17 BY MS. PAMENTER:

18 **Q. You also have to -- separate and**  
19 **apart from the conditions in the permit, you're**  
20 **also required to comply with the Illinois**  
21 **Environmental Protection Act and the regulations,**  
22 **correct?**

23 MR. SWEDLOW: Same objection.

24

1 BY THE WITNESS:

2 A. We're required to comply with the  
3 permit, yeah.

4 BY MS. PAMENTER:

5 Q. Do you believe all the Illinois  
6 Environmental Protection Act provisions and  
7 regulations are set forth in the permit?

8 MR. SWEDLOW: Same objection.

9 HEARING OFFICER HALLORAN: Yeah.  
10 I'll sustain. I think we're going to far into  
11 this.

12 BY MS. PAMENTER:

13 Q. And then I just wanted to clarify  
14 one part of what you stated. When you first  
15 started this section of the questioning, the  
16 question was stated you first started working in  
17 April 2009 regarding the facilities?

18 A. Yes.

19 Q. You weren't working at KCBX south,  
20 though, in April 2009, correct?

21 A. There was no KCBX south in April  
22 2009.

23 Q. Right. That was DTE's facility,  
24 correct?

1 A. Yes.

2 Q. You didn't work for DTE?

3 A. No.

4 Q. You weren't at the site in 2009 at  
5 the KCBX -- excuse me -- at the then DTE site in  
6 April of 2009, right?

7 A. No.

8 Q. So you're not aware of how much  
9 petroleum coke or coal may have existed at the  
10 site in April of 2009?

11 A. No.

12 Q. Or in 2010?

13 A. No.

14 Q. Or in 2011?

15 A. No.

16 Q. Because you started working at the  
17 south site in December of 2012, correct?

18 A. Yes.

19 MS. PAMENTER: No further questions.

20 HEARING OFFICER HALLORAN: Thank  
21 you. I'm not sure where we are, but do you have  
22 any other --

23 MR. SWEDLOW: I don't think we're  
24 allowed to. I think we get two rounds each.

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1 HEARING OFFICER HALLORAN: Okay.

2 Let's go off the record, please.

3 (Whereupon, a break was taken  
4 after which the following  
5 proceedings were had.)

6 HEARING OFFICER HALLORAN: We're  
7 going to take a lunch break until about 12:35 and  
8 thank you, Mr. Estadt. You may step down.

9 THE WITNESS: Thank you.

10 (Whereupon, a break was taken  
11 after which the following  
12 proceedings were had.)

13 HEARING OFFICER HALLORAN: All  
14 right. We're back on the record. It is  
15 approximately 12:40. You know, I was remiss. I  
16 wanted to note there was a room change. This  
17 hearing was noticed up for Room 11-512. That had  
18 to be moved. I have placed signage referring the  
19 hearing down to this room, which is 9-031. I  
20 posted three signs on the 11th floor and one sign  
21 outside this door. So I just wanted to make that  
22 announcement and also at the beginning of the  
23 hearing I had asked were there any members of the  
24 public here who were not affiliated with any



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1 parties and I think only two or three people  
2 raised their hands, is that true? So we have one,  
3 two, three, four, five. Do you mind identifying  
4 yourself if you want to on the record?

5 MR. GONZALEZ: Sure. Ed Gonzalez  
6 with the Attorney General's Office.

7 HEARING OFFICER HALLORAN: Great.  
8 Thanks.

9 MS. TOMIN: Sara Tomin at NRDC,  
10 Natural Resources Defense Council.

11 HEARING OFFICER HALLORAN: Thanks.

12 MR. WONG: Dillon Wong.

13 MR. SPENCER: Craig Spencer.

14 HEARING OFFICER HALLORAN: Thank  
15 you. I think we're -- we have KCBX's second  
16 witness, is that my understanding?

17 MR. SWEDLOW: Yes.

18 WHEREUPON:

19 TERRY STEINERT  
20 called as a witness herein, having been first duly  
21 sworn, deposeth and saith as follows:

22 D I R E C T E X A M I N A T I O N

23 BY MR. SWEDLOW

24 **Q. Good afternoon, Mr. Steinert. Can**

1 **you please state and spell your name for the**  
2 **record.**

3 A. My name is Terry, T-E-R-R-Y,  
4 Steinert, S-T-E-I-N-E-R-T.

5 **Q. Who is your current employer and**  
6 **what is your current job title?**

7 A. My current employer is Koch Minerals  
8 and my job title is southwest regional  
9 environmental manager.

10 **Q. And what date did you start that**  
11 **position?**

12 A. Approximately February 1st of this  
13 year.

14 **Q. What was your job title and employer**  
15 **before February 1st of 2014?**

16 A. I was the environmental compliance  
17 manager for Koch Carbon.

18 **Q. How long did you hold the job of**  
19 **environmental compliance manager for Koch Carbon?**

20 A. From 2004 until February of this  
21 year.

22 **Q. What are the responsibilities and**  
23 **roles of an environmental manager for Koch Carbon?**

24 A. Principally it is a support and

1 oversight role. We provide permitting, report  
2 generation, Agency correspondence, negotiation.  
3 Those types of services and support to our  
4 locations.

5 **Q. From October 2004 until February of**  
6 **2014, did your location include the KCBX north**  
7 **and/or south facility?**

8 A. Yes, it did.

9 **Q. Did it include both?**

10 A. Yes.

11 **Q. Did it include both for the entire**  
12 **period of your job as the environmental compliance**  
13 **manager?**

14 A. Yes.

15 **Q. Briefly what was, if you can, your**  
16 **job and job title working backwards from 2004?**

17 A. Prior to Koch Carbon, I was with  
18 Exelon Generation here in the Chicagoland area  
19 from roughly March of 2000 until 2004. I was a  
20 senior environmental analyst with Exelon. Prior  
21 to that, I was an environmental superintendant at  
22 Wellman, Incorporated which is a chemical  
23 manufacturing company in South Carolina from 1994  
24 to 2000 and prior to that I was an environmental

1 manager at a metal recycling plant for three  
2 years. Roughly 1991 to 1994.

3 **Q. So we're now back 23 years?**

4 A. I can go back further if you'd like  
5 me to.

6 **Q. Let's go all the way back.**

7 A. Prior to the metals recycling plant,  
8 I was in consulting for one year and prior to that  
9 I worked for a state resource Agency South  
10 Carolina Water Resources Commission from 1985 to  
11 1990.

12 **Q. What is your college education and**  
13 **where did you obtain that?**

14 A. I have a bachelor of science degree  
15 in watershed science from Utah State University  
16 and a master of science degree in environmental  
17 science from Oklahoma State University.

18 **Q. So with respect to environmental**  
19 **compliance and management, do you have 25 years**  
20 **approximately of experience?**

21 A. Twenty-five plus, yes.

22 **Q. Do you have any experience with**  
23 **participating in the drafting of the air permit**  
24 **applications for the State of Illinois?**

1           A.       Yes, I've been involved in drafting  
2 permit applications both with Koch Carbon and with  
3 Exelon Generation.

4           **Q.       If you include all of the revisions**  
5 **and supplements to an air permit application, how**  
6 **many approximately have you been involved in?**

7           A.       I would estimate at least 20.

8           **Q.       Are you generally familiar with the**  
9 **Illinois statutes and regulations regarding air**  
10 **permits?**

11          A.       In general, yes.

12          **Q.       Are you generally familiar with**  
13 **those regulations and statutes as they apply to**  
14 **the KCBX south facility?**

15          A.       Yes, in general.

16          **Q.       Can you describe for the record what**  
17 **your understanding of what a construction permit**  
18 **is as it relates to KCBX south?**

19          A.       Well, a construction permit, in  
20 essence, is essentially just an authorization to  
21 do something that is not currently authorized. It  
22 might be to install something. It might be to do  
23 something in a different way. It might be to  
24 build something. It could be to perform a new

1 activity, but it is essentially an authorization  
2 from the Illinois EPA to go ahead and conduct that  
3 particular activity.

4 **Q. You have the record in front of you.**  
5 **It is in two big binders. Can you turn to record**  
6 **citation number 699 and I don't know which binder**  
7 **it is in. Are you there?**

8 A. Yes.

9 **Q. Can you describe what is this**  
10 **document that starts on 699?**

11 A. This is a construction permit. It  
12 is essentially a revised construction permit that  
13 was issued December 18th, 2012, to DTE Chicago  
14 Fuels Terminal and based on my knowledge of  
15 this -- of this particular construction permit, it  
16 authorizes the addition of four portable conveyors  
17 as well as some other equipment at the site.

18 **Q. Can you describe what your**  
19 **understanding of what a portable conveyor is?**

20 A. A portable conveyor is a piece of  
21 equipment that is not self-propelled, but it can  
22 be moved around and it essentially by means of a  
23 belt moves bulk material from one location to  
24 another and that would depend on the length of the

1 conveyor.

2 **Q. Was it part of your role and**  
3 **responsibility for Koch Carbon to become familiar**  
4 **with the construction permits and its revisions**  
5 **for KCBX's South facility?**

6 A. Yes.

7 **Q. Can you describe in general terms**  
8 **what is the relationship between Koch Carbon and**  
9 **KCBX?**

10 A. KCBX Terminals Company is a  
11 subsidiary of Koch Carbon.

12 **Q. So in your role as an employee of**  
13 **Koch Carbon you service KCBX as the entity?**

14 A. That's correct. We would provide  
15 service and oversight.

16 **Q. If you can also turn -- keep that**  
17 **open. I don't know if they're in the same book,**  
18 **but I want you to look at 564 also. What is the**  
19 **document that begins at R564?**

20 A. This is a construction permit  
21 application for a Federal Enforceable State  
22 Operating Permit source that was submitted by DTE,  
23 prepared by CRA. It is dated September 2012.

24 **Q. So if you could explain for the**

1 **record how does a document that starts at 564**  
2 **relate to the document that starts at 699?**

3 A. This would be the underlying  
4 application that supported the Agency issuing the  
5 permit that starts on R699. So this would have  
6 been the information that was provided to them.

7 **Q. And what is the -- what was the**  
8 **purpose of this application that resulted in the**  
9 **permit again for purposes of the site itself?**

10 A. Well, among others, this application  
11 added four portable conveyors or requested the  
12 addition of four portable conveyors to the  
13 operating site. As I recall, there was some  
14 additions of generators and other types of  
15 processing equipment at the site.

16 **Q. Now, if you can turn to R130.**

17 A. I can give up this page?

18 **Q. I might take you back there, but you**  
19 **can give it up for now. What is R130?**

20 A. R130 is a revised construction  
21 permit and it is specifically a revision to the  
22 construction permit at R699 and this was issued to  
23 KCBX Terminals Company because it occurred after  
24 the transaction.



1           **Q.       Did you participate in the**  
2 **application and process for obtaining this**  
3 **construction permit for KCBX?**

4           A.       Yes, I did.

5           **Q.       What specifically was the new**  
6 **activity that was permitted through this revised**  
7 **construction permit?**

8           A.       Principally, this construction  
9 permit did three things. Number one, it  
10 rearranged some of the equipment identification  
11 numbers. Number two, it corrected some  
12 inconsistencies in the generators that were listed  
13 in the prior permit and it also repurposed two of  
14 the portable conveyors to fixed conveyors.

15           **Q.       With respect to that last principal**  
16 **purpose, you said it repurposed portable conveyors**  
17 **to fix conveyors. What does that mean?**

18           A.       Essentially what it did is it took  
19 the portable nature of those pieces of equipment  
20 away. So they became fixed in one location to  
21 serve one purpose and that purpose was to unload  
22 barges at the site.

23           **Q.       And if you can look on the diagram**  
24 **that is a blow up of record cite 163. Are the**

1 **formally portable, now fixed, conveyors**  
2 **represented on that?**

3 A. Yes, they are.

4 **Q. Where approximately on the drawing?**

5 A. That would be these two conveyors  
6 here on the western side of the property.

7 **Q. That make half of a T at the bottom?**

8 A. Yes, they make an L shape.

9 **Q. In the context of this application**  
10 **process and issuance of a revised construction**  
11 **permit for the KCBX south facility, did KCBX**  
12 **submit equipment specific calculated emissions**  
13 **information for those conveyors that were**  
14 **converted from portable to fixed?**

15 A. Yes.

16 **Q. What kind of information did it**  
17 **support?**

18 A. It submitted an application that  
19 referenced an initial application.

20 **Q. And what is it in the initial**  
21 **applications that provided that information?**

22 A. Do we know where it is in the  
23 record?

24 **Q. So when I told you to keep track of**

1 **where you were, I think that is R564, is that**  
2 **right?**

3 A. 564 is the initial application from  
4 DTE.

5 **Q. Is that the initial application you**  
6 **were referring to?**

7 A. You have to go back and repeat the  
8 question now. We have too many applications  
9 involved.

10 **Q. I asked you if when the portable**  
11 **conveyors were permitted as fixed conveyors**  
12 **through the application and permitting process if**  
13 **KCBX submitted equipment specific calculated**  
14 **emissions information in the context of that**  
15 **permit from portable to fixed?**

16 A. No, they did not.

17 **Q. And the permit issued even though**  
18 **KCBX did not submit equipment specific calculated**  
19 **emissions information, is that correct?**

20 A. That is correct.

21 **Q. Were you involved at all in the**  
22 **application process for the permit that is at**  
23 **issue in this case?**

24 A. Yes, I was.

1           **Q.           Turn to R186. Do you recognize the**  
2 **document that starts at R186?**

3           A.           I do.

4           **Q.           What is it?**

5           A.           It is an application submitted July  
6 23rd of 2013 to transfer 12 pieces of equipment  
7 from the KCBX north facility to the KCBX south  
8 facility.

9           **Q.           Did you participate in the drafting**  
10 **and supplying of information that is in this**  
11 **application?**

12          A.           I did.

13          **Q.           Does this application incorporate**  
14 **the July 23rd application that we just discussed**  
15 **at R564?**

16          A.           This is the July 23rd application.

17          **Q.           Oops. I'm sorry. Does the July**  
18 **23rd, 2013, application at R186 incorporate the**  
19 **December -- the application at 564? Sorry about**  
20 **that.**

21          A.           Yes, it does.

22          **Q.           Can you tell me how it incorporates**  
23 **that?**

24          A.           Well, on essentially at the top of

1 R187, the application in the cover letter requests  
2 certain revisions to the revised construction  
3 permit which refers back to the April 18th permit  
4 which in and of itself revises the December 18th,  
5 2012, permit which was transferred to KCBX on  
6 December 20th of 2012. So going back through the  
7 chain, yes, it talks about or it references in the  
8 document, in the forms, the certain parts of that  
9 initial application which would be the application  
10 back from -- I lost the page. I think it is --

11 HEARING OFFICER HALLORAN: Can you  
12 keep your voice up, Mr. Steinert?

13 THE WITNESS: Sorry. I will do my  
14 best.

15 BY THE WITNESS:

16 A. 564 it incorporates those sections.

17 BY MR. SWEDLOW:

18 Q. I apologize in advance for you  
19 jumping over, but you're the permit guy so there's  
20 a lot of paper. Having said that, can you help me  
21 identify the documents that follow the cover  
22 letter that ends at 188. So what I'm asking you  
23 to do is describe the documents that go from 189  
24 to 221 and to the extent they're not -- that a new

1 **document or some subpart of the document describe**  
2 **that to me. So let's start on 189. What is that?**

3 A. 189 is a fee determination form  
4 which is essentially sent with all air permit  
5 applications and it's basically you work through a  
6 process to determine what the appropriate fee  
7 would be for the application that you're making.  
8 So that is R189 and R190.

9 **Q. Did you supply information or**  
10 **participate in including the information of this**  
11 **form that is signed by Mike Estadt on 190?**

12 A. Yes, I did.

13 **Q. And then starting on 191.**

14 A. This is for identification purposes  
15 Form APC-628, which is a construction permit  
16 application for a FESOP source. A FESOP --

17 HEARING OFFICER HALLORAN: I'm  
18 sorry. The court reporter, Mr. Brickey, is having  
19 a hard time. Evidently there is a party going on  
20 next door.

21 THE WITNESS: Should I talk to him?

22 HEARING OFFICER HALLORAN: Yeah.

23 Would that be better, do you think?

24 MR. SWEDLOW: Let's go off the

1 record.

2 HEARING OFFICER HALLORAN: We can go  
3 off the record, yeah. Let me see what is going  
4 on.

5 (Whereupon, a break was taken  
6 after which the following  
7 proceedings were had.)

8 HEARING OFFICER HALLORAN: Back on  
9 the record.

10 BY MR. SWEDLOW:

11 **Q. You were identifying the document**  
12 **that is R191 for us?**

13 A. Yes. This is a Form APC-628, which  
14 is the standard construction permit application  
15 you would use. The standard form you would use  
16 for a FESOP source. The KCBX south site being a  
17 FESOP source.

18 **Q. What is a FESOP?**

19 A. A FESOP is an acronym. It stands  
20 for Federally Enforceable State Operating Permit  
21 and that is a permit that one would obtain if they  
22 had the potential to be a major source, but they  
23 choose to take limits in their permit in order to  
24 remain a minor source. So there is a threshold

1 that they take limits to remain under.

2 **Q. Did you participate in completing**  
3 **providing the information for this document that I**  
4 **believe runs from R191 to R194?**

5 A. Yes, I did.

6 **Q. Then can you explain what the**  
7 **document is that starts at R195?**

8 A. The document starting at 195 and  
9 extending to R204 is the process emission unit  
10 data and information form. So when you submit a  
11 permit application, you're going to have the  
12 general information that is on the previous form  
13 that we just talked about and then you're going to  
14 submit this form that talks about the equipment  
15 that you're actually requesting a permit for.

16 **Q. Does this process emission unit data**  
17 **and information form specifically reference the**  
18 **initial application anywhere?**

19 A. Yes, it does.

20 **Q. Can you identify all the places**  
21 **where the application is being referenced? Do it**  
22 **one at a time. Go page by page.**

23 A. Go page by page? Just the page? I  
24 don't have to tell you what box number or



1 anything?

2 **Q. I'd like you to say the box number**  
3 **and page by page.**

4 A. Page by page at R196 in box 21(a)  
5 the initial application is referenced.

6 **Q. Is there a reference on page 195 to**  
7 **the initial application?**

8 A. In box eight on page 195 there is a  
9 reference to the initial application. On page  
10 R198, there is a reference to the initial  
11 application at the top of the page.

12 **Q. What is being referenced? What is**  
13 **the reference?**

14 A. It says "See narrative Section 1.0  
15 in initial application" and then on page R199 in  
16 box 31 it is the same terminology. In box 32, the  
17 initial application is referenced. And then on  
18 R202 there is a reference at the top of the page  
19 to the initial application.

20 **Q. What is that reference?**

21 A. That reference says "See tables 1  
22 through 12 in initial application."

23 **Q. Do you know what tables were in the**  
24 **initial application?**

1           A.       Yes, there were equipment level and  
2 process level calculations in those tables and  
3 then on page 204 in box 39 it again references a  
4 figure from the initial application and then again  
5 in box 48(a) it references table 13 from the  
6 initial application.

7           **Q.       And then what is the document that**  
8 **starts on the next page R205?**

9           A.       This appears to be an excerpt from  
10 the construction permit application that was  
11 submitted by DTE in September of 2012.

12          **Q.       If we go back to page 198 and look**  
13 **at the reference to the initial application, what**  
14 **is it referring to? What portion of the initial**  
15 **application?**

16          A.       It is referring to the narrative in  
17 Section 1.0.

18          **Q.       And then if you turn back to 205**  
19 **which follows this application, what is that?**

20          A.       That is Section 1.0 project  
21 narrative.

22          **Q.       The purpose -- I think you already**  
23 **testified to this, the permit application that**  
24 **we're here for today was to transfer ten portable**

1 **conveyors, a box hopper and a stacker, is that**  
2 **correct?**

3 A. I think I testified 12 pieces of  
4 equipment, but, yes, that would be correct.

5 Q. Okay. So we'll refer to it as the  
6 12 pieces of equipment. I just don't want to say  
7 the whole thing over and over. So the 12 pieces  
8 we'll call it.

9 **Were those 12 pieces at the time**  
10 **of the permit application in July of 2013 already**  
11 **permitted for use to KCBX?**

12 A. Yes, they were at the north  
13 facility.

14 Q. Can you turn to R538, please. Do  
15 you recognize R538?

16 A. Yes. It is the FESOP permit which  
17 is the operating permit, Federally Enforceable  
18 State Operating Permit, for the KCBX north  
19 facility.

20 Q. What date was this issued?

21 A. This permit was issued April 5th,  
22 2012.

23 Q. Were you involved in the application  
24 process that led to this FESOP for KCBX north?

1 A. Yes, I was.

2 Q. Are the 12 pieces of equipment  
3 identified anywhere on this FESOP as they were  
4 being used at KCBX north?

5 A. Yes, they are.

6 Q. Can you identify where and read  
7 those words for the record?

8 A. The first page of the permit  
9 basically contains a list as well as some other  
10 narrative, but there is a list of equipment.  
11 Within that list, there is the Carter box hopper  
12 portable. There is another entry for ten -- and  
13 then in parens 10 portable conveyors and then a  
14 stacker American Bin.

15 Q. Are those the 12 pieces of equipment  
16 at issue in this appeal?

17 A. They are.

18 Q. During the application process to  
19 obtain the permit that included these 12 pieces of  
20 equipment at KCBX north, did KCBX supply to the  
21 Illinois Protection Agency equipment specific  
22 calculated emissions information?

23 A. KCBX provided the application  
24 from -- that is found on R -- beginning on 196

1 that lists the specific equipment on R187.

2 Q. Timeout. I think I was unclear in  
3 my question.

4 MR. SWEDLOW: Is it okay if I  
5 withdraw that one?

6 HEARING OFFICER HALLORAN: Yes.

7 BY MR. SWEDLOW:

8 Q. Referring specifically to the FESOP  
9 we were just looking at for KCBX north, you just  
10 identified that the 12 pieces of equipment are  
11 listed there and were permitted at north through  
12 the FESOP, correct?

13 A. Correct.

14 Q. When that FESOP for north was  
15 applied for, was equipment specific emissions  
16 calculated information provided for those 12  
17 pieces of equipment when they were permitted at  
18 north?

19 A. No.

20 Q. But the permit issued without that  
21 specific information, correct?

22 A. Yes, it was.

23 Q. If we go back to the permit where  
24 you were just going at R186. For KCBX south, did

1     **the permit application seek any modifications to**  
2     **the throughput limits that currently -- that**  
3     **applied as of that date at KCBX south?**

4           A.       No, they did not.

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

6           A.       Because they specifically state in  
7     the narrative in the cover letter that the  
8     throughput would be less than 11 million tons per  
9     year of coal and petroleum coke as authorized in  
10    the revised construction permit.

11          **Q.       And this references special**  
12    **condition 14(c)1 of the revised construction**  
13    **permit as the then existing limitations?**

14          A.       Yes. In this case, the revised  
15    construction permit would refer to the April 2013  
16    permit which is found on -- I don't know that we  
17    found that one, have we?

18          **Q.       Which one are we looking for?**

19          A.       April 2013.

20                   MS. PAMENTER: R130 for the record.

21                   THE WITNESS: Is it R130?

22                   MS. PAMENTER: Mm-hmm.

23    BY THE WITNESS:

24          A.       Yes. So this would have had been

1 referencing condition 14(c)1 of the permit found  
2 at R130.

3 BY MR. SWEDLOW:

4 **Q. And 14(c)1 I think is on page 139 if**  
5 **I'm not mistaken. Can you confirm it was the then**  
6 **existing and now existing throughput limit?**

7 A. Yes, that looks to be the current  
8 throughput limit 11 million tons per year of coal  
9 and petroleum coke.

10 **Q. Was KCBX seeking any changes to**  
11 **either the annual or monthly throughput**  
12 **limitations?**

13 A. No.

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

15 A. Because the last essentially two  
16 sentences of the first full paragraph on R187 says  
17 "Finally on this point, please note that KCBX is  
18 not requesting any changes to the annual and  
19 monthly throughput limitations and/or the emission  
20 limitations in the revised construction permit  
21 and/or to the related testing, monitoring,  
22 recordkeeping and reporting requirements.  
23 Similarly, KCBX is not requesting any changes to  
24 any other applicable requirements in the revised

1 construction permit."

2 **Q. Now, I'd like you to turn to the**  
3 **very beginning of the record. R1. If we look,**  
4 **there is a 1(b) and then I think it is called**  
5 **romanette one, do you see that?**

6 A. I do.

7 **Q. Are any of the 12 pieces of**  
8 **equipment that are the subject of this appeal air**  
9 **pollution control equipment?**

10 A. No.

11 **Q. Why not? Can you explain why**  
12 **they're not?**

13 A. Well, air pollution control  
14 equipment is a device that serves to lessen or  
15 mitigate the emission of an air pollutant. In  
16 this particular case, the ten portable conveyors,  
17 the one stacker, the one portable hopper don't  
18 perform that function.

19 **Q. Do you have an understanding as to**  
20 **what equipment or practices would be used if the**  
21 **equipment had been transferred to south to control**  
22 **dust from these portable units?**

23 A. Right. Well, the south site has a  
24 system-wide -- I would say site-wide, processing



1 handling area wide, dust suppression system that  
2 consists of water spray towers, water application  
3 towers that can be augmented by mobile equipment,  
4 by water trucks, to provide spot application where  
5 needed.

6 **Q. And it is that system that would**  
7 **apply to these portable units if they had been**  
8 **transferred?**

9 A. That system would provide the dust  
10 mitigation or the best control, yes.

11 **Q. If you look at 1(b) romanette two,**  
12 **it talks about quantities and types of raw**  
13 **materials, do you see that?**

14 A. I do.

15 **Q. Now, if you turn back to R195, which**  
16 **is part of the permit application.**

17 A. Yes.

18 **Q. Does the permit application describe**  
19 **the type of raw material?**

20 A. Yes, it does. On page 195, in box  
21 six, it says handling of coal and petroleum coke  
22 and as I recall that is also in the cover letter  
23 as well.

24 **Q. With respect to the quantities, is**

1 **any information identified or provided with**  
2 **respect to the quantities of raw materials to be**  
3 **used with respect to these portable conveyors?**

4 A. Well, again, on page R187 the  
5 quantity information there is still the 11 million  
6 tons. So the 11 million ton restriction would  
7 apply to the 12 pieces of equipment as well as the  
8 existing equipment at the site and then on R196 in  
9 box 21(a) it references tables five and six in the  
10 initial application, which also has quantity  
11 information in it.

12 **Q. When you say the tables five and six**  
13 **of the -- that's within the tables 1 through 12**  
14 **that were referenced in the permit application?**

15 A. In a different part of the permit  
16 application, yes.

17 **Q. Let's turn to 602 for the record,**  
18 **which I think is table five. You tell me. So**  
19 **there is no mystery, what does the document say at**  
20 **the top of 602?**

21 A. 602 is table five and it is from the  
22 initial application.

23 **Q. And R606, what does it say at the**  
24 **top of that document?**

1           A.       606 is table six from the same  
2 application.

3           **Q.       If you look on page 605, can you**  
4 **explain to me what footnote three is referring to?**

5           A.       Footnote three is a reference to a  
6 standard equation that is used to generate an  
7 emission factor for particulate emissions from  
8 material transfers and it references specifically  
9 AP-42, which is a US EPA document Section  
10 13.2.4.3.

11          **Q.       And how is that used to calculate**  
12 **equipment specific information?**

13          A.       Well, this particular equation uses  
14 certain variables. One being the moisture content  
15 of the material, another being the wind speed and  
16 then it calculates using a standard formula what  
17 an emission would be from a material transfer.  
18 So, you know, whether the material comes off of a  
19 stacker, whether it comes off of a box hopper,  
20 whether it comes off of a conveyor, whether it  
21 comes off an end loader dumping into a truck, it  
22 is the same formula. It is the same calculation.

23                               And you can see that in this  
24 table if you will look -- if you'll go to 602

1 where it says emission factors in the top tier  
2 heading. If you look underneath that, there is  
3 some subheadings. One is PM. One is PM 10. If  
4 you look at those emission factors, they are the  
5 same throughout the entire table regardless of the  
6 pieces of equipment that it is coming from.

7 **Q. Go back to the very beginning and**  
8 **look at romanette three and then I want you to**  
9 **look at that and then at the same time go back to**  
10 **R204, which is the application and explain to me**  
11 **what is meant by varies there?**

12 A. In boxes 40, 41, 42, the application  
13 states that the information being requested  
14 varies. In the case of box number 40, it asks for  
15 a description of the exhaust point. If the  
16 exhaust point discharges in doors, then it says  
17 you don't need to complete the form. In this  
18 particular case, using the descriptions in box  
19 number 40 for stacks, vents, roof monitors, that  
20 type of information, a conveyor doesn't have -- it  
21 is not equipped with a stack or a vent or an  
22 equipment opening where emissions could be  
23 exhausted through.

24 So in this particular case

1 because the conveyor moves around and you don't  
2 have a defined point, the emission for lack of a  
3 better term area or emission source is going to  
4 vary. It is going to be wherever that conveyor is  
5 discharging.

6 **Q. Is a conveyor or any of these 12**  
7 **pieces of equipment is it an exhaust point in the**  
8 **sense of a stack, vent or roof monitor?**

9 A. No.

10 **Q. What is the difference? Explain**  
11 **what is meant on this form and practice for**  
12 **permitting by exhaust point in the context of**  
13 **stack venting?**

14 A. Again, exhaust point is typically an  
15 engineered opening, if you will, where material  
16 can be emitted either by forced emission, such as,  
17 you know, combustion would push air through or it  
18 could be from, for instance, a baghouse where  
19 you've got a fan that is pulling material through  
20 a filter and that air has to be exhausted out some  
21 type of an opening which could be a vent or a  
22 stack. So it is -- I guess, in essence, it is an  
23 engineered discharge device.

24 **Q. Like a smokestack?**

1           A.       Like a smokestack.

2           **Q.       And these portable conveyors are not**  
3 **like smokestacks?**

4           A.       They do not have stacks or vents in  
5 the traditional sense, no.

6           **Q.       Romanette four identifies**  
7 **specification and then it says "including**  
8 **engineering drawings, plans and specifications,"**  
9 **do you see that?**

10          A.       Yes.

11          **Q.       When this equipment was initially**  
12 **permitted at KCBX north, were engineering**  
13 **drawings, plans and specifications either**  
14 **requested or provided in the context of that**  
15 **permit for these pieces of equipment?**

16          A.       I don't believe they were when they  
17 were initially permitted. They certainly were not  
18 when they were re-permitted because those permits  
19 come up for renewal.

20          **Q.       Did KCBX provide -- excuse me -- did**  
21 **DTE provide engineering drawings for the conveyors**  
22 **that it sought to have added to its permit at what**  
23 **is now KCBX south?**

24          A.       No, it did not.

1           **Q.       Did DTE specifically identify the**  
2 **equipment at issue for its permits when it**  
3 **submitted its information in the initial**  
4 **application?**

5           A.       No, it did not.

6           **Q.       How did it identify the pieces of**  
7 **equipment?**

8           A.       I believe the phrase they used was  
9 to be determined.

10          **Q.       And that was for all of the portable**  
11 **conveyor, et cetera, equipment that they obtained**  
12 **a permit for at KCBX south, is that correct?**

13          A.       Yes, that's correct.

14          **Q.       If we look at number four of the**  
15 **denial dated January 17th, 2014. The reason here**  
16 **states that the application did not include data**  
17 **that would prove the actual emission levels**  
18 **pursuant to an Illinois Administrative Code**  
19 **section and other information that could be used**  
20 **to estimate emissions.**

21               MS. PAMENTER: You're paraphrasing  
22 for the record. I object. It's not an actual  
23 recitation of paragraph four. It is a  
24 paraphrasing of paragraph four.

1 HEARING OFFICER HALLORAN: I wasn't  
2 following along, Mr. Swedlow.

3 MR. SWEDLOW: I'll rephrase.

4 BY MR. SWEDLOW:

5 Q. Can you please review silently  
6 paragraph four and then tell me what you think it  
7 is referring to?

8 A. Paragraph number four is referencing  
9 a specific section of the Illinois Administrative  
10 Code, that being 212.321, which is the processed  
11 weight rate rule and the assertion in four is that  
12 the applicant didn't provide enough information to  
13 prove that actual emissions would be under those  
14 prescribed in 212.321.

15 Q. Are you familiar with that Illinois  
16 code section?

17 A. I am familiar with it, yes.

18 Q. What is a processed weight rate  
19 calculation?

20 A. The calculation itself is -- there  
21 is two formulas provided in the rule and there is  
22 a calculation then that is made. Depending on the  
23 amount of material, there is a calculation -- the  
24 material transferred. The calculation is then



1 made what the allowable emission from that process  
2 would be.

3 **Q. If you turn to R205, which is the**  
4 **project narrative referenced in the KCBX permit**  
5 **application.**

6 A. Yes.

7 **Q. Is the processed weight rate code**  
8 **section discussed within this narrative?**

9 A. It is on R207.

10 **Q. Can you explain what this discussion**  
11 **means?**

12 A. Well, essentially, what DTE did in  
13 this application was they took 212.321, they  
14 calculated -- given the equations in the rule,  
15 they calculated what the allowable emissions would  
16 be and then they compared it back against the  
17 actual emissions that are essentially calculated  
18 or represented -- calculations represented back in  
19 table five, which would have been part of this  
20 application as well.

21 **Q. And how close does the calculation**  
22 **come to the limitation on pounds per hour?**

23 A. The calculated allowable emission is  
24 165.7 pounds per hour. So that's the allowable

1 under the weight rate rule. The actual emissions  
2 that would be calculated for the operation of  
3 equipment level or the equipment in question is  
4 0.79 pounds per hour. So it's a difference of  
5 165.7 versus 0.79.

6 **Q. So roughly three orders of magnitude**  
7 **less than the limit?**

8 A. Roughly.

9 **Q. More than 159 pounds less than the**  
10 **165.7 limitation?**

11 A. Yes.

12 **Q. Did KCBX in its July 23rd, 2013,**  
13 **application and the information specifically**  
14 **referenced therein provide sufficient information**  
15 **to the Illinois Environmental Protection Agency**  
16 **for them to determine compliance with the**  
17 **processed weight rate rule --**

18 A. Yes.

19 **Q. -- for the 12 pieces of equipment at**  
20 **an issue?**

21 A. Yes.

22 MS. PAMENTER: Objection. Calls for  
23 a legal conclusion. This goes to the ultimate  
24 issue that the Agency initially made a

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1 determination on and that is the province of the  
2 Illinois Pollution Control Board to determine in  
3 this permit appeal.

4 HEARING OFFICER HALLORAN: Your  
5 objection is so noted. I think I ruled on that  
6 yesterday on April 28th. Regardless, the Board  
7 will weigh it accordingly.

8 MS. PAMENTER: If I -- I need to  
9 further my objection since we've now entered into  
10 essentially an opinion. Mr. Steinert has not been  
11 tendered as an expert witness in this matter.  
12 We're entitled to voir dire the witness with  
13 respect to any opinions that he gives and I would  
14 also note that the petitioner's witness list --  
15 disclosure -- excuse me -- with respect to  
16 Mr. Steinert does not include this particular  
17 opinion.

18 HEARING OFFICER HALLORAN: So noted.  
19 Overruled. Go ahead, Mr. Swedlow.

20 MR. SWEDLOW: Should I respond?

21 HEARING OFFICER HALLORAN: You can  
22 respond for the record.

23 MR. SWEDLOW: This was the subject  
24 of a motion the Hearing Officer already identified

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1 that he ruled on and Mr. Steinert was proffered as  
2 both an expert and fact witness and the motion to  
3 prohibit him from testifying about his expert  
4 opinions on these regulatory matters has already  
5 been decided.

6 MS. PAMENTER: If I may. I think I  
7 know where he is going with this. I would note,  
8 Mr. Halloran, that your ruling on the motion in  
9 limine did not consider whether Mr. Steinert is  
10 qualified to serve as an expert witness. We  
11 needed to hear what was presented in terms of his  
12 testimony today and I would ask for the  
13 opportunity to voir dire the witness at least in  
14 an offer of proof setting so as to ensure that  
15 that record has been made for purposes of today.

16 HEARING OFFICER HALLORAN: Was that  
17 brought up in your motion?

18 MS. PAMENTER: It was not because we  
19 were not aware of what testimony they were going  
20 to utilize to try to proffer Mr. Steinert as an  
21 expert witness, what his background was. He had  
22 not given -- he had not given his testimony until  
23 today with respect to -- with respect to his  
24 qualifications and we are entitled following his

1 qualifications after --

2 HEARING OFFICER HALLORAN: Excuse  
3 me. Thank you. Didn't in your motion you  
4 surmised what he was going to testify to?

5 MS. PAMENTER: We did not discuss  
6 his qualifications.

7 HEARING OFFICER HALLORAN: No. What  
8 he was going to testify to.

9 MS. PAMENTER: Yes, with respect  
10 to --

11 HEARING OFFICER HALLORAN: Right.  
12 And he's testifying to that and you've made your  
13 objection.

14 MS. PAMENTER: But my -- the motion  
15 was on the ultimate issue of law. It did not  
16 address Mr. Steinert's qualifications. He has not  
17 been tendered yet as an expert witness in any  
18 particular area. Typically after a witness is  
19 tendered, at that point in time we would conduct a  
20 voir dire and I would at least like to make an  
21 offer of proof with respect to a voir dire on  
22 this.

23 HEARING OFFICER HALLORAN: Okay.  
24 And another thing regardless I said the Board

1 would weigh accordingly. Mr. Swedlow?

2 MR. SWEDLOW: I'm just looking at  
3 the order and at least the Hearing Officer  
4 recognized that the arguments the Agency was  
5 making is that Mr. Steinert was going to offer  
6 opinion testimony. So it was both an argument  
7 that he was -- his testimony and that it was  
8 related to legal conclusion and both were ruled  
9 upon. His curriculum vitae was provided. He was  
10 deposed in this case and the Agency who happens to  
11 be represented by counsel here can cross-examine  
12 him to try to establish that he doesn't have  
13 expertise.

14 HEARING OFFICER HALLORAN: That's  
15 fine. And you can cross-examine Mr. Steinert. So  
16 objection overruled.

17 MR. SWEDLOW: I'm going -- I'll just  
18 ask the question again and you can reserve your  
19 objection.

20 MS. PAMENTER: Yes. Okay.

21 BY MR. SWEDLOW:

22 **Q. Mr. Steinert, does the -- let me**  
23 **finish the question because this is probably going**  
24 **to be the subject of post-hearing briefs. So let**

1 me get the whole question out.

2 A. Okay.

3 Q. Mr. Steinert, does the application  
4 that was submitted by KCBX on July 23rd, 2013,  
5 along with the information that was specifically  
6 referenced in that application provide the Agency  
7 a sufficient basis to determine whether the 12  
8 pieces of equipment at issue would comply with  
9 35 Ill. Adm. Code Section 212.321, which we have  
10 previously discussed as the processed weight rate  
11 rule?

12 A. Yes. In my opinion, it does.

13 Q. After the submission of the July  
14 23rd, 2013, application for the permit that is at  
15 issue on this appeal, did you have any meetings  
16 with the Illinois Environmental Protection Agency  
17 to discuss that permit application?

18 A. Yes.

19 Q. If you can turn to 183. This is a  
20 meeting sign-in sheet dated August 27th, 2013,  
21 entitled Illinois Environmental Protection Agency  
22 at the top, do you see that?

23 A. I do.

24 Q. Is your name on this sheet?

1           A.       It is.

2           **Q.       Did you attend a meeting with the**  
3 **Illinois Environmental Protection Agency on that**  
4 **date?**

5           A.       I did.

6           **Q.       What was the purpose of that meeting**  
7 **from your perspective?**

8           A.       Well, the purpose of the meeting was  
9 once again to explain the purpose and the need for  
10 the application. The application being that to  
11 transfer the 12 pieces of equipment from north to  
12 south. It was to provide them information on our  
13 anticipated schedule. We were also updating the  
14 Agency on our plans to submit a joint FESOP  
15 application that would essentially combine the  
16 north and south facilities and it was also to get  
17 a chance for the Agency to ask us any questions.  
18 We asked them if they needed any additional  
19 information or had any questions on the  
20 application that we submitted.

21           **Q.       And when you asked the Agency if**  
22 **they needed any additional information or had any**  
23 **questions on the information that was submitted,**  
24 **what was the response from the Agency?**



1           A.       The only information they indicated  
2 they needed were the equipment ID numbers for the  
3 12 pieces of equipment that were going to be  
4 transferred, that they wanted the ID numbers as we  
5 would like to see them represented in the  
6 construction permit.

7           **Q.       And did you provide the information**  
8 **that was requested?**

9           A.       Yes, I did.

10          **Q.       If you look at the immediate prior**  
11 **page, 192, can you tell me what that is?**

12          A.       That is an e-mail from me to Mike  
13 Dragovich who was the permit rider that was  
14 working on this particular application, the July  
15 2013 application, and in this e-mail I describe  
16 the portable conveyors, the stacking conveyors and  
17 the portable hoppers that currently exist at the  
18 south facility as well as the ID numbers we would  
19 like for the equipment that would be transferred  
20 from north to south.

21          **Q.       Is this equipment identification**  
22 **numbering system similar to the way these pieces**  
23 **of equipment were numbered for the permitted use**  
24 **at KCBX north?**

1           A.       I don't believe they are. I think  
2 we were trying to be consistent with the prior  
3 construction permits as much as we could. I don't  
4 know that we had it -- that we had unique  
5 identifiers for the pieces of equipment at north  
6 and, in fact, if you look at R538 the north  
7 equipment is just listed. There is no ID numbers  
8 associated with it.

9           **Q.       If you look at R625, do you**  
10 **recognize that document?**

11          A.       This is the permit -- this is the  
12 permit that was transferred from DTE to KCBX at  
13 the time of sale or immediately thereafter.

14          **Q.       And the equipment here identified is**  
15 **simply by designation number similar to the way it**  
16 **was provided to Mr. Dragovich, is that correct?**

17          A.       Yes, there's the general category  
18 and then individual numbers for the individual  
19 pieces of equipment.

20          **Q.       After you provided the designation**  
21 **for the individual pieces of equipment that are**  
22 **the subject of this appeal to Mr. Dragovich, did**  
23 **you communicate with him any further regarding any**  
24 **additional information he might need?**

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1           A.       I had a follow-up phone call with  
2 Mike after I had sent the e-mail. It was a few  
3 days after and I asked him at that time if he had  
4 received the e-mail. He indicated that he had. I  
5 asked him if he needed anything additional that we  
6 would provide it. He said he did not. Then I  
7 asked if he had any questions on the application  
8 that would help him with his analysis and he said  
9 he had no questions.

10           **Q.       The date of your e-mail to Mike**  
11 **Dragovich was what? It is 182.**

12           A.       It's 182?

13           **Q.       Yes.**

14           A.       It was September 3rd, 2013.

15           **Q.       Do you recall approximately when the**  
16 **telephone conversation was that followed this**  
17 **e-mail?**

18           A.       I don't recall specifically, but  
19 just in general it was probably a week after.

20           **Q.       If you turn to record 761, this**  
21 **document is dated September 5th, 2013, do you see**  
22 **that at the top?**

23           A.       Yes.

24           **Q.       It is called permit calculation**

1 sheet?

2 A. Yes.

3 Q. If you turn to page six of six on  
4 this, after the calculations are provided the  
5 document states "It is recommended that this  
6 revised construction be granted. This permit  
7 allows operation until final action is taken on  
8 the FESOP. The source applied for a FESOP because  
9 the facility is a major for NOx and PM-10. The  
10 construction permit was revised to add ten  
11 conveyors, one stacking conveyor and one portable  
12 hopper to the operation with no increase in permit  
13 emissions from the previous limit," do you see  
14 that?

15 A. Yes.

16 Q. Did you have any other conversations  
17 with the permit engineer Mike Dragovich from  
18 September 5th until today where he indicated that  
19 he would not grant the permit?

20 A. No, I did not.

21 MR. SWEDLOW: I have no further  
22 questions.

23 HEARING OFFICER HALLORAN: Thank  
24 you. Ms. Pamenter?

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1 MR. SWEDLOW: Can I take a restroom  
2 break?

3 HEARING OFFICER HALLORAN: Yes. We  
4 can go off the record.

5 (Whereupon, a break was taken  
6 after which the following  
7 proceedings were had.)

8 HEARING OFFICER HALLORAN: We're  
9 back on the record. Ms. Pamentor?

10 C R O S S E X A M I N A T I O N

11 BY MS. PAMENTER

12 Q. Good afternoon, Mr. Steinert. Can  
13 you tell me after August 1st, 2013, how many  
14 permit applications that you worked on that were  
15 submitted to the Illinois EPA?

16 A. After August 1st of 2013?

17 Q. Yes.

18 A. There would be none.

19 Q. I think you testified that you  
20 presently work for Koch Minerals, LLC, yes?

21 A. Yes.

22 Q. And then between July 23rd, 2013,  
23 and January 17th, 2014, you worked for Koch  
24 Carbon?

1 A. Yes.

2 Q. And Koch Carbon is a subsidiary of  
3 Koch Minerals, correct?

4 A. Yes.

5 Q. And Koch -- KCBX Terminals Company  
6 is a subsidiary of Koch Carbon, do I have that  
7 right?

8 A. Yes.

9 Q. I believe you also testified that  
10 KCBX Terminals Company is one of the 12 locations  
11 that you managed the environmental affairs of  
12 while working at Koch Carbon, correct?

13 A. Yes.

14 Q. KCBX Terminals Company is the  
15 applicant in this particular case, they filed the  
16 July 23rd, 2013, construction permit application?

17 A. That's correct.

18 Q. And you assisted in the preparation  
19 of that permit application, correct?

20 A. Yes.

21 Q. Sitting here today because you  
22 worked on putting the permit application together  
23 you wouldn't testify that there was insufficient  
24 information included in that permit application,

1 **correct?**

2 MR. SWEDLOW: I'll object, but he  
3 can answer.

4 BY THE WITNESS:

5 A. I don't even know how to answer  
6 that.

7 HEARING OFFICER HALLORAN: Wait a  
8 minute. What are your grounds?

9 MR. SWEDLOW: Argumentative, but --  
10 I'll just withdraw my objection. He can answer.

11 HEARING OFFICER HALLORAN: If you  
12 can answer the question, please do so.

13 BY THE WITNESS:

14 A. Are we speaking a hypothetical? I  
15 mean, I don't know how to answer your question.

16 BY MS. PAMENTER:

17 **Q. Okay.**

18 MS. PAMENTER: I'll withdraw it.

19 HEARING OFFICER HALLORAN: Thank  
20 you.

21 BY MS. PAMENTER:

22 **Q. Can we agree the Illinois EPA**  
23 **decides whether to grant or deny a construction**  
24 **permit application?**

1           A.       Illinois EPA issues construction  
2 permits. So, yes, they can grant or deny.

3           Q.       Okay. And to the extent there is an  
4 appeal of a denial decision, can we agree that the  
5 Illinois Pollution Control Board hears that  
6 appeal?

7           A.       Yes.

8           Q.       And makes the decision with regard  
9 to that appeal, correct?

10          A.       Yes.

11          Q.       You never worked at the Illinois EPA  
12 as a permit analyst, right?

13          A.       That's correct.

14          Q.       And you didn't work in the air  
15 permit section of the Illinois EPA, correct?

16          A.       That is correct.

17          Q.       You never worked in the Bureau of  
18 Air for the Illinois EPA, correct?

19          A.       That's correct.

20          Q.       And I use the August 1st, 2013,  
21 date. Are you aware of whether a new bureau chief  
22 started for the Bureau of Air at the Illinois EPA?

23          A.       As of August 1st, 2013?

24          Q.       Mm-hmm.



1           A.           That date is not relevant to me.  
2 No, I don't know if someone started that day or  
3 not.

4           **Q.           Okay. And putting the date aside,**  
5 **are you aware whether there was a change in the**  
6 **chief of the Bureau of Air for the Illinois EPA**  
7 **within the last year?**

8           A.           Yes, I'm aware.

9           **Q.           And what was that change?**

10          A.           Well, I do know that Bob Bernoteit  
11 was in an acting role in terms of the permit  
12 section and as far as the bureau chief goes I know  
13 that it was open.

14          **Q.           But you don't know whether it had**  
15 **been filled or not?**

16          A.           I don't know on that particular day.

17          **Q.           Fair enough. I believe you**  
18 **testified, and again this was a little while ago**  
19 **so correct me if I state this wrong, that you**  
20 **worked on in the approximately 25 years we were**  
21 **talking about 20 permit applications during that**  
22 **time period?**

23          A.           For the Illinois -- with the  
24 Illinois EPA, yes.

1           **Q.        You weren't working for the Illinois**  
2 **EPA, correct?**

3           A.        Applications --

4           **Q.        That were --**

5           A.        -- that were submitted to the  
6 Illinois EPA.

7           **Q.        For the record, let's clean this up**  
8 **so that we're not speaking at the same time. I**  
9 **apologize to the court reporter. So let's be**  
10 **clear for the record. When you were talking about**  
11 **your experience earlier and you stated that you**  
12 **had worked on approximately 20 permit**  
13 **applications, that was during your time working**  
14 **for Koch Minerals, Koch Carbon, Exelon and the**  
15 **other companies that you referred to, correct?**

16          A.        That would just have been with  
17 Exelon and the Koch companies.

18          **Q.        And that was with respect to**  
19 **drafting permit applications?**

20          A.        Drafting and submitting, yes.

21          **Q.        Obviously you weren't in a position**  
22 **to make a decision regarding whether the**  
23 **application should be granted or denied, correct?**

24          A.        I did not issue permits.

1           **Q.       We can agree you've never served on**  
2 **the Illinois Pollution Control Board?**

3           A.       That is correct. I have not.

4           **Q.       Pursuant to KCBX's July 23rd, 2013,**  
5 **construction permit application, I just want to be**  
6 **clear. KCBX wanted to take from its north**  
7 **facility and install at its south facility ten**  
8 **additional conveyors, one additional box hopper**  
9 **and one stacker?**

10          A.       All portable, but yes.

11          **Q.       I have that correct. Okay. And**  
12 **conveyors come in different sizes?**

13          A.       They can.

14          **Q.       The size of the conveyor needed at a**  
15 **site depends upon the rate that the facility wants**  
16 **to move its material, is that right?**

17          A.       Not necessarily.

18          **Q.       Mr. Steinert, you gave a deposition**  
19 **in this matter, correct?**

20          A.       Yes.

21          **Q.       Your deposition was taken on April**  
22 **15th, 2014, is that right?**

23          A.       Yes.

24          **Q.       You were sworn in during that**

1 **deposition, is that right?**

2 A. Correct.

3 **Q. I'm going to -- I don't have --**

4 MR. SWEDLOW: That's okay.

5 MS. PAMENTER: May I approach the  
6 witness?

7 HEARING OFFICER HALLORAN: Yes, you  
8 may.

9 MS. PAMENTER: Thank you.

10 BY MS. PAMENTER:

11 **Q. I'm going to hand you a copy of your**  
12 **transcript from your deposition on April 15th,**  
13 **2014, and ask you to turn to page nine, please,**  
14 **and let me know when you're there.**

15 A. I am there.

16 **Q. And, specifically, I am going to**  
17 **have you read with me on lines 10 through 14.**  
18 **Okay?**

19 MR. SWEDLOW: I'm sorry. Can you  
20 tell me the page number?

21 MS. PAMENTER: Yes, of course. It  
22 is page nine.

23 MR. SWEDLOW: Okay.

24

1 BY MS. PAMENTER:

2 Q. So we're going to read -- I'm going  
3 to read to you lines 10 through 14 and if you'll  
4 follow along, please. How is it --

5 MR. SWEDLOW: Your Honor --  
6 Mr. Hearing Officer, I would only object that we  
7 haven't established that anything he said is  
8 inconsistent.

9 HEARING OFFICER HALLORAN: I'm not  
10 sure what prompted -- are you going to impeach  
11 him?

12 MS. PAMENTER: Yes.

13 HEARING OFFICER HALLORAN: And the  
14 last question before you handed him the  
15 deposition?

16 MS. PAMENTER: It was the size of  
17 the conveyor needed depends upon the rate that the  
18 facility wants to move material, correct?

19 MR. SWEDLOW: No. The answer was  
20 not necessarily.

21 MS. PAMENTER: Yes, I understand.  
22 The question was comma correct.

23 HEARING OFFICER HALLORAN: You may  
24 proceed. Overruled. Let's see where we go.

1 BY THE WITNESS:

2 A. You wanted me to begin reading at  
3 what line?

4 BY MS. PAMENTER:

5 Q. I'll read. You'll read along with  
6 me. I'm starting at line 10. Question: How is  
7 it determined what size conveyor may be needed,  
8 for example, at the south site, if you know?

9 Answer: Well, it's an operational question, but  
10 it would depend on the rate that they would need  
11 to move material. Did I read that correctly?

12 A. Yes, you did.

13 Q. KCBX's existing conveyors at its  
14 south site were not long enough if you strung them  
15 together to fully utilize the space at the site,  
16 is that right?

17 A. I believe that is correct.

18 Q. The conveyors at the north site that  
19 KCBX was seeking through its permit application to  
20 install at the south site have different  
21 capacities than those existing at the south site,  
22 is that right?

23 A. Yes.

24 Q. And when I refer to capacity, I want

1 to make sure we're talking about the same thing.  
2 We're talking about tons per hour transfer rate,  
3 right?

4 A. Well, that's what you want it to be.  
5 Yes. That would be tons per hour.

6 Q. Just to see if we can agree. The  
7 conveyors at KCBX's north site have a 3,000 ton  
8 per hour transfer rate whereas the conveyors  
9 existing at the south site have a 2,500 ton per  
10 hour transfer rate, correct?

11 A. That's my understanding, yes.

12 Q. Okay. As of July 23rd, 2013, KCBX  
13 was unable to achieve material handling and  
14 throughput rates envisioned at the south facility?

15 A. Is that a question?

16 Q. Yes.

17 A. Can you read that back, please?

18 Q. Absolutely. Do you agree that as of  
19 July 23rd, 2013, KCBX was unable to achieve the  
20 material handling and throughput rates envisioned  
21 for the south facility?

22 A. In general, I think that's a true  
23 statement, yes.

24 Q. And so as of July 23rd, 2013, KCBX

1 wanted to stage more material at its south  
2 facility and thus wanted to bring in this new  
3 equipment?

4 A. I don't know that that's true.

5 Q. But we can agree, though, that as of  
6 July 23rd, 2013, KCBX wanted to install additional  
7 equipment at the south site, correct?

8 A. Yes, they want to install additional  
9 equipment.

10 Q. And then stackers can come in  
11 different lengths, do I have that right?

12 A. They can, yes.

13 Q. Can we agree that the ten additional  
14 conveyors are new emission sources?

15 A. They would be new to the south site.

16 Q. As an emission source, correct?

17 A. As an emission unit.

18 Q. Okay. And the additional box hopper  
19 would be a new emission unit at the south site?

20 A. Yes.

21 Q. And the additional stacker would be  
22 a new emission unit at the south site?

23 A. Yes.

24 Q. I'm going to have you turn -- well,



1 just to make sure it's clear. I'm going to have  
2 you start at page R186, please, and I want you to  
3 flip and sort of look at together the pages to  
4 R204 for me. So can you go to starting at R186  
5 and then take a look all the way through R204,  
6 please.

7 A. Am I looking for something?

8 Q. I just need you to take that  
9 grouping for me. Do you agree that pages R186 to  
10 R204 is the construction permit application that  
11 KCBX submitted on July 23rd, 2013, those pages?

12 A. Not in its entirety.

13 Q. What additional attachments were  
14 actually attached to the construction permit  
15 application that was submitted to the Illinois  
16 EPA?

17 A. There is material referenced in this  
18 application.

19 Q. And that's what I want to clarify.  
20 So when you say there is additional material,  
21 you're referring to references within the  
22 application not attached to the application,  
23 correct?

24 A. Based on what is here, I don't see

1 anything else attached.

2 Q. So sitting here today you're not  
3 certain even though you participated in the  
4 preparation of the July 23rd, 2013, construction  
5 permit application as to whether the actual  
6 application that was submitted to the Illinois EPA  
7 was only pages R186 to R204?

8 A. Well, for example, I'm inferring or  
9 I'm assuming that there was probably a check  
10 attached, but I don't see it in the record.

11 Q. Fair. Is there anything else that  
12 you think might be attached other than the check?

13 A. In terms of a physical piece of  
14 paper, I don't believe there was anything else  
15 attached.

16 Q. Thank you for that clarification  
17 with regard to the check. I do want it to be  
18 clear.

19 And then turning to R205 and  
20 again that is the project narrative that you  
21 discussed with Mr. Swedlow during your direct  
22 examination, is that correct?

23 A. Yes.

24 Q. That was not attached -- actually,

1 attached to the July 23rd, 2013, construction  
2 permit application, correct?

3 A. I do not believe it was physically  
4 part of the package, no.

5 Q. But may have been -- I believe you  
6 testified it is referenced within the application,  
7 correct?

8 A. Yes, it is.

9 Q. If you turn to page R189, please,  
10 and it carries over to R190. This is the fee  
11 determination for construction permit application  
12 that is included within the construction permit  
13 application at issue here?

14 A. Yes.

15 Q. And if you turn to page R190 and  
16 specifically I'm looking at paragraph's 17 through  
17 19, do you see that?

18 A. Yes.

19 Q. And that is the section where KCBX  
20 would calculate its fee that would be charged for  
21 this permit application, is that right?

22 A. Yes.

23 Q. And KCBX's fee was \$10,000 because  
24 it was seeking to add 12 new emission units to the

1 south site, is that right?

2 A. That's correct.

3 Q. I am sorry to back up. I think it's  
4 the right time just to do one last thing. If we  
5 can go back to R186, please. Just for the record,  
6 what is on pages R186 to R188, that is the cover  
7 letter to the construction permit application,  
8 correct?

9 A. That is correct.

10 Q. When you testified in direct  
11 examination, you stated that the cover letter  
12 incorporated the September 2012 permit  
13 application, correct?

14 A. Yes.

15 Q. And there is no reference, though,  
16 in the cover letter to the September 2012  
17 construction permit application, right?

18 A. There is no direct reference.

19 Q. So you were referring to the  
20 reference in the carryover sentence "Since that  
21 time, KCBX requested certain revisions to the  
22 revised construction permits which were included  
23 in a reissued permit dated April 18th, 2013"?

24 A. Yes.

1 Q. Going forward let's turn to page  
2 R195. Again, this is the process emission unit  
3 data and information form that is part of KCBX's  
4 July 23rd, 2013, construction permit application,  
5 is that right?

6 A. That is right.

7 Q. If we take a look at box number  
8 nine, this seeks the name of the manufacturer of  
9 the emission unit if known, do you see that?

10 A. Yes.

11 Q. And KCBX's response is "to be  
12 determined," correct?

13 A. Correct.

14 Q. Prior to January 17th, 2014, had  
15 KCBX determined the manufacturer information for  
16 the new emission units?

17 A. We knew the manufacturer of the 12  
18 pieces of equipment in question, yes.

19 Q. And that was not provided to the  
20 Illinois EPA prior to January 17th, 2014, to your  
21 knowledge?

22 A. Not in this application.

23 Q. Not at all, correct, to your  
24 knowledge?

1 A. To my knowledge.

2 Q. Box ten seeks the model number of  
3 the new emission units, correct?

4 A. Yes.

5 Q. And KCBX's response was, quote, to  
6 be determined, unquote, right?

7 A. Yes.

8 Q. Prior to January 17th, 2014, KCBX  
9 had determined the model numbers for the new  
10 emission units, right?

11 A. I believe they knew all of the model  
12 numbers, yes.

13 Q. Those were not provided, though, to  
14 the Illinois EPA, to your knowledge?

15 A. To my knowledge.

16 Q. And box 11 asks for the serial  
17 numbers for the new emission units, right?

18 A. Yes.

19 Q. KCBX's response again is, quote, to  
20 be determined, unquote, is that right?

21 A. Correct.

22 Q. Prior to January 17th, 2014, KCBX  
23 knew the serial numbers for the new emission  
24 units, right?

1 A. That, I don't know.

2 Q. Okay. And so you wouldn't know  
3 either whether -- I'm going to strike that. Let's  
4 turn to R182, which you discussed and keep -- put  
5 a tab on this. We're going to come back to it.  
6 Let's quickly go to R182 if we could.

7 A. I'm sorry. What page?

8 Q. R182, please. And let me know when  
9 you're there.

10 A. I am there.

11 Q. Okay. This is the e-mail that you  
12 testified about in your direct examination that  
13 you wrote on September 3rd, 2013, and sent to  
14 Michael Dragovich with the Illinois EPA, correct?

15 A. That's correct.

16 Q. And this sets forth the ID numbers  
17 for the equipment that was sought to be added from  
18 the north site and installed at the south site, is  
19 that right?

20 A. Yes.

21 Q. The ID numbers set forth on here are  
22 not model numbers, right?

23 A. That is correct.

24 Q. And they're not serial numbers,

1 correct?

2 A. That is correct.

3 Q. These are numbers that KCBX created,  
4 right?

5 A. Yes.

6 Q. And quickly stay there, again, but  
7 I'm also going to have you go to R538, please, and  
8 let me know when you're there.

9 A. I'm there.

10 Q. You testified about the document  
11 that starts at page R538 during your direct  
12 examination and just to refresh our recollection  
13 and for the sake of the record this is the  
14 Federally Enforceable State Operating Permit that  
15 was issued to KCBX Terminals Company on April 5th,  
16 2012, regarding the north facility, correct?

17 A. Yes.

18 Q. And I believe you testified that the  
19 equipment that KCBX is seeking to take from the  
20 north facility and install at the south facility  
21 is listed on the first page of this permit, which  
22 is R538, yes?

23 A. Yes.

24 Q. Okay. There are no ID numbers



1 included with respect to this equipment on page  
2 R538, right?

3 A. That's correct.

4 Q. Let's go to page R183. You  
5 referenced or looked at this page R183 when you  
6 were testifying about the August 27th, 2013,  
7 meeting, correct?

8 A. Yes.

9 Q. During that August 27th, 2013,  
10 meeting, the Illinois EPA also discussed its  
11 Environmental Justice Outreach Program, correct?

12 A. I believe they did, yes.

13 Q. And the Illinois EPA stated that it  
14 may need to conduct environmental justice outreach  
15 as related to the KCBX construction permit  
16 application, correct?

17 A. Yes.

18 Q. I'm going to have you turn to page  
19 R564, please. Let me know when you're there?

20 A. I'm there.

21 Q. Okay. Starting at page R564 this is  
22 the construction permit application for a  
23 Federally Enforceable State Operating Permit,  
24 FESOP, source, correct?

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1 A. Yes.

2 Q. And this is DTE, the former owners,  
3 application dated September of 2012, correct?

4 A. Correct.

5 Q. If you can turn to page R567, which  
6 is within DTE's September 2012 permit application,  
7 and let me know when you're there.

8 A. I am there.

9 Q. So we're on R567 and I want to look  
10 at the third paragraph, the first sentence and  
11 please read along with me. "DTE proposes to  
12 construct four portable conveyors, 14 storage  
13 piles, one 100 horsepower air compressor and five  
14 15-HP light standards," did I read that right?

15 A. Yes, you did.

16 Q. And in comparison KCBX was seeking  
17 through its permit application to install ten  
18 additional conveyors, one box hopper and one  
19 stacker at the south site, correct?

20 A. Yes.

21 Q. We're going to look at two  
22 documents. So I'm going to have you -- you're  
23 going to be flipping back and forth between these  
24 two places. Don't lose where you are right now I

1 guess is what I'm trying to say. Let's turn to  
2 page R196 and at the same time please turn to R581  
3 and let me know when you've got --

4 A. You said R581?

5 Q. Yes. R581, please. Let me know  
6 when you're there.

7 A. Okay.

8 Q. So the lower number, the R196 --  
9 when we're in the R100's, we're referring to  
10 KCBX's construction permit application, is that  
11 right? If you need to, you can flip back to R186,  
12 which is the start of this.

13 A. So the lower numbers -- so 196 would  
14 be part of KCBX's July 2013 application if that's  
15 your question.

16 Q. Correct.

17 A. I agree.

18 Q. I just want to make sure we're on  
19 the right starting number. So lower numbers are  
20 KCBX's July 23rd, 2013, construction permit  
21 application. Higher numbers are DTE's September  
22 2012 construction permit application, can we agree  
23 that that's correct?

24 A. Yes.

1           Q.       And the two pages that I  
2 specifically asked you to turn to, R196 and R581,  
3 those are pages -- it is page two essentially of  
4 the process emission unit data and information  
5 form, is that right?

6           A.       Yes.

7           Q.       So we're comparing like things,  
8 correct?

9           A.       They're not exactly alike, no.

10          Q.       In terms of the pages, we're going  
11 to get to the fact of what is different about them  
12 in a second. I just want to make sure we're on  
13 comparable pages.

14          A.       Okay. We are on comparable pages.

15          Q.       Let's look at the answer to number  
16 15 on page R196 and R581. That states, quote,  
17 none, although water suppression is used to  
18 control fugitive particulate emissions, unquote.  
19 It is the same on both pages, correct?

20                 MR. SWEDLOW: Where are you reading  
21 from?

22                 MS. PAMENTER: Number 15, the  
23 response.

24                 MR. SWEDLOW: It doesn't say

1 fugitive.

2 MS. PAMENTER: Fair. Okay.

3 BY THE WITNESS:

4 A. And on 581 although is misspelled if  
5 that matters.

6 BY MS. PAMENTER:

7 Q. Okay. All right. So let's clarify  
8 for the record. On R196, it is "none although  
9 water suppression is used to control fugitive  
10 particulate emissions" whereas on R581 it is "none  
11 although, spelled wrong, water suppression is used  
12 to control particulate emissions," is that right?

13 A. Yes.

14 Q. Looking at number 17, the answer or  
15 response with respect to that, there is a  
16 distinction, slight, between the two. On R196, it  
17 is "The source has limited its material throughput  
18 per year to obtain a FESOP" whereas on R581, it  
19 says "The source has limited their material  
20 throughput per year to obtain a FESOP, correct?

21 A. Yes.

22 Q. So the difference is its versus  
23 their?

24 A. Yes.

1 Q. So, essentially, KCBX and DTE have  
2 the same response?

3 A. Essentially it's the same, yes.

4 Q. Let's look under material usage  
5 information which is part of the process emission  
6 unit data and information form. Again, we're  
7 still on pages R196, which is KCBX's construction  
8 permit application and R581, which is DTE's  
9 September 2012 construction permit application,  
10 correct?

11 A. Yes.

12 Q. KCBX refers to tables five and six  
13 in initial application. DTE refers to tables five  
14 and six, correct?

15 A. That is correct.

16 Q. They're referring to the same thing,  
17 though, right?

18 A. Yes.

19 Q. So KCBX is -- Strike that. KCBX  
20 references to tables five and six in the September  
21 2012 construction permit application, correct?

22 A. From DTE, correct. Yes.

23 Q. Now, we've established that KCBX's  
24 construction permit application sought to take

1 equipment from the north site and install it at  
2 the south site, right?

3 A. Yes.

4 Q. But DTE's construction permit  
5 application did not concern equipment being taken  
6 from the north site and installed on the south  
7 site, right?

8 A. No. It -- no -- or, yes, I guess.  
9 I'm answering the question to your right.

10 Q. So I'm correct that DTE's  
11 construction permit application did not concern  
12 equipment being taken from the north site and  
13 installed at the south site?

14 A. That is correct.

15 Q. Let's look at tables five and six of  
16 DTE's construction permit application which KCBX  
17 is relying upon and I'm going to have you  
18 specifically turn to pages R602 to R608 that you  
19 were looking at before.

20 Tables five and six do not  
21 include the ten additional conveyors from the  
22 north site in those tables, correct?

23 A. Not specifically, no.

24 Q. The additional box hopper is not

1 included in tables five and six?

2 A. Not specifically.

3 Q. The additional stacker is not  
4 included in tables five or six?

5 A. Not specifically.

6 Q. I don't know if you recall. If you  
7 need to flip back, it is R183 is your e-mail to  
8 Michael Dragovich. In that e-mail, I believe you  
9 indicate that the new conveyors are to have ID  
10 numbers PC13 through PC22, correct?

11 A. That is correct.

12 Q. If you turn to page R603, which,  
13 again, we're still in DTE's September 2012  
14 construction permit application that KCBX was  
15 relying upon. There is a heading coal/petcoke  
16 portable conveyor emissions, do you see that?

17 A. Yes.

18 Q. Underneath that heading there is  
19 listed PC1 through PC12, correct?

20 A. Yes.

21 Q. PC13 through PC22 is not listed  
22 there, right?

23 A. That's correct.

24 Q. In the next column, it states the



1 maximum material handling rate in tons per hour,  
2 is that right?

3 A. Yes, it is tons per hour.

4 Q. It is small. I want to double  
5 check. For the equipment labeled PC1 through  
6 PC12, which existed at the south site, the maximum  
7 material handling rate in tons per hour is 2,500,  
8 correct?

9 A. For PC1 through PC12, yes.

10 Q. But we've established that with  
11 respect to the equipment that is located at the  
12 north site that KCBX wanted to install at the  
13 south site, PC13 through PC22, that the maximum  
14 material handling rate is 3,000 tons per hour,  
15 correct?

16 A. Yes.

17 Q. And I believe you testified before  
18 that -- and if I'm wrong please correct me. That  
19 to the extent the tons per hour changes that  
20 impacts the emissions rate that gets calculated,  
21 right?

22 A. Yes.

23 Q. Okay. Let's turn to page 198, which  
24 is in KCBX's construction permit application and

1 at the same time let's look at R583, which is  
2 DTE's September 2012 construction permit  
3 application.

4 A. So I'm at 198. What is the second  
5 one?

6 Q. 583.

7 A. 583. Okay.

8 Q. And can we agree that we're  
9 comparing like pages by comparing 198 and 583?

10 A. Like pages. Not like content, but  
11 like pages, yes.

12 Q. Yeah. I just want to make sure  
13 we're on the right page. So this page which is  
14 R198 and R583, this is seeking information  
15 regarding applicable rules or regulations, right?

16 A. Yes.

17 Q. Okay. And at the top of both R198  
18 and R583 it says "See narrative, Section 1.0,"  
19 right?

20 A. Well, no.

21 Q. I'm sorry. Let me clarify for the  
22 record. R198 says "See narrative Section 1.0 in  
23 initial application" and R583 says "See narrative,  
24 Section 1.0"?

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1 A. That's correct.

2 Q. Both R198 and R583 are referring to  
3 the same project narrative, is that right?

4 A. They're referring to the same  
5 narrative.

6 Q. Yes. The same narrative, is that  
7 correct?

8 A. That's correct.

9 Q. Let's turn in the -- let's turn to  
10 page R567, please, and let me know when you're  
11 there.

12 A. Okay.

13 Q. And the reason why I was saying  
14 project narrative is because page R567 says "1.0  
15 project narrative" at the top, is that right?

16 A. It does on 567, yes.

17 Q. But you believe even though this  
18 says project narrative on page R567 that the  
19 reference to "see narrative" in the earlier pages  
20 that we were discussing is this project narrative,  
21 correct?

22 A. Not necessarily, no. It is -- this  
23 page 198 is asking for discussion of the  
24 applicable rules. That discussion is contained

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1 within this project narrative, but it does not  
2 constitute all of that project narrative. There  
3 is other stuff in this project narrative that is  
4 not germane to this application.

5 **Q. That's fair. I appreciate the**  
6 **clarification. So thank you. So then let's take**  
7 **a look at the project narrative and the applicable**  
8 **rules then that are being referenced, do those**  
9 **start on page R567 and continue to the top of page**  
10 **R570?**

11 A. Yes.

12 **Q. So when KCBX filed its July 23rd,**  
13 **2013, construction permit application, it was**  
14 **relying upon DTE's description of the state rules**  
15 **and the applicability determination that is set**  
16 **forth on pages R567 to R570, right?**

17 A. I don't know whether we relied on  
18 their applicability determinations. We relied on  
19 their analysis.

20 **Q. KCBX didn't create its own section**  
21 **on applicable rules that it included in its July**  
22 **23rd, 2013, construction permit application,**  
23 **right?**

24 A. There was no need. We were not

1 asking for any other permit changes. So that  
2 analysis would still be valid.

3 Q. So the answer to my question is,  
4 yes, KCBX did not create any different discussion  
5 regarding the applicable rules?

6 A. If that's your question, yes.

7 Q. Let's turn to R -- let's do this  
8 now. Let's turn to R569, please.

9 A. Okay.

10 Q. So you're there, correct?

11 A. Yes.

12 Q. And I believe we talked about this  
13 or at least you did talk about this a little bit  
14 during your direct examination. This is the  
15 processed weight rate rule sample calculation,  
16 correct?

17 A. Correct.

18 Q. That is included I guess in the  
19 middle of this page, yes?

20 A. Yes.

21 Q. I believe that you testified that in  
22 doing the calculation it is dependant that one of  
23 the numbers that is included in this which is the  
24 P, the processed weight rate, that may change. So

1 here is 2,500 that is on page R569, right?

2 A. It is 2,500, yes.

3 Q. And the equipment -- we've  
4 established that the equipment at the north site  
5 that we're talking about here is -- that would be  
6 3,000 if we were doing this calculation based on  
7 one of those pieces of equipment?

8 A. For one of those pieces of equipment  
9 individually, yes.

10 Q. Okay. Isn't it true that with  
11 regard to -- Strike that.

12 Isn't it true that the A in this  
13 equation, in this case, 2.54 is a number that  
14 comes from the rule?

15 A. Yes.

16 Q. And that is based on whether you are  
17 greater than or less than 450 tons per hour?

18 A. That's correct.

19 Q. Okay. And so here the A is 2.54,  
20 correct?

21 A. Yes.

22 Q. But isn't the 2.54 utilized when it  
23 is less than 450 tons per hour?

24 A. That is correct. That's what the

1 rule states.

2 Q. And it is -- correct me if I'm  
3 wrong. It is 24.8 if it's more than 2,500 tons  
4 per hour, right?

5 A. Yes.

6 Q. So this is wrong on page R569,  
7 right?

8 A. Well, it should be noted that if you  
9 change 2.54 with 25 you're going to get a much  
10 larger emission rate.

11 Q. Fair. But I just want to establish  
12 this calculation does not use the correct number  
13 for the A, right?

14 A. This calculation does not have the  
15 correct A value based on 25 tons per hour.

16 Q. Okay. And can we agree that it also  
17 does not have the correct little B that is in this  
18 equation?

19 A. Yes, that's correct.

20 Q. And for the same reason because  
21 they're utilizing -- DTE in this case is utilizing  
22 2,500 tons per hour which is greater than  
23 obviously 450 tons per hour and as such the little  
24 B is not correct?

1 A. That is -- yes.

2 Q. Do I have that right?

3 A. The little B should be a different B  
4 based on the rule.

5 Q. KCBX could have corrected this. I  
6 mean, you know this obviously that it is not  
7 correct, right?

8 A. Yes, I know that it is not correct.

9 Q. So it could have been corrected  
10 through the July 23rd, 2013, construction permit  
11 application, right?

12 A. That's possible, yes.

13 Q. Let's go to page 202 -- I'm sorry.  
14 Let's just finish up really quickly. On page  
15 R199, please. And then again page R584 and let  
16 me know when you're there.

17 A. Okay. I'm there.

18 Q. In response to questions 31 and 32  
19 on page R199, which is KCBX's construction permit  
20 application it states "See narrative, 1.0 in  
21 initial application" whereas on page R584 in  
22 response to questions 31 and 32 it states "See  
23 narrative Section 1.0 in response to questions 31  
24 and 32," correct?



1 A. Correct.

2 Q. And this is the same narrative that  
3 we looked at before, though, this concerns  
4 compliance information, correct, that would be  
5 included in that project narrative?

6 A. Yes.

7 Q. I just want to make sure that we  
8 know when we're referring to the narrative on page  
9 R199 and R584 the Illinois EPA was supposed to go  
10 and look at DTE's September 2012 construction  
11 permit application and the narrative that is  
12 included in there, is that right?

13 A. Yes.

14 Q. Let's go to R202, please, and R587  
15 and let me know when you're at those two spots.

16 A. Okay.

17 Q. Again, R202 is KCBX's permit  
18 application that says "See tables 1 through 12 in  
19 initial application" and R587 is DTE's September  
20 2012 construction permit application which states  
21 "See tables 1 through 12," correct?

22 A. Yes.

23 Q. And so KCBX through its application  
24 was telling, for lack of a better word, the

1 Illinois EPA to look at DTE's September 2012  
2 construction permit application regarding tables 1  
3 through 12, correct?

4 A. Correct.

5 Q. Okay. And this concerns emission  
6 information. That is what pages R202 and R587 are  
7 referring to, right?

8 A. They're referring to the tables  
9 which have calculations in them.

10 Q. Fair. And can we agree that tables  
11 1 through 12 in DTE's construction permit  
12 application, which is what KCBX is referring to in  
13 its construction permit application, that tables 1  
14 through 12 do not contain any information  
15 regarding the new conveyor, the new hopper and the  
16 new stacker that KCBX was seeking to take from the  
17 north facility and install at the south facility?

18 A. Not specifically.

19 Q. Then let's go to R204 and at the  
20 same time R589. I believe this is my last  
21 comparison. So let me know when you're at those  
22 two pages.

23 A. I'm there.

24 Q. Okay. So R204 is part of KCBX's

1 construction permit application and R589 is part  
2 of DTE's September 2012 construction permit  
3 application, correct?

4 A. Correct.

5 Q. Okay. And in response to number 39  
6 KCBX responded "See figure one in initial  
7 application," right?

8 A. Yes.

9 Q. And DTE responded "See figure one"  
10 to question 39, right?

11 A. That's right.

12 Q. So both KCBX and DTE are referring  
13 the Illinois EPA to the same figure one, is that  
14 right?

15 A. That is right.

16 Q. So if we turn a page to R590, am I  
17 looking at the right figure one?

18 A. That is figure one.

19 Q. Okay. So this is -- for purposes of  
20 KCBX's construction permit application, this is  
21 the figure one that Illinois EPA was supposed to  
22 look at, right?

23 A. Yes.

24 Q. All right. Figure one, though, was

1 prepared by DTE just to be clear?

2 A. It was prepared by CRA, but  
3 submitted by DTE.

4 Q. Fair. Okay. I like the  
5 clarification for the record. Okay. Looking at  
6 R590, this shows bulk materials going through a  
7 conveyor transfer point to bulk material piles,  
8 correct?

9 A. Correct.

10 Q. And in its most basic of depictions,  
11 right, PM emissions are shown as coming off of the  
12 conveyor transfer points, is that right?

13 A. That's right.

14 Q. PM emissions, though, are not also  
15 coming off of the bulk material piles according to  
16 this diagram, right?

17 A. Not on this diagram they don't, no.

18 Q. There is no control equipment that  
19 is depicted in the diagram, right?

20 A. No.

21 Q. And according to this diagram bulk  
22 materials at the KCBX south facility just sit in  
23 piles indefinitely?

24 A. According to this diagram?

1           **Q.       Uh-huh.**

2           A.       This diagram doesn't say anything  
3 about time.

4           **Q.       Well, we can agree, though, that**  
5 **there is no arrow from the bulk material piles to**  
6 **another box entitled conveyor transfer points,**  
7 **correct?**

8           A.       This diagram addresses conveyor  
9 transfer points because that's the subject of the  
10 application. It doesn't concern itself with bulk  
11 material piles.

12          **Q.       Exactly. I'm trying to establish if**  
13 **there is on this diagram the words bulk material**  
14 **pile, correct?**

15          A.       Correct.

16          **Q.       So this shows that bulk materials,**  
17 **petroleum coke and coal, go from the starting**  
18 **point, it is not depicted what the starting point**  
19 **is, but go from a starting point to the conveyor**  
20 **transfer point into a bulk material pile, that's**  
21 **what the arrow shows, correct?**

22          A.       Yes.

23          **Q.       There are no arrows going from the**  
24 **bulk material piles anywhere according to this**

1 **diagram?**

2 A. That is not relevant to the  
3 application. The application is for material  
4 transfer points. It is not for bulk material  
5 piles.

6 **Q. Materials to go offsite, materials**  
7 **go through conveyor transfer points, correct?**

8 A. Correct.

9 **Q. And so they go from bulk material**  
10 **piles through a conveyor transfer point offsite,**  
11 **correct?**

12 A. They go from bulk material piles  
13 through conveyor transfer points to some sort of  
14 mode of transportation, yes.

15 **Q. And what I'm stating, I think we can**  
16 **agree, that is not depicted in this diagram?**

17 A. The scenario that you speak of is  
18 not depicted in this diagram if that's your  
19 question.

20 **Q. Thank you. Yes. Let's go back to**  
21 **R204 and R589.**

22 MR. SWEDLOW: You said we had our  
23 last comparison.

24 MS. PAMENTER: I'm on my last page.

1 There's one more comparison on the page. KCBX  
2 wrote this application, right?

3 MR. SWEDLOW: Do you really want me  
4 to answer that?

5 HEARING OFFICER HALLORAN: No.

6 MS. PAMENTER: No. I strike my  
7 statement. I apologize.

8 BY MS. PAMENTER:

9 Q. We're looking at number 48 on page  
10 R204 and R589, do you see that?

11 A. Yes.

12 Q. And on 204 it states "See table 13  
13 in initial application," correct?

14 A. Correct.

15 Q. And on R589 it says "See table 13,"  
16 correct?

17 A. Correct.

18 Q. And so KCBX is having the Illinois  
19 EPA look at DTE's table 13 prepared in September  
20 of 2012, correct?

21 A. They're referencing it, yes.

22 Q. After September of 2012, I believe  
23 you testified that KCBX applied for and obtained  
24 an April 2013 construction permit, correct?

1 A. Yes.

2 Q. **And you stated --**

3 A. Actually, can I clarify?

4 Q. **Yes.**

5 A. It's a revision to a construction  
6 permit.

7 Q. **Thank you. And I believe you stated**  
8 **during your direct examination that the purpose**  
9 **for obtaining that permit was to rearrange**  
10 **equipment ID numbers, correct inconsistencies and**  
11 **repurpose two portable conveyors to fixed**  
12 **conveyors, is that right?**

13 A. I think I said inconsistencies in  
14 generators and to repurpose two portable  
15 conveyors.

16 Q. **So, in part, the equipment existing**  
17 **at the site did not match the current permit that**  
18 **was in place and as such the permit needed to be**  
19 **revised, is that right?**

20 A. In terms of generators, that's  
21 right.

22 Q. **Okay. Let's turn to page R65,**  
23 **please.**

24 A. Am I done with the two page leaving



1 open?

2 Q. Yes.

3 A. So I'm going to which page now?

4 Q. **Sixty-five, please.**

5 A. Sixty-five.

6 Q. **Mm-hmm. And let me know when you're**  
7 **there, please.**

8 A. I'm there.

9 Q. **This is a log sheet that the south**  
10 **plant uses to document the controls that they have**  
11 **applied on any particular shift or day, is that**  
12 **right?**

13 A. Yes, I believe so.

14 Q. **And the KCBX south facility**  
15 **maintains daily log sheets regarding water truck**  
16 **applications that are made at the south site,**  
17 **right?**

18 A. To the best of my knowledge, that's  
19 correct. I don't have those files available to  
20 me.

21 Q. **And the KCBX south facility collects**  
22 **information regarding the operations of its water**  
23 **cannon systems, correct?**

24 A. Yes.

1           Q.       Does the KCBX south facility also  
2 maintain monthly reports with emission  
3 calculations associated with the movement of  
4 materials coming into the facility, as they are  
5 moved within the facility and as they leave the  
6 facility?

7           A.       They did at the time I had oversight  
8 responsibility there.

9           Q.       And that time period does include  
10 January 23, 2013, to -- oh, my gosh -- Strike  
11 that.

12                               That time period does include  
13 July 23rd, 2013, through January 17th, 2014,  
14 correct?

15          A.       Yes.

16          Q.       I believe you stated that you  
17 attended a meeting on August 27th, 2013, with the  
18 Illinois EPA regarding the construction permit  
19 applications?

20          A.       Correct.

21          Q.       And after that, you sent this e-mail  
22 to Mr. Dragovich on September 5th, 2013, correct?

23          A.       Yes.

24                       MR. SWEDLOW: I object. The e-mail

1 is dated September 3rd.

2 HEARING OFFICER HALLORAN: I'm  
3 sorry?

4 MR. SWEDLOW: The e-mail is dated  
5 September 3rd.

6 HEARING OFFICER HALLORAN: Ms.  
7 Pamentner?

8 MS. PAMENTER: He is correct. It is  
9 dated September 3rd. Thank you for the  
10 clarification.

11 BY MS. PAMENTER:

12 **Q. And I believe you also testified**  
13 **that after that you had one additional telephone**  
14 **conversation with Mr. Dragovich, is that right?**

15 A. That's right.

16 **Q. So you didn't make any other**  
17 **telephone calls to the Illinois EPA regarding the**  
18 **construction permit application after that phone**  
19 **call?**

20 A. I didn't need to.

21 **Q. So you didn't, correct?**

22 A. I did not.

23 MS. PAMENTER: If I can have one  
24 moment.

1 HEARING OFFICER HALLORAN: You may.

2 MS. PAMENTER: I don't have any  
3 further questions. Thank you.

4 HEARING OFFICER HALLORAN: All  
5 right. Mr. Swedlow?

6 MR. SWEDLOW: Take a five-minute  
7 break?

8 HEARING OFFICER HALLORAN: Off the  
9 record.

10 (Whereupon, a break was taken  
11 after which the following  
12 proceedings were had.)

13 HEARING OFFICER HALLORAN: Okay.  
14 Back on the record.

15 R E D I R E C T E X A M I N A T I O N

16 BY MR. SWEDLOW

17 **Q. Mr. Steinert, I want to clarify what**  
18 **was sought with the revised construction permit**  
19 **appeal. What was the complete universe of -- what**  
20 **was the revision in its entirety that was sought**  
21 **to the July 2013 revised permit construction**  
22 **application?**

23 A. The revision in its entirety was  
24 simply to move 12 pieces of equipment from north

1 to south keeping all other permit conditions at  
2 south the same.

3 Q. And when you say all other permit  
4 conditions at the south the same, does that  
5 include annual throughput limitations?

6 A. Yes.

7 Q. Does it include monthly throughput  
8 limitations?

9 A. Yes.

10 Q. Does it include emissions  
11 limitations?

12 A. Yes.

13 Q. Does it include reporting  
14 requirements?

15 A. Yes.

16 Q. Does it include everything else  
17 having to do with the permit that was initially  
18 issued to DTE for this site and then assigned to  
19 KCBX?

20 A. Yes.

21 Q. So the reason if I understand  
22 correctly that our permit application, meaning  
23 KCBX's permit application, referenced the DTE  
24 application is because every single thing was

1 going to be the same except for the transfer of  
2 these 12 pieces of portable equipment, correct?

3 A. That is correct.

4 Q. And when this portable -- when these  
5 12 piece of portable equipment were initially  
6 permitted for use by KCBX at the north facility,  
7 was the equipment specific emission calculation  
8 information provided per equipment or in the  
9 aggregate for the site?

10 A. It was provided in the aggregate for  
11 the site.

12 Q. Yet the Illinois Environmental  
13 Protection Agency still issued the permit with  
14 respect that -- with those pieces of equipment at  
15 the north facility, correct?

16 A. That is correct.

17 Q. And when KCBX sought a separate  
18 revision of the construction permit to repurpose  
19 portable conveyors into permanently fixed  
20 conveyors, was an equipment specific emissions  
21 calculation provided for those conveyors through  
22 their repurposing?

23 A. No.

24 Q. It was only simply that all of the

1 emissions and throughput limitations that apply to  
2 the site still apply to the site, correct?

3 A. Correct.

4 Q. And EPA issued the permit for that  
5 repurposing as well --

6 A. Yes.

7 Q. -- for those conveyors, correct?

8 A. Yes.

9 Q. And if we look back, and I'm not  
10 going to do much of this, at page 580 the revision  
11 to the permit that we were seeking to further  
12 revise has a page called process emission unit  
13 data and information, do you see that?

14 A. I do.

15 Q. What is the response for  
16 manufacturer, model number and serial number?

17 A. To be determined.

18 Q. Yet the Illinois Environmental  
19 Protection Agency permitted all of the equipment  
20 sought through this construction permit, did it  
21 not?

22 A. Yes, it did.

23 Q. And for KCBX's request to transfer  
24 these 12 pieces of already permitted equipment,

1 KCBX put the same information in those same  
2 columns and entries, correct?

3 A. That is correct.

4 Q. Yet the Illinois Environmental  
5 Protection Agency did not permit this transfer of  
6 already permitted pieces of equipment, is that  
7 correct?

8 A. They denied that permit, yes.

9 Q. Did anyone from the Illinois  
10 Environmental Protection Agency ever send to KCBX  
11 a letter saying "Your application for a revised  
12 construction permit is incomplete"?

13 A. No.

14 Q. Did anyone from the Illinois  
15 Environmental Protection Agency ever contact you  
16 and say "Your permit application is incomplete"?

17 A. No.

18 Q. With respect to all of the  
19 incorporation comparisons that were made between  
20 the DTE applications that led to a permit and the  
21 revised permit application that KCBX submitted,  
22 are any of those necessary to change if nothing  
23 was changing at the facility with respect to those  
24 categories of information?



1 MS. PAMENTER: Objection. Calls for  
2 a legal conclusion.

3 MR. SWEDLOW: He is being offered as  
4 an opinion witness on this exact topic.

5 HEARING OFFICER HALLORAN:  
6 Overruled.

7 BY THE WITNESS:

8 A. Can you restate it? I'm not sure I  
9 understand.

10 BY MR. SWEDLOW:

11 **Q. Is there any reason to change**  
12 **anything from the application that we were**  
13 **referring to if nothing was changing with respect**  
14 **to that category of information?**

15 A. No, there would be no information.

16 **Q. And to repeat. What is the one**  
17 **category that is relevant to this particular**  
18 **permit application?**

19 A. Well, the only thing that is  
20 relevant that should be changed in the permit is  
21 the list of permitted equipment. So it needed to  
22 have the addition of the 12 pieces of equipment in  
23 question.

24 **Q. When and if you were calculating the**

1 processed weight rate, does the difference between  
2 2,500 and 3,000 lead to any different conclusion  
3 as to whether or not these additional pieces of  
4 equipment could possibly violate the processed  
5 weight rate rule?

6 A. No, the conclusion is the same.

7 Q. Why is that? Can you explain that  
8 to us?

9 A. Because the difference between  
10 allowable and actual is so great that a modest  
11 change of 500 tons per hour doesn't approach any  
12 kind of exceedance of the allowable processed  
13 weight rate.

14 Q. And even though there were  
15 identified incorrect numbers used in the original  
16 processed weight rate calculation for the permit  
17 that already issued for this site, EPA still  
18 issued the permit for this site, for the KCBX  
19 south facility when it was owned by DTE?

20 A. That's correct.

21 Q. And then it transferred and  
22 permitted that same construction permit to KCBX  
23 when it bought the site?

24 A. That's correct.

1           **Q.       Did anyone from the Illinois**  
2 **Environmental Protection Agency ever contact you**  
3 **and say "Your application is incomplete because**  
4 **you didn't provide any or all processed weight**  
5 **rate calculation information"?**

6           A.       No one contacted me, no.

7           **Q.       Did you ever receive a letter that**  
8 **said "We need more information because your**  
9 **application is incomplete relating to the**  
10 **processed weight rate calculation"?**

11          A.       I did not.

12          **Q.       Was this raised at the meeting that**  
13 **you attended on August 27th?**

14          A.       It was not.

15          **Q.       When you sent your e-mail on**  
16 **September 3rd identifying the equipment by number**  
17 **rather than by serial number, did anyone from IEPA**  
18 **tell you that your submission was incomplete?**

19          A.       No.

20          **Q.       Was that communicated to you in**  
21 **writing or orally?**

22          A.       It was not communicated to me at  
23 all.

24          **Q.       Earlier you testified that you have**

1 **been involved in 20 air permit applications to the**  
2 **Illinois Protection Agency in Illinois during the**  
3 **period of time you worked in Illinois or worked**  
4 **for Illinois sites, is that correct?**

5 A. That's correct.

6 **Q. Have you been involved in any**  
7 **governmental environmental permit applications**  
8 **outside of Illinois?**

9 A. Yes.

10 **Q. Where and when were those?**

11 MS. PAMENTER: Objection.

12 Relevance.

13 HEARING OFFICER HALLORAN: Wait a  
14 minute. Hold on. Mr. Swedlow?

15 MR. SWEDLOW: Well, the attempt I  
16 think on the voir dire was to limit the expertise  
17 and experience of this witness to only his  
18 applications to the Illinois Environmental  
19 Protection Agency as it relates to air and whether  
20 he sat on the Illinois Pollution Control Board and  
21 our position and our proffer for him here as an  
22 expert is his decades of experience of both  
23 working for government agencies on permitting  
24 issues and submitting permit applications to other

1 government agencies is relevant. I would also  
2 note that Julie Armitage said she looked at  
3 permits and rules from other states when  
4 considering this application. So other states are  
5 either relevant for the whole proceeding or not  
6 relevant for any of the proceeding.

7 HEARING OFFICER HALLORAN: Ms.  
8 Pamentner?

9 MS. PAMENTER: The purpose of the  
10 voir dire was to indicate -- I'm sorry. The  
11 purpose of the voir dire was to ask questions  
12 regarding this permit application that has been  
13 submitted in the State of Illinois, that gets  
14 reviewed by the Illinois Environmental Protection  
15 Agency and that gets reviewed by the Illinois  
16 Pollution Control Board. Rulings made on permit  
17 applications in other states is irrelevant to this  
18 proceeding and Ms. Armitage who has not testified  
19 yet did not testify with regard to permit  
20 applications in other states in her deposition.

21 MR. SWEDLOW: I can go either way on  
22 this because part of the record -- the state  
23 submitted four separate supplements. One actually  
24 Friday. In those supplements were permits that

1 were issued in other states and regulations from  
2 other states. If it is not relevant, then we need  
3 to make that ruling now before she testifies and  
4 if it is, then I can qualify this witness as an  
5 expert.

6 HEARING OFFICER HALLORAN: Are you  
7 talking about the supplement that was filed  
8 yesterday?

9 MR. SWEDLOW: No. I'm talking about  
10 the supplemental that was filed Friday by the  
11 Illinois Environmental Protection Agency that  
12 included California and Indiana related  
13 environmental permits.

14 MS. PAMENTER: I'm not trying to  
15 misstate the record at all. I'm just trying to --  
16 he is correct that there are California  
17 regulations and if I can just ask are you  
18 referring to the BP Whiting consent decree which  
19 is in Indiana?

20 MR. SWEDLOW: I'm referring to the  
21 California and the Indiana regulations and permits  
22 that were made part of this record through the  
23 fourth supplement and if we can strike anything  
24 that is not from Illinois, then I will not ask

1 this witness a single question about anything that  
2 he has done outside of Illinois.

3 MS. PAMENTER: If I can have a  
4 moment.

5 HEARING OFFICER HALLORAN: Sure.

6 MS. PAMENTER: I guess we're going  
7 to need to allow the questions to proceed because  
8 they were produced as a result of the April 17th  
9 Board order. So I don't know that we can actually  
10 then remove stuff out of the administrative  
11 record. So I'll withdraw my objection in light of  
12 that and please proceed.

13 HEARING OFFICER HALLORAN: Thank  
14 you, Ms. Pamenter.

15 BY MR. SWEDLOW:

16 **Q. Can you describe all of your**  
17 **experience in permit applications for**  
18 **environmental permits outside of Illinois over the**  
19 **course of your career and if you can identify the**  
20 **number of permits you've worked on?**

21 A. Can we restrict it to air permits?

22 **Q. We can start with air permits.**

23 A. I have permitted a facility  
24 expansion and a facility modification in

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1 California. I have permitted a greenfield  
2 facility construction in Texas, a brownfield  
3 construction facility in Texas. Actually, a  
4 second greenfield facility construction in Texas.  
5 I have permitted two permit revisions or I have  
6 applied for and received two permit revisions for  
7 a facility in Texas. I have applied for and  
8 received permit revisions on three occasions for a  
9 facility in West Virginia and I have applied for  
10 and received a synthetic minor permit for a  
11 facility in Minnesota. I have received two permit  
12 revisions for facilities in Michigan. These are  
13 all air permits. This is all just experience at  
14 Koch Carbon or Koch Minerals. Do you want me to  
15 go further back in my employment history?

16 **Q. Why don't we do it this way to short**  
17 **circuit. If you count all of the permit**  
18 **applications and counting separately the revisions**  
19 **that relate to air throughout your entire career**  
20 **in every state and federal, how many permit**  
21 **applications have you been involved in?**

22 A. At least 40.

23 **Q. And have you been involved in any**  
24 **other environmental permit applications beyond**



1 **air?**

2 A. Yes.

3 **Q. If you count all revisions, how many**  
4 **would that be?**

5 A. Including other media and air  
6 together, probably 75.

7 MR. SWEDLOW: I have no further  
8 questions.

9 MS. PAMENTER: Briefly.

10 R E C R O S S E X A M I N A T I O N

11 BY MS. PAMENTER

12 **Q. One thing I want to clarify. I**  
13 **unfortunately have to take you back to your direct**  
14 **examination. I apologize. I forgot to ask you**  
15 **before. I believe when you stated that you worked**  
16 **at Koch Carbon that it included north and south**  
17 **for the entire time period between October 2004**  
18 **and February 2014 and just to clarify while you**  
19 **were at Koch Carbon -- excuse me -- KCBX did not**  
20 **own the south site until December of 2012,**  
21 **correct?**

22 A. That's correct.

23 **Q. And you didn't work for DTE --**

24 A. That is correct.

1 Q. -- when it owned the south site?

2 A. I did not.

3 Q. Okay. So when we're talking about  
4 the south site, we're talking December 2012 --

5 A. From time of acquisition up through  
6 February of 2014.

7 Q. I just wanted to clarify that. You  
8 just testified with respect to your work on permit  
9 applications outside the State of Illinois, is  
10 that fair?

11 A. Yes.

12 Q. Can we agree that with respect to  
13 states outside of the State of Illinois you didn't  
14 work for their respective Environmental Protection  
15 Agency at any point in time?

16 A. That would be true except for South  
17 Carolina. I did work for an Agency in South  
18 Carolina.

19 Q. So while you worked in South  
20 Carolina then, you did not consider whether a  
21 permit application should be granted or denied,  
22 correct?

23 A. I was -- I was a modeler. So, no, I  
24 was not a permit writer if that's your question.

1           Q.       I'm just trying to clarify. Your  
2 work outside the State of Illinois was with  
3 respect to drafting the permit applications,  
4 correct?

5           A.       Yes.

6           Q.       Not with respect to making the  
7 decision as to whether there was sufficient  
8 information in a permit application to grant or  
9 deny it, correct?

10          A.       That is correct.

11          Q.       Okay. Then you were asked some  
12 questions about the revision. I've heard the word  
13 revision and I believe I want to clarify that.  
14 That refers to the -- on page R186 the  
15 construction permit application, the reference to  
16 request for revision, is that right?

17          A.       I don't know the context in which  
18 you're asking the question. When you say we refer  
19 to the revision, we've referred to several  
20 revisions throughout this testimony. This is one  
21 of them.

22          Q.       Fair. So let me do it this way  
23 then. Having using the word revision, do you  
24 agree that there are no regulations in the State

1 **of Illinois specific to a revision to a permit**  
2 **application?**

3 A. Do you want to rephrase the  
4 question?

5 **Q. Do you want me to rephrase the**  
6 **question?**

7 A. Please rephrase the question.

8 **Q. Are you aware of any specific**  
9 **regulations that concern a request for a revision**  
10 **to a construction permit application?**

11 A. I'm going to state my response based  
12 on what I think you're asking. So there are  
13 regulations that involve modifications, changes,  
14 we can use the word revision in there as well at a  
15 site. I'm not aware of any specific regulation  
16 that addresses what the form or substance of a  
17 request to revise a construction permit or even a  
18 revised -- revised construction permit in this  
19 particular instance should look like. I don't  
20 recall there being any specific regulation that  
21 speaks to that.

22 **Q. You didn't -- you, KCBX, didn't**  
23 **submit a form called a request for revision,**  
24 **correct?**

1           A.       We submitted in this application  
2 July 23rd, 2013, a construction permit application  
3 for a FESOP source as well as we've already talked  
4 about the fee determination sheet and the process  
5 emission unit data and the information sheet. Are  
6 you asking me does the state have a form --

7           **Q.       Correct.**

8           A.       -- for revising permits?

9           **Q.       Correct.**

10          A.       I'm not aware that there is a  
11 specific form, no.

12          **Q.       So this document at R186 to R204 is**  
13 **a construction permit application, correct?**

14          A.       Yes. In essence, it is.

15          **Q.       And you also testified with respect**  
16 **to the equipment going from the north site to the**  
17 **south site as being a transfer. Did I**  
18 **characterize that correctly?**

19          A.       Well, that would be a term. You can  
20 call it a movement. You can call it a transfer.  
21 Yes, it can be a transfer.

22          **Q.       But in reality we've discussed the**  
23 **fact that the ten conveyors are a new emission**  
24 **unit, correct?**

1           A.       Yes, by definition in the rule it  
2 would be a new emission unit.

3           **Q.       And the additional box hopper is a**  
4 **new emission unit, correct?**

5           A.       It's a new emission unit for south,  
6 yes.

7           **Q.       And the stacker is a new emission**  
8 **unit?**

9           A.       For south, yes.

10          **Q.       And then you also stated that the**  
11 **only thing that is relevant, and please correct me**  
12 **if I'm wrong, that the only thing that is relevant**  
13 **with respect to the construction permit**  
14 **application is the list of equipment because you**  
15 **weren't seeking any other changes in the permit,**  
16 **do I have that right?**

17          A.       That's basically, correct.

18          **Q.       And you referred to the fact that**  
19 **there were some other applications for which you**  
20 **did not include emission data information, isn't**  
21 **that right?**

22          A.       That's correct.

23          **Q.       But you did include emission data**  
24 **information with respect to this July 23rd, 2013,**

1 **construction permit application, correct?**

2 A. We included the reference to the  
3 initial application.

4 **Q. And that is tables five and six that**  
5 **are in the DTE construction permit application?**

6 A. And we also stated in the cover  
7 letter that the emission limits would be the same.

8 **Q. And then with respect to the**  
9 **emission factor calculation, a change in the tons**  
10 **per hour impacts the emission rate, correct?**

11 A. Not the way you stated it, no. The  
12 emission rate has nothing to do with the emission  
13 factor. The emission factor is going to be  
14 calculated the same as I showed earlier in table  
15 five. So if you applied that emission factor to  
16 let's say the tons per year throughput rate, it's  
17 a rate, it would give you the same number because  
18 we're not changing the tons per year number.

19 **Q. Okay.**

20 A. If you're applying it --

21 **Q. I'm sorry. Finish your answer. I**  
22 **apologize.**

23 A. If you're applying it to the tons  
24 per hour, you would get a different number.

1           **Q.**       **So if we just quickly turn to R603,**  
2 **I want to make sure I understand this. Let me**  
3 **know when you're there.**

4           A.       Yes.

5           **Q.**       **If I put in under coal petcoke**  
6 **portable conveyor emissions a 3,000 ton per hour**  
7 **amount, do you see right now it says 2,500 if I**  
8 **put in 3,000 I will get different numbers in the**  
9 **last four columns, is that right?**

10          A.       No.

11          **Q.**       **The numbers --**

12          A.       You will not get different numbers  
13 in the tons per year column because those numbers  
14 are calculated from the tons per year column to  
15 the left. You would get different rates or  
16 different numbers in the pounds per day column.  
17 Those two columns.

18                   MS. PAMENTER: We have no further  
19 questions.

20                   MR. SWEDLOW: I want to clarify  
21 there was something that I think was a  
22 misstatement. I just want to clarify for the  
23 record. You can ask more questions about it.

24                                   Record site page 191 question



1 three of the construction permit application says,  
2 quote, does this application request a revision to  
3 an existing construction permit issued by the BOA?  
4 Yes or no. If yes, provide permit number.  
5 07050082. And I don't want the record to reflect  
6 that there isn't a specific item on the form that  
7 says revision. So you can ask whatever you want,  
8 but that exchange I think left the record somewhat  
9 ambiguous about the fact that there is a column  
10 that asks about revision and the original permit  
11 number.

12 HEARING OFFICER HALLORAN: Ms.  
13 Pamenter?

14 MS. PAMENTER: I agree that number  
15 three on page R191 states that. My question to  
16 the witness concerned whether there was a separate  
17 form entitled request for revision to construction  
18 permit and I believe that has been answered. I  
19 don't feel that I need to ask another question  
20 with regard to that.

21 HEARING OFFICER HALLORAN: Okay.  
22 Thank you. You may step down. You have no  
23 further questions?

24 MR. SWEDLOW: No.

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1 (Whereupon, a break was taken  
2 after which the following  
3 proceedings were had.)

4 WHEREUPON:

5 DAVID KOLAZ  
6 called as a witness herein, having been first duly  
7 sworn, deposeth and saith as follows:

8 MR. GRANT: Mr. Halloran, I have a  
9 couple of issues probably before we get started.  
10 First, I'd like to renew our motion to exclude  
11 Mr. Kolaz for --

12 HEARING OFFICER HALLORAN: You have  
13 to speak up.

14 MR. GRANT: I know. It's been hard,  
15 too. I'd like to renew our motion to exclude  
16 Mr. Kolaz, his opinions, as representing the  
17 ultimate issue of law for decision by the Board,  
18 not the ultimate issue of fact. The same argument  
19 we made in our motion in limine.

20 HEARING OFFICER HALLORAN: Okay.  
21 Your objection is so noted, but overruled based on  
22 my April 28th order.

23 MR. GRANT: My second question is --  
24 maybe I'll wait until the questions get started,

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1 but I'm wondering whether Mr. Kolaz even needs to  
2 be qualified as an expert prior to giving his  
3 opinions. In other words, for Mr. Dwyer, you  
4 know, to lay a foundation for his expert testimony  
5 prior to him giving any of his opinions. I'm not  
6 sure how this is done in these proceedings.  
7 That's how it is always done in court. Before an  
8 expert can testify, either the parties stipulate  
9 to the fact that the guy is an expert in the area  
10 or they're required to lay a foundation and you  
11 can make a finding that he is an expert in the  
12 areas that he is going to testify to.

13 HEARING OFFICER HALLORAN: I don't  
14 think a finding -- he can lay it out in the  
15 transcript. That's never happened before even  
16 when you've been before me on a number of cases.

17 MR. GRANT: No, I know a lot --  
18 well, there have been -- usually with the experts  
19 we've stipulated to them. So I don't know if  
20 we've reached this issue and certainly we can ask  
21 questions and make an argument to the Board in the  
22 final brief --

23 HEARING OFFICER HALLORAN: You can  
24 cross.

1 MR. GRANT: -- this should not be  
2 considered expert testimony.

3 HEARING OFFICER HALLORAN: Right.

4 MR. GRANT: Okay.

5 HEARING OFFICER HALLORAN: Your  
6 query is on the record. Anyway, Mr. Dwyer, you  
7 may proceed. The witness is -- are you sworn in  
8 yet?

9 THE WITNESS: Yes.

10 HEARING OFFICER HALLORAN: Have at  
11 it.

12 D I R E C T E X A M I N A T I O N  
13 BY MR. DWYER

14 Q. Dave, will you go ahead and state  
15 your full name and spell your last name for the  
16 record?

17 A. David Kolaz, K-O-L-A-Z.

18 Q. And, Dave, can you tell me what the  
19 purpose -- let me back up. Were you retained to  
20 provide advice and consulting services to the law  
21 firm of Hodge, Dwyer & Driver?

22 A. I was.

23 Q. And do you know what the purpose of  
24 that retention was?

1           A.       I was to provide testimony in the  
2 matter of the permit appeal.

3           **Q.       And do you understand that to be the**  
4 **matter we're here on today?**

5           A.       Yes.

6           **Q.       Dave, first, I want to talk to you a**  
7 **little bit about your background. First, tell me**  
8 **if you would your education after high school and**  
9 **the colleges or universities?**

10          A.       After high school, I attended the  
11 University of Illinois and obtained a bachelor of  
12 science degree in aeronautical and astronautical  
13 engineering and then I began work with the  
14 Illinois EPA right after that and then in 1984 I  
15 obtained a masters of engineering degree from  
16 Southern Illinois University with a specialty in  
17 environmental engineering.

18          **Q.       And, Dave, are you -- do you have**  
19 **any other professional registrations?**

20          A.       I'm a registered professional  
21 engineer in the State of Illinois.

22          **Q.       And when did you receive that**  
23 **designation initially?**

24          A.       1977.

1           **Q.       And have you kept that up and are**  
2 **you still registered today in Illinois?**

3           A.       Yes, I have and I am.

4           **Q.       Okay.  First, Dave, if you look in**  
5 **front of you, you should have a couple of**  
6 **documents.  The first one is marked Petitioner's**  
7 **Exhibit 1, do you have that document in front of**  
8 **you?**

9                               (Document marked as Petitioner's  
10                              Exhibit No. 1 for  
11                              identification.)

12 BY THE WITNESS:

13           A.       Yes, I do.

14 BY MR. DWYER:

15           **Q.       And what is your understanding of**  
16 **what that document is?**

17           A.       This three-page document is --  
18 describes the expert opinion that I have rendered  
19 or intend to render in this case.

20                       MR. GRANT:  Just a second.  I have  
21 two pages.

22                       MR. DWYER:  It should only be two.

23                       THE WITNESS:  I'm sorry.

24                       MR. GRANT:  That same document --

1 BY MR. DWYER:

2 Q. To be clear, Dave, on Petitioner's  
3 Exhibit 1 the pages -- are there page numbers at  
4 the bottom?

5 A. Yes.

6 Q. Okay. And does it begin with page  
7 eight?

8 A. It does.

9 Q. And does it continue to page nine?

10 A. It does.

11 MR. GRANT: So you had a cover sheet  
12 that was the third page?

13 MR. DWYER: (Affirmative nod.)

14 MR. GRANT: Thanks.

15 BY MR. DWYER:

16 Q. Prior to today, Dave, have you seen  
17 that document?

18 A. Yes, I have.

19 Q. And were you involved in preparing  
20 those opinions?

21 A. I was.

22 Q. And as we sit here today, do you  
23 have those same opinions that you had when they  
24 were published and filed with the Board?

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1 A. I do.

2 Q. Let's talk about your employment  
3 history, Dave, and in particular do you also have  
4 another document with you that is marked  
5 Petitioner's Exhibit 2?

6 (Document marked as Petitioner's  
7 Exhibit No. 2 for  
8 identification.)

9 BY THE WITNESS:

10 A. I do.

11 BY MR. DWYER:

12 Q. Have you seen that document before?

13 A. Yes, I have.

14 Q. What is it?

15 A. This is my curriculum vitae.

16 Q. And so looking at your CV, Dave,  
17 I'll try to be efficient with your time here, but  
18 according to your CV, Dave, is it correct that you  
19 worked for the Illinois EPA for approximately 30  
20 years?

21 A. Yes.

22 Q. Tell me when you first began your  
23 employment at Illinois EPA.

24 A. I began in -- actually, in June of



1 1971.

2 **Q. How long did you work there?**

3 A. I worked through December of 2004.

4 **Q. Now, looking at your CV, Dave, why**  
5 **don't you first tell me what was your first**  
6 **position with the Illinois EPA?**

7 A. My first position was as a --  
8 serving as a variance analysis engineer.

9 **Q. And can you just describe briefly**  
10 **what were your responsibilities in that position?**

11 A. The Pollution Control Board rules  
12 allow a regulated entity to request a waiver of  
13 time from pollution control rules in cases where  
14 the facility or the business is unable for various  
15 reasons to comply with the rule in the statutory  
16 timeframe.

17 **Q. Would you review those?**

18 A. Yes.

19 **Q. Okay. What would your review**  
20 **consist of?**

21 A. It would consist of reviewing the  
22 application and the reasons for the request and in  
23 some cases speaking with the applicant and then  
24 preparing a draft recommendation as to whether or

1 not I believe that the variance should be granted.

2 **Q. Would it involve reviewing**  
3 **Illinois's air pollution regulations?**

4 A. Yes.

5 **Q. And how long were you in that**  
6 **position at the Agency?**

7 A. Approximately, two years.

8 **Q. And what was your next position,**  
9 **Dave?**

10 A. I next worked in the permit section  
11 as a permit analyst.

12 **Q. If you would, describe for me what**  
13 **were your duties and responsibilities as a permit**  
14 **analyst?**

15 A. As a permit analyst, I would review  
16 applications for permits and then make a  
17 recommendation to my supervisor as to whether or  
18 not the permit should be granted or denied.

19 **Q. In that position, just give me your**  
20 **best guess, Dave, how many permits did you review**  
21 **while you were in that position as a permit**  
22 **analyst at IEPA?**

23 A. I've never thought of that before,  
24 but I would guess I probably reviewed a hundred.

1           **Q.           And when you say reviewed, Dave,**  
2 **tell me, if you can in a little more detail, what**  
3 **would that review constitute? What did you**  
4 **review?**

5           A.           Well, the permit applicant would  
6 provide information that was intended to describe  
7 the operations of the facility in a particular --  
8 its emissions or potential emissions. If this was  
9 a permit to construct a piece of equipment, it  
10 would have various pieces of information that  
11 would help us to understand what was planned to be  
12 constructed. If it was an operating permit or a  
13 renewal of an operating permit, it would be  
14 slightly different, but, in essence, serve the  
15 same purpose. To let us understand what rules  
16 would apply to that facility and to understand the  
17 plans that the facility had for complying with  
18 those regulations.

19           **Q.           And in that position would that**  
20 **require you to have familiarity with the Pollution**  
21 **Control Board's air pollution regulations?**

22           A.           Yes, it would.

23           **Q.           And after that position, what was**  
24 **your next position at the Agency, Dave?**

1           A.       I then was supervisor of the air  
2 data unit for the air monitoring section.

3           **Q.       Tell me right now, Dave, just**  
4 **generally when you were at the Agency in that**  
5 **position describe for me the permit process from**  
6 **the time that the Agency receives a permit to the**  
7 **time that a decision is made about that permit.**

8           A.       Well, the permit process -- if I  
9 start at the beginning, sometimes I think it would  
10 be correct to say the permit process starts with  
11 an inquiry from the permit applicant even before  
12 an application is received. A facility might  
13 contact the Agency, contact the permit analyst and  
14 request a meeting to discuss their plans and  
15 intentions and get some advice and some  
16 information from the Agency to aid them in  
17 preparing an effective permit application.

18                       You know, the next step in my  
19 view is the act or submittal of the permit  
20 application itself. Once the permit application  
21 is received, there is a period of time where a  
22 completeness review is done.

23           **Q.       Tell me, if you can, what is the**  
24 **purpose of the completeness review, Dave?**

1           A.       Well, the completeness -- the  
2 purpose of the completeness review is to determine  
3 if a complete permit application has been  
4 received. If it has, then the permit application  
5 is deemed to have been filed. The Agency --

6           **Q.       Let me stop you. What if it has**  
7 **not?**

8           A.       If it is not complete?

9           **Q.       Yes.**

10          A.       If it is not complete, then the  
11 Agency has 30 days to notify the company that it  
12 is not complete and that is termed a notice of  
13 incompleteness in which case the application is  
14 deemed to have not been filed.

15          **Q.       Let's assume, you know, in your**  
16 **description that the application is complete.**  
17 **What happens next?**

18          A.       Well, next, the application is  
19 assigned to a permit analyst for the purpose of  
20 having a review done of that application and the  
21 permit analyst looks at the information in the  
22 application. They also look at the rules that  
23 would apply to the facility and make an assessment  
24 as to whether or not the grant of that permit

1 would result in a situation where the company  
2 would be able to comply with the regulations.

3 It would also -- you know,  
4 despite the notice of incompleteness step that I  
5 mentioned, in some cases further review of the  
6 permit application might reveal that there is an  
7 important piece of information that is needed and  
8 in that case the permit analyst would contact the  
9 company and request that piece of information.

10 **Q. And then what would the next step**  
11 **be?**

12 A. Well, at that stage assuming that a  
13 permit analyst determined that the permit could be  
14 granted, they would -- the permit analyst would  
15 draft the permit and that permit -- that draft  
16 permit would be shared with their supervisor. If  
17 there is a situation where the permit analyst  
18 feels that there are issues and problems,  
19 oftentimes there are discussions with the  
20 supervisor concerning that matter before any  
21 further action is taken.

22 The step after that is -- in the  
23 case of the decision to grant a permit, that  
24 permit is then submitted to the permit section

1 manager for signature. Although there are times  
2 depending upon the type of permit where the  
3 supervisor will sign the final permit. So there  
4 is signature authority that is granted to the  
5 supervisor for certain types of permits.

6 **Q. As we sit here today, is it your**  
7 **understanding that that is essentially the same**  
8 **process that is employed in the Bureau of Air at**  
9 **Illinois EPA?**

10 A. Yes.

11 MR. GRANT: I'd like to object  
12 because I'm getting a little confused. All I want  
13 is Mr. Dwyer to clarify the timeframe for when  
14 Mr. Kolaz has worked in the permit department.

15 HEARING OFFICER HALLORAN: Mr.  
16 Dwyer?

17 BY MR. DWYER:

18 **Q. Dave, if you need to look at your**  
19 **resume, can you tell me what was the period of**  
20 **time you were employed as a permit analyst**  
21 **engineer?**

22 A. Nine months.

23 MR. GRANT: And the year is what I  
24 was specific to. Now versus then.

1 BY MR. DWYER:

2 Q. What years -- looking at your  
3 resume, Dave, when were you -- when did you hold  
4 that position?

5 A. Between 1973 and 1974.

6 Q. And after that, Dave, did you  
7 continue working at EPA in another position?

8 A. Yes.

9 Q. What was that position and briefly  
10 describe your duties and responsibilities?

11 A. After the work as a permit analyst,  
12 I was the supervisor of the air data unit for the  
13 air monitoring section.

14 Q. Dave, what were your  
15 responsibilities in that position?

16 A. I was responsible for reviewing the  
17 air monitoring data that was obtained through our  
18 ambient air monitoring instrumentation that was  
19 located throughout the state.

20 Q. And during what years did you hold  
21 that position?

22 A. From 1974 to 1977.

23 Q. And did you then move to another  
24 position at the Agency?



1 A. Yes.

2 **Q. Tell me what the title was and**  
3 **describe your duties, if you would, and**  
4 **responsibilities.**

5 A. From 1977 into 1990, I was the  
6 manager of the air monitoring section.

7 **Q. And, in that position, what were**  
8 **your responsibilities?**

9 A. In that position, I was responsible  
10 for both the data analysis work that I described  
11 just a few minutes ago where I worked as the  
12 supervisor, but I was also responsible then for  
13 the laboratory and the people that maintain the  
14 air monitoring instruments in the state.

15 **Q. And then during what years did you**  
16 **hold that position, Dave?**

17 A. 1977 to 1990.

18 **Q. And in 1990 did again your position**  
19 **change at the Agency?**

20 A. Yes.

21 **Q. And what was your new position?**

22 A. My new position was as manager of a  
23 group called the air systems management section.

24 **Q. Can you describe briefly what your**

1 **duties and responsibilities were?**

2 A. Yes. In that position, I was  
3 responsible for helping to develop the  
4 computerization of the division of air pollution  
5 control and I was also responsible for developing  
6 regulations and implementing the annual air  
7 emission reporting program that came about as a  
8 result of the 1990 Clear Air Act amendments.

9 **Q. And in that position did you have**  
10 **any opportunity or responsibility to review air**  
11 **permit applications?**

12 A. Only as regards to the compilation  
13 of the emission inventory.

14 **Q. And why would you need to look at**  
15 **permits to perform that?**

16 A. Well, the permit application  
17 especially would have information such as emission  
18 rates, stack heights, stack temperatures, various  
19 other pieces of information that would be  
20 important for an air emission inventory.

21 **Q. And during that period, did your**  
22 **responsibilities include providing testimony to**  
23 **the Pollution Control Board, if you recall?**

24 A. Yes. I mean, during this whole

1 period we've talked about there were various times  
2 that I provided testimony.

3 **Q. And did that relate to what I'll**  
4 **refer to as rulemaking proceedings?**

5 A. Some did and some was involved --  
6 actually, the first time I testified was in an  
7 enforcement case.

8 **Q. And after that position, were you**  
9 **then -- did you then move to another position at**  
10 **the Agency?**

11 A. Yes.

12 **Q. And what was that position and what**  
13 **year was it?**

14 A. From 1994 to 2000, I was manager of  
15 a section entitled compliance and systems  
16 management section.

17 **Q. If you would, just describe briefly**  
18 **what were your duties and responsibilities in that**  
19 **position?**

20 A. That position encompassed the duties  
21 of my previous position, but also added the  
22 responsibility of developing and managing the  
23 compliance program which involved addressing  
24 situations where the Bureau of Air and the Agency

1 felt that there were violations of the regulations  
2 in the act.

3 **Q. And in that position did you have**  
4 **occasion to review permit applications or permits?**

5 A. Yes. Both.

6 **Q. And what would the purpose of your**  
7 **review be?**

8 A. The purpose of the review would be  
9 to better inform myself and the others that worked  
10 with me about situations involving potential  
11 noncompliance. So, for example, if we received an  
12 inspection report from an inspector that alleged a  
13 violation of a provision of a permit, we would  
14 review that permit, verify the information and in  
15 some cases we would look at the actual permit  
16 application to gather necessary information to,  
17 again, verify and substantiate the information  
18 that we had.

19 **Q. In that position, just your best**  
20 **guess, Dave, how many permit applications and/or**  
21 **permits would you have reviewed during your time**  
22 **in that position?**

23 MR. GRANT: I object. I don't think  
24 he mentioned applications.

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1 MR. DWYER: I think he did.

2 MR. GRANT: I think he said permits.

3 HEARING OFFICER HALLORAN:

4 Overruled.

5 BY MR. DWYER:

6 Q. I'll clarify. Dave, in that  
7 position, just to clarify, that we're talking  
8 about right now was part of your duties did they  
9 include reviewing permit applications?

10 A. Yes.

11 Q. Okay.

12 A. Yes.

13 Q. Why don't you go ahead and tell me,  
14 if you can, your best guess how many permits  
15 and/or permit applications you may have reviewed  
16 during the time you were assigned those duties?

17 A. Those were over a period of six  
18 years. If I guess too low, you'll think I'm not  
19 working hard enough. I don't know. A couple  
20 hundred I would guess. I should also mention that  
21 same group, as I said earlier, had the duties of  
22 my previous section. So we were also compiling  
23 the emission inventory.

24 Q. And because of that, did that also

1 **involve your reviewing permits and permit**  
2 **applications?**

3 A. Yes.

4 **Q. So in 1994 -- I'm sorry. When did**  
5 **you change to another position, Dave?**

6 A. I changed to another position in  
7 2000.

8 **Q. And what was that position?**

9 A. In 2000, I became chief of the  
10 Bureau of Air Pollution Control.

11 **Q. And as we sit here today, do you**  
12 **know who holds that position at the Agency?**

13 A. Yes, I do.

14 **Q. Who is that?**

15 A. Julie Armitage.

16 **Q. Now, if you would, Dave, describe**  
17 **for me your duties and responsibilities as the**  
18 **chief of the Bureau of Air?**

19 A. As chief of the Bureau of Air, I was  
20 responsible for basically the air pollution  
21 program, the state's air pollution program in  
22 Illinois. That may be the best way to describe it  
23 as it consisted of two divisions. One division  
24 was the division of vehicle inspection and

1 maintenance and this is the group that designed  
2 and implements the car testing program in Chicago  
3 and Metro East that many of you are probably  
4 familiar with and it also consists of the division  
5 of air pollution control.

6           The division of air pollution  
7 control is comprised of a permit section, field  
8 operations section which are the people that make  
9 inspections of facilities. Also the air  
10 monitoring section that we've talked about  
11 briefly. There is an air quality planning section  
12 who developed regulations and actually evaluate  
13 the state's progress in meeting those regulations  
14 by doing modeling and analysis of data and then  
15 there is the compliance and systems management  
16 section which still exists and these are the  
17 people, again, who compile the inventory and work  
18 to resolve potential compliance problems in  
19 Illinois.

20           **Q. All right. So during that period**  
21 **that you were the Bureau of Air chief, Dave, from**  
22 **2000 to 2004 during your tenure there, did you**  
23 **have occasion to review permits or permit**  
24 **applications submitted to the Bureau of Air or**

1 **issued by the Bureau of Air?**

2 A. I did that from a different  
3 perspective than I previously described, but, yes,  
4 I did.

5 **Q. And what was that different**  
6 **perspective?**

7 A. Well, I wasn't charged with actually  
8 doing the analysis and drafting the permit and I  
9 really wasn't trying to review compliance  
10 necessarily with the permit, but in some cases  
11 there were high profile permit applications that  
12 were complex in various ways and I in my  
13 responsibility as bureau chief would speak with  
14 the permit manager and we would discuss various  
15 issues that might have arisen in the course of  
16 either reviewing a permit or making a decision to  
17 grant or deny a permit.

18 **Q. During that period, Dave, when you**  
19 **were the bureau chief, can you tell me what was**  
20 **your understanding as to who would make the final**  
21 **permit decision on an application?**

22 A. Well, when I was the bureau chief, I  
23 always took the position that the role of making  
24 that decision was that of the permit manager.



1           **Q.       After 2004 -- well, did you continue**  
2 **to work for the Agency after 2004?**

3           A.       Not as a full-time employee, but the  
4 year after I retired --

5           **Q.       Just to back up. What year did you**  
6 **retire, Dave?**

7           A.       December 2004.

8           **Q.       And then go ahead. Did you do**  
9 **additional work for the Illinois EPA?**

10          A.       Yes, the new acting bureau chief at  
11 that time Laurel Kroack asked if I would come back  
12 and assist in developing the specification and  
13 bidding documents for the car testing program.

14          **Q.       After 2004, continuing into 2006,**  
15 **were you employed?**

16          A.       Yes.

17          **Q.       Were you employed by a company?**

18          A.       I'm trying to think of what you mean  
19 by employed. I was retired.

20          **Q.       Did you do any work related to your**  
21 **former experience at Illinois EPA?**

22          A.       I worked for individuals. I worked,  
23 for example, for Illini Bio-Energy which was a  
24 company working to design and construct an ethanol

1 plant in Illinois. I worked for the Illinois Pork  
2 Producers in 2005 assisting them with some issues  
3 they had regarding permitting of hog forms.

4 **Q. Just to -- would you be comfortable**  
5 **with the characterization that you did some**  
6 **private consulting after you left the Agency?**

7 A. Yes.

8 **Q. And subsequently in 2006, did you**  
9 **become employed somewhere else?**

10 A. Yes.

11 **Q. Where was that?**

12 A. In 2006, I began working for  
13 Conestoga-Rovers & Associates.

14 **Q. And just briefly tell me what is**  
15 **Conestoga-Rovers & Associates?**

16 A. It's a consulting engineering  
17 company that is based in Waterloo, Canada. It has  
18 approximately 2,400 employees.

19 **Q. Does it have an office in Illinois?**

20 A. Well, yes, it does.

21 **Q. Can you tell me is that the office**  
22 **that you are employed at?**

23 A. There are several offices in  
24 Illinois. The office in Chicago -- but I was

1 asked to help start the office in Springfield.

2 **Q. Was that in 2006?**

3 A. Yes.

4 **Q. Did you do that?**

5 A. Yes.

6 **Q. And can you tell me what kind of**  
7 **work do you do for Conestoga-Rovers & Associates?**

8 A. I do just the air pollution work and  
9 I've done several things. When I started with  
10 them, the -- I started working on the Caterpillar  
11 Title V permits.

12 **Q. Let me just step back a little bit,**  
13 **Dave. What kind of projects do you work on at**  
14 **Conestoga-Rovers?**

15 A. I work on permitting projects.

16 **Q. Are they all limited to air?**

17 A. Yes.

18 **Q. And when you say you work on**  
19 **projects, can you describe for me what you do?**

20 A. Yes. Well --

21 **Q. If it helps to use an example, go**  
22 **ahead.**

23 A. I would characterize it this way.  
24 Since I've been with Conestoga-Rovers, I've worked

1 on permitting projects as we've started to  
2 discuss. I've worked on projects helping people  
3 with compliance issues where they were being --  
4 either had received a violation notice or were  
5 being sued, which did not -- in itself was not  
6 what I would call a permitting project although it  
7 did involve reviewing permits in some cases. I  
8 also worked on at least one air monitoring project  
9 that I can recall which is the O'Hare Airport  
10 expansion. It involved the developing a program  
11 to measure the lead that would be coming from the  
12 houses that would be demolished and generally that  
13 probably covers it.

14 **Q. Let me ask you this. Since you left**  
15 **the Agency either as an individual consultant or**  
16 **working for Conestoga, have you prepared any air**  
17 **permit applications?**

18 A. Yes, I have.

19 **Q. And have you prepared any air permit**  
20 **applications that have were submitted to the**  
21 **Illinois EPA?**

22 A. I have.

23 **Q. Have you prepared air permit**  
24 **applications that were submitted to other states?**

1 A. I have.

2 **Q. Do you recall what states?**

3 A. Well, as we sit here, I recall  
4 Texas. I recall a permit application for Kentucky  
5 and one for Georgia.

6 **Q. When you worked on the air permit  
7 applications here in Illinois, what was the scope  
8 of your work? What did you do?**

9 A. Are we talking about with  
10 Conestoga-Rovers?

11 **Q. We can start with Conestoga-Rovers.**

12 A. With Conestoga-Rovers, I actually  
13 prepared the permit application. This involved  
14 meeting with the company representatives, speaking  
15 with them about their plans and their -- what they  
16 saw as the outcome they would like to have from  
17 the permitting process and toured the facilities  
18 that were involved in the permitting process that  
19 we were seeking a permit for and then I also spoke  
20 with the people.

21 In one case that I recall, the  
22 company had a permit that was expiring and they  
23 were renewing the permit. So I spoke with the  
24 people who were charged with implementing the

1 provisions of the existing permit to see if there  
2 were any complications or issues that they saw in  
3 the terms and conditions that existed and, in  
4 fact, there were and we spoke in terms of changes  
5 that we would like to see during the permit  
6 renewal process.

7 So after that I drafted the  
8 permit application, but also drafted the permit,  
9 the changes that we'd like to see in the permit  
10 and met with the company, got their input and  
11 submitted that to the Illinois EPA.

12 **Q. Now, did you review their past or**  
13 **current permits in the process of working on the**  
14 **permit application?**

15 A. Yes.

16 **Q. Tell me why did you do that?**

17 A. Are we talking specifically  
18 Caterpillar or --

19 **Q. Yes.**

20 A. -- just generally? Okay.  
21 Especially with the Title V permits, the permit  
22 needs to include all past permit revisions and  
23 terms that would continue to be applicable. So  
24 for thoroughness I reviewed all of that and also

1 looked at, you know, in some cases old  
2 applications. I mean, one example I can think of  
3 and this is in a sense a trivial example in one of  
4 the Caterpillar facilities there had been a  
5 condition that they operate their boiler and  
6 record and report the amount of natural gas and  
7 oil that they used which seems simple except the  
8 boiler from the very beginning was never designed,  
9 never had the capability to burn oil and this --  
10 so I had gone back and looked at the record and  
11 oddly enough the company never seemed to object.  
12 I guess they wrote zero every month and felt that  
13 was the simplest approach.

14                   So in looking at that I could  
15 see where the error occurred and could correct it.  
16 Usually, though, I'm looking for something more  
17 serious than that, a new source review problem or  
18 something that could be a problem like that.

19           **Q.       Dave, have you ever worked or**  
20 **prepared an application or permit for a material**  
21 **handling facility?**

22           A.       Yes.

23           **Q.       Can you tell me when that was**  
24 **approximately?**

1 A. I believe that was in 2007 or 2008.

2 Q. Can you tell me what did you do --  
3 let me ask you first. What type of material  
4 handling facility -- what did it handle?

5 A. It handled coal.

6 Q. Was it located here in Illinois?

7 A. Yes.

8 Q. And where was it located?

9 A. It is located in Massac County near  
10 the City of Metropolis. West of the City of  
11 Metropolis.

12 Q. Did you prepare a permit application  
13 for the company?

14 A. Yes.

15 Q. What were you seeking to permit?

16 A. The facility is a large facility and  
17 has a Title V permit and what they were seeking to  
18 do was to add 100 feet of fixed conveyor, a radial  
19 arm stacker and two feeders.

20 Q. Okay. Can you just describe for me  
21 what is a -- what is a conveyor?

22 A. A conveyor conveys, but it is a  
23 device with rollers, electric motor and a belt  
24 made of different types of material.



1           **Q.       Are there different kinds of**  
2 **conveyors?**

3           A.       Yes, there are.

4           **Q.       Did you -- do you have any**  
5 **experience with portable conveyors and/or fixed**  
6 **conveyors?**

7           A.       I mean, I have experience with a  
8 fixed conveyor, you know, in the sense that the --  
9 that was one of the conveyors I was permitting for  
10 at the Cook Coal Terminal, but all the conveyors,  
11 in essence, are the same. I mean, they convey.  
12 They move coal on a belt and they drop the coal.  
13 You feed the coal on the one end. It moves  
14 sometimes horizontally, sometimes vertically. A  
15 stacker I might term it a specialized kind of  
16 conveyor in that it is particularly designed to be  
17 able to stack coal in various configurations. A  
18 radial arm stacker if can picture this can operate  
19 on a track and swing itself around and stack the  
20 coal in rows. A portable conveyor is a device  
21 that can be moved fairly easily and moved into a  
22 position to serve different purposes for stacking  
23 and manipulating the coal.

24           **Q.       In your experience for Conestoga or**

1 **individual consultants, have you prepared any**  
2 **permit applications that involve permitting**  
3 **stackers, conveyors or hoppers?**

4 A. Stackers and conveyors.

5 **Q. How many stackers and conveyors?**

6 A. Yes. Let me explain. The permit --  
7 the permit at Cook Coal Terminal only involved  
8 requesting, you know, permit for the 100 foot  
9 fixed conveyor extension, the radial arm stacker  
10 and also the two feeders, reclaim feeders are what  
11 they were called. And the facility itself,  
12 though, had a variety of pieces of equipment and  
13 because the facility itself is a large emission  
14 source the permit involved determining whether or  
15 not these changes, these additions, would trigger  
16 new source review, which is a major federal and  
17 state program.

18 If the emissions for the  
19 addition would exceed a certain number, then there  
20 would be a whole new set of regulations that would  
21 have to be addressed. So in the course of  
22 preparing this application, I reviewed all of the  
23 equipment at the facility. I looked at how it had  
24 been permitted in the past. I looked at its past

1 permit just to be sure that there wasn't some  
2 issue that would surface after we submitted the  
3 new application.

4 So I looked at the rail and  
5 loading facility. This facility also had silos  
6 where they could store coal, but they also stored  
7 coal in the open. It had portable conveyors. It  
8 had barge unloading. So while my responsibility  
9 wasn't to re-permit those old things, I did go  
10 through an analysis of all of the pieces of  
11 equipment.

12 **Q. And as part of that, was it**  
13 **necessary for you to review Illinois air pollution**  
14 **control regulations?**

15 A. Yes.

16 **Q. And, in particular, did it require**  
17 **you to review any that involved fugitive**  
18 **particulate emissions?**

19 A. Yes.

20 **Q. And do you consider yourself**  
21 **familiar with those regulations?**

22 A. Yes.

23 **Q. Now, in the course of your private**  
24 **work since you left the Agency, have you been**

1 **involved in providing services to any other**  
2 **facilities involving material handling?**

3 A. Yes.

4 **Q. When was that?**

5 A. This was in, I think, the period in  
6 2007 to 2009.

7 **Q. And tell me what kind of services**  
8 **did you provide the company.**

9 A. The services I provided was to --  
10 let me start over. A company named IEI Barge up  
11 near Galena, Illinois that also handles coal piles  
12 and also cotton seed and salt and fertilizer was  
13 the subject of a citizen suit alleging coal dust  
14 was blowing off the property and impacting local  
15 businesses and neighbors.

16 **Q. And were you hired by the company**  
17 **IEI?**

18 A. I was hired -- let me think who I  
19 was hired by. I worked through Conestoga-Rovers.  
20 I worked with Drinker Biddle attorneys on behalf  
21 of IEI Barge.

22 **Q. Do you know whether Conestoga was**  
23 **retained by the law firm or not?**

24 A. Yes, they were.

1           **Q.           And what services did you provide to**  
2 **IEI?**

3           A.           I reviewed an expert report that was  
4 prepared by a consultant working for the  
5 plaintiffs and in looking through that report I  
6 critiqued it and prepared a document that was a  
7 critique of that report that identified what I  
8 felt and I think what was ultimately proven to be  
9 some significant flaws in that analysis, but also  
10 I reviewed -- I spent a lot of time reviewing the  
11 company's permit Agency inspection reports of the  
12 facility.

13           **Q.           Just to be clear. Are those Agency**  
14 **inspection reports, inspection reports that were**  
15 **prepared by the Illinois EPA?**

16           A.           Yes.

17           **Q.           And was that part of the basis for**  
18 **your report that you prepared?**

19           A.           It was important background  
20 information. The actual -- in looking at the  
21 report, I could have done -- I could have prepared  
22 the report without having to look at the field  
23 inspector's reports from the Illinois EPA. I  
24 mean, those were useful, but I did not incorporate

1 anything from those reports into my report.

2 **Q. Did you provide any testimony in**  
3 **that case?**

4 A. I provided a deposition.

5 **Q. And was there a trial in the case?**

6 A. No, there was not.

7 **Q. Do you know why?**

8 A. The law firm Drinker Biddle was  
9 successful in having the expert -- expert report  
10 of the plaintiffs discredited and there was a  
11 summary judgment given in favor of IEI Barge.

12 **Q. I should have covered this back when**  
13 **we were going over your time working at the**  
14 **Agency, Dave, but do you recall have you ever**  
15 **provided testimony to the Illinois Pollution**  
16 **Control Board regarding air pollution control**  
17 **regulations?**

18 A. Yes.

19 **Q. Do you recall whether that testimony**  
20 **involved the regulations governing particulate**  
21 **emissions?**

22 A. Well, that was one of the matters  
23 that I was involved in. At that time my input  
24 into that whole process involved describing and --

1 describing the need for the regulation in my role  
2 as the air monitoring expert.

3 **Q. And do you know today did that**  
4 **involve 212.321 subpart K of the Illinois air**  
5 **pollution control regulations?**

6 A. Yes, but I want to emphasize my --  
7 my input, as I said, described the conditions of  
8 the air and the need for such a regulation as  
9 opposed to providing testimony specific to the  
10 formulation of the rules.

11 **Q. And earlier you testified, Dave, and**  
12 **you described what you understand the permit**  
13 **process from the time a company contacts the**  
14 **Agency and ultimately a permit decision to grant**  
15 **or deny is made.**

16 **As we sit here today, do you**  
17 **have any understanding that that process is any**  
18 **different than what you described when you were**  
19 **the Bureau of Air chief?**

20 A. I think the key components are the  
21 same. Naturally, back when I started the Agency  
22 was new. In fact, I am considered one of the 25  
23 charter members. My name is on a plaque by the  
24 director's office.

1 MR. SWEDLOW: Can we stop with the  
2 expert qualifications at that point?

3 BY THE WITNESS:

4 A. But naturally with experience and  
5 time it has been refined, but the fundamentals of  
6 the process I described are still in place.

7 MR. GRANT: I've got 4:05. We're  
8 still in the background.

9 HEARING OFFICER HALLORAN: Let's go  
10 off the record. Do you want to go off the record?

11 MR. GRANT: Yes, please.

12 (Whereupon, a break was taken  
13 after which the following  
14 proceedings were had.)

15 HEARING OFFICER HALLORAN: We're  
16 back on the record.

17 BY MR. DWYER:

18 Q. Dave, let me just wrap up here.

19 Dave, do you know a Robert Bernoteit?

20 A. Yes, I do.

21 Q. How do you know him?

22 A. I know him from my employment at the  
23 Illinois EPA in working with him in a variety of  
24 ways.



1           **Q.       Did he work for you when you were**  
2 **the Bureau of Air chief?**

3           A.       Yes. I mean, I view that as manager  
4 at the time Don Sutton, the permit manager, worked  
5 for me, but Bob worked for Don.

6           **Q.       But Bob was assigned to the Bureau**  
7 **of Air during the time you were the bureau chief?**

8           A.       Yes.

9           **Q.       Do you also know a gentleman by the**  
10 **name of Mike Dragovich?**

11          A.       Yes.

12          **Q.       How do you know him?**

13          A.       Mike was actually employed, I guess  
14 Bob was too, while I was at the Agency. I wasn't  
15 directly involved in hiring him, but Bob is a  
16 permit analyst in the permit section. Mike is.

17          **Q.       Mike is?**

18          A.       Mike is, yes. Excuse me.

19          **Q.       And then, finally, do you know a**  
20 **gentleman by the name of Joe Kotas?**

21          A.       Yes.

22          **Q.       How do you know Mr. Kotas?**

23          A.       Mr. Kotas is a field inspector in  
24 the Chicago area and I know him in that capacity.

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1 MR. DWYER: I'm really done, Brad,  
2 with laying the background I think I need to lay.

3 HEARING OFFICER HALLORAN: Okay.  
4 Let's go off the record for a second and then  
5 we'll wrap it up.

6 (Whereupon, a break was taken  
7 after which the following  
8 proceedings were had.)

9 HEARING OFFICER HALLORAN: We're  
10 back on the record. Mr. Dwyer is in the middle of  
11 a direct examination of Mr. Kolaz. We're going to  
12 take a break now. We're going to continue on  
13 record until tomorrow. Tomorrow's hearing will be  
14 in Room 9-040 here at the Thompson Center and  
15 we'll see you then and have a great evening.  
16 Thank you.

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1 STATE OF ILLINOIS )  
2 ) SS.  
3 COUNTY OF COOK )  
4

5 I, Steven Brickey, Certified Shorthand  
6 Reporter, do hereby certify that I reported in  
7 shorthand the proceedings had at the trial  
8 aforesaid, and that the foregoing is a true,  
9 complete and correct transcript of the proceedings  
10 of said trial as appears from my stenographic  
11 notes so taken and transcribed under my personal  
12 direction.

13 Witness my official signature in and for  
14 Cook County, Illinois, on this \_\_\_\_\_ day of  
15 \_\_\_\_\_, A.D., 2014.

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24

\_\_\_\_\_  
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Phone: (312) 419-9292  
CSR No. 084-004675

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