

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

KCBX TERMINALS COMPANY)

Petitioner,)

v.)

ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY)

Respondent.)

PCB No. 11-43

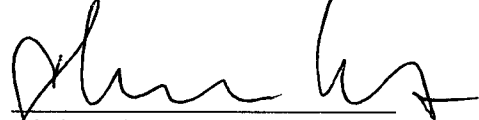
(Permit Appeal-Air)

NOTICE OF ELECTRONIC FILING

PLEASE TAKE NOTICE that on the 15th of March, 2011, the Respondent filed its Motion for Additional Time to Respond to Discovery, by electronic filing. A true and accurate copy of the document so filed is attached hereto and herewith served upon you.

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

By LISA MADIGAN
Attorney General of the
State of Illinois



Christopher J. Grant
Assistant Attorney General
Environmental Bureau
69 W. Washington Street
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Chicago Illinois, 60602
(312)814-5388

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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Petitioner,)	
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v.)	PCB No. 11-43
)	(Permit Appeal-Air)
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)	
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MOTION FOR ADDITIONAL TIME TO RESPOND TO DISCOVERY

Now comes Respondent, ILLINOIS ENVIRONMENTAL PROTECTION AGENCY (“Illinois EPA”), by LISA MADIGAN, Attorney General of the State of Illinois, and moves the Hearing Officer for additional time to respond to Petitioner’s written discovery in this matter.

In support of its request, Respondent states, as follows:

1. Petitioner KCBX Terminals Company (“KCBX”) filed this permit appeal with The Board on February 1, 2011. KCBX has indicated its wish to proceed to hearing on an expedited basis. Illinois EPA is to file the record of its decision by April 4, 2011 and hearing is scheduled for June 1, 2011.
2. On March 1, 2011, the parties submitted an agreed discovery schedule, calling for discovery to be completed by April 19, 2011.
3. On March 9, 2011, KCBX served the undersigned with its written discovery requests, to be returned in 28 days (i.e. by April 6, 2011). Included in KCBX’s discovery requests are nineteen pages of requests to admit facts. Many of these requests are technical in nature, and will require substantial investigation. KCBX has also served interrogatories, and an extensive document production request.

4. In this case, only matters of record before Illinois EPA at the time of the Agency's final decision are relevant. (See: 35 Ill. Adm. Code 105.214). However, the Agency record will not be finally assembled and filed until April 4, 2011, only two days before responses to Petitioner's discovery requests are currently due. Such a short time frame will make it impossible to properly respond.

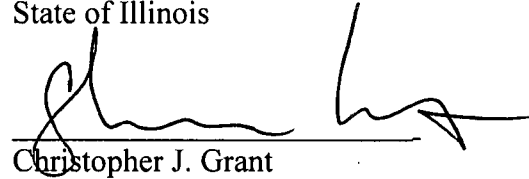
5. Although the undersigned agreed to the present discovery schedule, it was not then contemplated that Petitioner's written discovery requests would be so extensive and burdensome. The massive amount of discovery propounded, combined with Petitioner's insistence on an early hearing date, creates an unnecessary hardship on Respondent. However, Petitioner will not be prejudiced by an extension. Because Illinois EPA has agreed to stay the new permit's conditions, operation of the KCBX facility is not impaired in any way during the pendency of this appeal. While Petitioner is certainly entitled to demand a hearing within the statutory deadline, it should not be allowed to harass the Agency with overwhelming discovery requests.

6. Respondent requests that the Hearing Officer extend the deadline for responding to Petitioner's Requests to Admit, Interrogatories, and Document Requests for an additional 30 days, until May 6, 2011. This will allow the Agency sufficient time to review and respond to the discovery requests in comparison to the full record of its decision.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

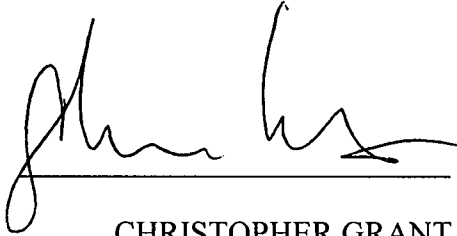
by LISA MADIGAN
Attorney General of the
State of Illinois

A handwritten signature in black ink, appearing to read "Christopher J. Grant", is written over a horizontal line.

Christopher J. Grant
Assistant Attorney General
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CERTIFICATE OF SERVICE

I, CHRISTOPHER GRANT, an attorney, do certify that I caused to be served this 15th day of March, 2011, Respondent's Motion for Additional Time to Respond to Discovery, and Notice of Filing, upon the persons listed below by electronic filing and hand delivery.



CHRISTOPHER GRANT

Mr. John Therriault
Assistant Clerk
Illinois Pollution Control Board
100 W. Randolph
Chicago, Illinois 60601
(by electronic filing)

Ms. Katherine D. Hodge
Ms. Lauren C. Lurkins
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Hearing Officer
Illinois Pollution Control Board
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By Hand Delivery

KCBX Terminals Company v. Illinois EPA, PCB 11-43