BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

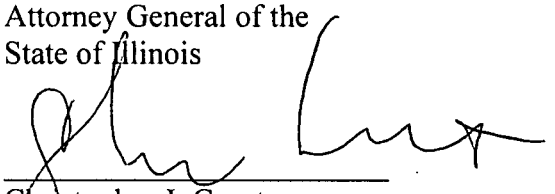
KCBX TERMINALS COMPANY	)	
	)	
Petitioner,	)	
	)	PCB No. 11-43
	)	
v.	)	(Permit Appeal-Air)
	)	
	)	
ILLINOIS ENVIRONMENTAL PROTECTION AGENCY	)	
	)	
	)	
Respondent.	)	

NOTICE OF ELECTRONIC FILING

PLEASE TAKE NOTICE that on April 5, 2011, the Respondent filed its Motion to Strike Requests for Admission, 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



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MOTION TO STRIKE REQUESTS FOR ADMISSION

Now comes Respondent, ILLINOIS ENVIRONMENTAL PROTECTION AGENCY ("Illinois EPA"), by LISA MADIGAN, Attorney General of the State of Illinois, and requests that the Hearing Officer strike Respondent's Requests for Admission as contrary to the limits contained in Illinois Supreme Court Rule 216.

1. Petitioner KCBX Terminals Company ("KCBX") filed this permit appeal with the Board on February 1, 2011, and has demanded an early hearing. KCBX served an extensive written discovery requests on March 9th. On March 15, 2011, Respondent filed a motion to extend the deadline for responding to Petitioner's written discovery to May 6, 2010[1].

2. Petitioner has served one hundred six (106) Requests for Admission upon Illinois EPA, not including subparts.

3. On January 1, 2011, Illinois Supreme Court Rule 216 was amended to include the following limitation:

Rule 216. Admission of Fact or of Genuineness of Documents

[1] The undersigned did not become aware of the Amendment to Rule 216 until after he moved to extend the discovery deadline. On March 25, 2011, the undersigned send a copy of the Amended Rule to opposing counsel along with the request that they withdraw their existing Requests for Admission and refile under the limitations of the new rule. This request was denied

* * *

(f) Number of Requests. The maximum number of requests for admission a party may serve on another party is 30, unless a higher number is agreed to by the parties or ordered by the court for good cause shown. If a request has subparts, each subpart counts as a separate request.

4. In the Committee Comments to the amended rule, the Court describes the reason for the limitation:

> COMMITTEE COMMENT
>
> (October 1, 2010)
>
> Paragraphs (f) and (g) are designed to address certain problems with Rule 216, including the service of hundreds of requests for admission. For the vast majority of cases, the limitation to 30 requests now found in paragraph (f) will eliminate this abusive practice. Other noted problems include the bundling of discovery requests to form a single document into which the requests to admit were intermingled. This practice worked to the disadvantage of certain litigants, particularly *pro se* litigants, who do not understand that failure to respond within the time allowed results in the requests being deemed admitted. Paragraph (g) provides for requests to be contained in a separate paper containing a boldface warning regarding the effect of the failure to respond within 28 days. Consistent with *Vision Point of Sale Inc. v. Haas*, 226 Ill. 2d 334 (2007), trial courts are vested with discretion with respect to requests for admission.

5. Section 101.616 of the Board Procedural Rules provides "[f]or purposes of discovery, the Board may look to the Code of Civil Procedure and the Supreme Court Rules for guidance where the Board's procedural rules are silent". The Board Procedural Rules do not provide any guidance on the number of Requests to Admit that may be served. However, most of the Board's discovery provisions are identical to the comparable Supreme Court Rule[2]. Respondent therefore believes that the Hearing Officer should consider the recent amendment to Rule 216 to be incorporated by reference.

6. Even if the Hearing Officer declines to incorporate the Amended Rule 216 into the

[2] For example, both limit the number of interrogatories to 30 [compare Section 101.620(a) to S. Ct. R. 213(c)], and both limit the duration of depositions to 3 hours [101.622(f) and S. Ct R. 206(d).]

Board Procedural Rules, he should consider limiting the Requests to prevent an abuse of the discovery process. Section 101.616(d) provides:

> The hearing officer may, on his or her own motion or on the motion of any party or witness, issue protective orders that deny, limit, condition or regulate discovery to prevent unreasonable expense or harassment, to expedite resolution of the proceeding, or to protect non-disclosable materials from disclosure consistent with Section 7 and 7.1 of the Act and 35 Ill. Adm. Code 130.

Petitioner's submission of extensive discovery requests, including one hundred six requests for admission, covering nineteen pages, combined with its demand for an early hearing, is unreasonable and harassing. Respondent requests that the Hearing Officer apply his authority to control discovery by striking Petitioner's Requests for Admission, and limiting any future request to thirty, including subparts, as provided in Amended Supreme Court Rule 216.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

by LISA MADIGAN
Attorney General of the
State of Illinois

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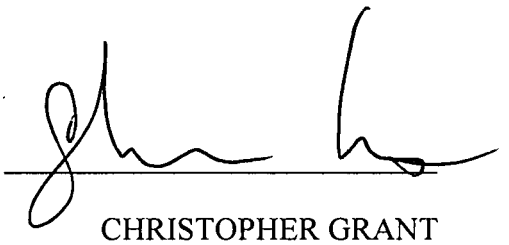
CERTIFICATE OF SERVICE

I, CHRISTOPHER GRANT, an attorney, do certify that I caused to be served this 5th day of April, 2011, Respondent's Motion to Strike Requests for Admission, and Notice of Filing, upon the persons listed below by electronic filing, hand delivery, and first class mail.



CHRISTOPHER GRANT

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