

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

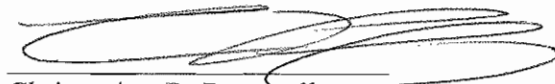
KCBX TERMINALS COMPANY)	
)	
Petitioner,)	PCB No. 10-110
)	PCB No. 11-43
)	(Consolidated)
)	
v.)	(Permit Appeal-Air)
)	
)	
ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY)	
)	
Respondent.)	

NOTICE OF ELECTRONIC FILING

PLEASE TAKE NOTICE that on May 6, 2011, the Respondent filed its Response to Petitioner's Motion to Supplement the Record filed April 28, 2011, 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 R. Pressnall
Special Assistant Attorney General
Illinois Environmental Protection Agency
1021 N. Grand Avenue, East
Springfield, Illinois 62794-9276
(217) 524-3003

CERTIFICATE OF SERVICE

I, CHRISTOPHER R. PRESSNALL, an attorney, do certify that I caused to be served this 6th day of May, 2011, Respondent's Response to Petitioner's Motion to Supplement the Record upon the persons listed below, by email and first class mail.



CHRISTOPHER R. PRESSNALL

Ms. Katherine D. Hodge
Ms. Lauren C. Lurkins
Hodge Dwyer & Driver
3150 Roland Avenue
P.O. Box 5776
Springfield, Illinois 62705-5776
(by email and first class mail)

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

Mr. Bradley P. Halloran
Hearing Officer
Illinois Pollution Control Board
100 W. Randolph
Chicago Illinois 60601
(by hand delivery)

KCBX Terminals Company v. Illinois EPA, PCB 10-110/11-43 (Consolidated)

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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

RESPONSE TO PETITIONER’S MOTION TO SUPPLEMENT THE RECORD

Now comes Respondent, ILLINOIS ENVIRONMENTAL PROTECTION AGENCY (“Illinois EPA”), by LISA MADIGAN, Attorney General of the State of Illinois, and responds to Petitioners, KCBX TERMINALS COMPANY’s (“KCBX’s”) *Motion to Supplement the Record*. Respondent objects to the inclusion of certain documents included in the Motion to Supplement and specifically states as follows:

1. On April 4, 2011, the Respondent filed its Record of Decision (“Record”) in PCB No. 11-43.
2. On April 28, 2011, the Petitioner filed a Motion to Supplement the Record (“Motion to Supplement”), which purported to identify documents that should have been included in the record.

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3. Per Section 105.212(b) of the Illinois Pollution Control Board's ("Board") procedural rules, 35 Ill. Adm. Code 105.212(b), the Record must include:

- 1) Any permit application or other request that resulted in the Agency's final decision;
- 2) Correspondence with the petitioner and any documents or materials submitted by the petitioner to the Agency related to the permit application;
- 3) The permit denial letter that conforms to the requirements of Section 39(a) of the Act or the issued permit or other Agency final decision;
- 4) The hearing file of any hearing that may have been held before the Agency, including any transcripts and exhibits; and
- 5) Any other information the Agency relied upon in making its final decision.

4. In preparation of the Record, the Illinois EPA consulted the permit file maintained for Federally Enforceable State Operating Permit ("FESOP") Application No. 95050167 ("File"), the 2010 renewal of which is at issue in PCB No. 11-43. The Illinois EPA produced documents reviewed and relied upon by the Illinois EPA during the pendency of the FESOP renewal in accordance with Section 105.212(b) of the Board's rules, 35 Ill. Adm. Code 105.212(b).

5. The following is a discussion of the documents Petitioner seeks to have included in the Record:

a. *A FESOP issued by the Illinois EPA to KCBX on June 22, 2000, marked by Petitioner as Exhibit 1, Bates stamped K:000541-K:000550*

The Illinois EPA objects to the inclusion of the FESOP issued in 2000 in the record as the File does not include a copy of the 2000 FESOP and it was not specifically relied upon. The Illinois EPA relied upon the revised FESOP issued April 8, 2004 (Bates

stamped K:00415 – 00439), which is in the Record.

b. *A November 29, 2004 Illinois EPA letter to KCBX regarding expiration and renewal of the FESOP, marked by Petitioner as Exhibit 2, Bates stamped K:000551-K:000553*

The Illinois EPA objects to the inclusion of the November 29, 2004 letter as it was not relied upon by the Illinois EPA in the drafting of the FESOP renewal at issue. The November 29, 2004 letter is a document generated and sent by clerical staff and was not reviewed or relied upon by the Illinois EPA in the drafting and issuance of the FESOP renewal.

c. *An October 23, 2006 KCBX letter to Illinois EPA supplementing the FESOP Renewal Application of January 27, 2005, marked by Petitioner as Exhibit 3, Bates stamped K:000554-K:000567*

The Illinois EPA does not object to the inclusion of Petitioner's October 23, 2006 letter allegedly submitted to the Illinois EPA. However, the Illinois EPA notes that the aforementioned letter is in not the File and therefore was not in a position to produce the document.

d. *A September 13, 2007 Illinois EPA letter regarding an August 29, 2007 inspection of the Facility, marked by Petitioner as Exhibit 4, Bates stamped K:000568-K:000575*

The Illinois EPA objects to the inclusion of the September 13, 2007 Illinois EPA letter regarding an August 29, 2007 inspection of the facility as it was not reviewed nor was it relied upon by the Illinois EPA in the drafting and issuance of the FESOP renewal.

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e. *An October 14, 2007 KCBX letter to Illinois EPA submitting a Joint Construction/Operating Permit Application, marked by Petitioner as Exhibit 5, Bates stamped K:000576-K:000613*

The Illinois EPA does not object to the inclusion of this document.

f. *A January 25, 2008 KCBX letter to Illinois EPA regarding its Request to Extend the Deadline to Prepare Construction Permit, marked by Petitioner as Exhibit 6, Bates stamped K:000614*

The Illinois EPA does not object to the inclusion of this document.

g. *A February 21, 2008 Short Elliott Hendrickson Inc. ("SHE") letter, on behalf of KCBX, to Illinois EPA regarding the Air Construction/Operation Permit Application and meeting follow-up, marked by Petitioner as Exhibit 7, Bates stamped K:000615-K:000619*

The Illinois EPA does not object to the inclusion of this document.

h. *A March 28, 2008 SHE letter, on behalf of KCBX, to Illinois EPA regarding the Air Construction/Operation Permit Application, and Particulate Matter ("PM") emissions calculations, marked by Petitioner as Exhibit 8, Bates stamped K:000620-K:000622 (the version of the letter contained in the Record is not signed and not on SHE letterhead)*

The Illinois EPA does not object to the inclusion of this document.

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i. *An April 4, 2008 e-mail from Tom Henning (SHE) to John Blazis (Illinois EPA) regarding PM with an aerodynamic diameter less than or equal to 10 micrometers ("PM₁₀") calculations, marked by Petitioner as Exhibit 9, Bates stamped K:000623*

The Illinois EPA does not object to the inclusion of this document.

j. *An April 9, 2008 KCBX facsimile to Illinois EPA regarding a Request to Extend the Deadline to Issue Joint Construction/Operating Permit, marked by Petitioner as Exhibit 10, Bates stamped K:000624-K:000625*

The Illinois EPA does not object to the inclusion of this document.

k. *A May 14, 2008 KCBX facsimile to Illinois EPA regarding a request to Extend the Deadline to Issue a Joint Construction/Operating Permit, marked by Petitioner as Exhibit 11, Bates stamped K:000626-K:000627*

The Illinois EPA does not object to the inclusion of this document.

l. *A June 4, 2008 SHE letter, on behalf of KCBX, to Illinois EPA regarding the Construction Permit for Two Electric Conveyors, marked by Petitioner as Exhibit 12, Bates stamped K:000628-K:000630*

The Illinois EPA does not object to the inclusion of this document.

m. *A September 2, 2008 e-mail from Katherine Hodge (HD&D) to Chris Pressnall (Illinois EPA) regarding the draft permit with changes, marked by Petitioner as Exhibit 13, Bates stamped K:000631*

The Illinois EPA does not object to the inclusion of this document.

n. *A September 4, 2008 e-mail from Katherine Hodge (HD&D) to Chris Pressnall (Illinois EPA) regarding finalizing the permit, marked by Petitioner as Exhibit 14, Bates stamped K:000632*

The Illinois EPA objects to the inclusion of this document as it was not relied upon by the Illinois EPA in the drafting and issuance of the FESOP renewal.

o. *An October 1, 2008 e-mail from Katherine Hodge (HD&D) to Chris Pressnall (Illinois EPA) regarding the revised version of the Construction Permit, marked by Petitioner as Exhibit 15, Bates stamped K:000633*

The Illinois EPA does not object to the inclusion of this document.

p. *An October 7, 2008 e-mail from Katherine Hodge (HD&D) to Chris Pressnall (Illinois EPA) regarding conference call to discuss permit, marked by Petitioner as Exhibit 16, Bates stamped K:000634*

The Illinois EPA objects to the inclusion of this document as it was not relied upon by the Illinois EPA in the drafting and issuance of the FESOP renewal.

q. *An October 8, 2008 e-mail from Katherine Hodge (HD&D) to Chris Pressnall (Illinois EPA) regarding confirmation of conference call, marked by Petitioner as Exhibit 17, Bates stamped K:000635-K:000636*

The Illinois EPA objects to the inclusion of this document as it was not relied upon by the Illinois EPA in the drafting and issuance of the FESOP renewal.

r. *An October 9, 2008 e-mail from Katherine Hodge (HD&D) to Chris Pressnall (Illinois EPA) regarding availability for conference call, marked by Petitioner as Exhibit 18, Bates stamped K:000637*

The Illinois EPA objects to the inclusion of this document as it was not relied upon by the Illinois EPA in the drafting and issuance of the FESOP renewal.

s. *An October 14, 2008 e-mail from Katherine Hodge (HD&D) to Chris Pressnall (Illinois EPA) regarding scheduling of meeting/conference call, marked by Petitioner as Exhibit 19, Bates stamped K:000638-K:000639*

The Illinois EPA objects to the inclusion of this document as it was not relied upon by the Illinois EPA in the drafting and issuance of the FESOP renewal.

t. *An October 15, 2008 e-mail from Katherine Hodge (HD&D) to Chris Pressnall (Illinois EPA) regarding the moisture language in the Construction Permit, marked by Petitioner as Exhibit 20, Bates stamped K:000640*

The Illinois EPA does not object to the inclusion of this document.

u. *An October 16, 2008 e-mail from Katherine Hodge (HD&D) to Chris Pressnall (Illinois EPA) regarding execution of the permit, marked by Petitioner as Exhibit 21, Bates stamped K:000641-K:000642*

The Illinois EPA objects to the inclusion of this document as it was not relied upon by the Illinois EPA in the drafting and issuance of the FESOP renewal.

v. *An October 16, 2008 e-mail from Katherine Hodge (HD&D) to Chris Pressnall (Illinois EPA) regarding FESOP modifications, marked by Petitioner as Exhibit 22, Bates stamped K:000643-K:000645*

The Illinois EPA does not object to the inclusion of this document.

w. *An October 17, 2008 e-mail from Katherine Hodge (HD&D) to Chris Pressnall (Illinois EPA) regarding review of permit, marked by Petitioner as Exhibit 23, Bates stamped K:000646*

The Illinois EPA does not object to the inclusion of this document.

x. *An October 17, 2008 e-mail from Katherine Hodge (HD&D) to Chris Pressnall (Illinois EPA) regarding problems with permit, marked by Petitioner as Exhibit 24, Bates stamped K:000647*

The Illinois EPA objects to the inclusion of this document as it was not relied upon by the Illinois EPA in the drafting and issuance of the FESOP renewal.

y. *An October 17, 2008 e-mail from Katherine Hodge (HD&D) to Chris Pressnall (Illinois EPA) regarding signed permit, marked by Petitioner as Exhibit 25, Bates stamped K:000648-K:000649*

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The Illinois EPA objects to the inclusion of this document as it was not relied upon by the Illinois EPA in the drafting and issuance of the FESOP renewal.

z. *A February 20, 2009 e-mail from Christopher Bailey (KCBX) to George Kennedy (Illinois EPA) forwarding information regarding diesel generator, marked by Petitioner as Exhibit 26, Bates stamped K:000650*

The Illinois EPA does not object to the inclusion of this document.

aa. *A July 13, 2009 e-mail from Katherine Hodge (HD&D) to George Kennedy, Bob Bernoteit and Chris Pressnall (Illinois EPA) regarding scheduling meeting, marked by Petitioner as Exhibit 27, Bates stamped K:000651*

The Illinois EPA objects to the inclusion of this document as it was not relied upon by the Illinois EPA in the drafting and issuance of the FESOP renewal.

bb. *A July 13, 2009 e-mail from Chris Pressnall (Illinois EPA) to Katherine Hodge (HD&D) regarding scheduling meeting, marked by Petitioner as Exhibit 28, Bates stamped K:000652*

The Illinois EPA objects to the inclusion of this document as it was not relied upon by the Illinois EPA in the drafting and issuance of the FESOP renewal.

cc. *A July 13, 2009 e-mail from Chris Pressnall (Illinois EPA) to Katherine Hodge (HD&D) regarding scheduling meetings, marked by Petitioner as Exhibit 29, Bates stamped K:000652-K:000654*

The Illinois EPA objects to the inclusion of this document as it was not relied upon by the Illinois EPA in the drafting and issuance of the FESOP renewal.

dd. *A July 14, 2009 e-mail from Katherine Hodge (HD&D) to Bob Bernoteit, Chris Pressnall and George Kennedy (Illinois EPA) regarding confirmation of extension of time to submit written comments, marked by Petitioner as Exhibit 30, Bates stamped K:000655-K:000657*

The Illinois EPA does not object to the inclusion of this document.

ee. *A July 14, 2009 e-mail from George Kennedy (Illinois EPA) to Katherine Hodge (HD&D) regarding confirmation of extension of time to submit written comments, marked by Petitioner as Exhibit 31, Bates stamped K:000658-K:000659*

The Illinois EPA does not object to the inclusion of this document.

ff. *A July 16, 2009 e-mail from Katherine Hodge (HD&D) to George Kennedy (Illinois EPA) regarding telephone conference, marked by Petitioner as Exhibit 32, Bates stamped K:000660-K:000661*

The Illinois EPA does not object to the inclusion of this document.

gg. *A July 23, 2009 e-mail from Katherine Hodge (HD&D) to Chris Pressnall regarding deviation reporting, marked by Petitioner as Exhibit 33, Bates stamped K:000662*

The Illinois EPA does not object to the inclusion of this document.

hh. *An August 7, 2009 KCBX letter and attachments to Illinois EPA regarding the Preliminary Draft FESOP, marked by Petitioner as Exhibit 34, Bates stamped K:000663-K:000721*

The Illinois EPA does not object to the inclusion of this document.

ii. *An October 7, 2009 e-mail from Katherine Hodge (HD&D) to Chris Pressnall (Illinois EPA) regarding KCBX meeting, marked by Petitioner as Exhibit 35, Bates stamped K:000722*

The Illinois EPA objects to the inclusion of this document as it was not relied upon by the Illinois EPA in the drafting and issuance of the FESOP renewal.

jj. *An October 15, 2009 e-mail from Katherine Hodge (HD&D) to Chris Pressnall (Illinois EPA) regarding Construction Permit issued on October 17, 2008, marked by Petitioner as Exhibit 36, Bates stamped K:000723-K:000735*

The Illinois EPA objects to the inclusion of this document as it was not relied upon by the Illinois EPA in the drafting and issuance of the FESOP renewal.

kk. *A November 10, 2009 e-mail from Katherine Hodge (HD&D) to Chris Pressnall (Illinois EPA) regarding a discussion regarding fluid coke, marked by Petitioner as Exhibit 37, Bates stamped K:000736*

The Illinois EPA does not object to the inclusion of this document.

ll. *A May 4, 2010 KCBX letter to Illinois EPA regarding Revision to Fugitive Particulate Operating Program, marked by Petitioner as Exhibit 38, Bates stamped K:000737-K:000751*

The Illinois EPA objects to the inclusion of this document as it was not relied upon by the Illinois EPA in the drafting and issuance of the FESOP renewal.

mm. *A May 7, 2010 KCBX letter Illinois EPA regarding Construction Permit Application – Receipt and Handling of Fluid Coke/additional information regarding Fluid Coke receipt, marked by Petitioner as Exhibit 39, Bates stamped K:000752-K:000754*

The Illinois EPA does not object to the inclusion of this document.

nn. *A June 4, 2010 e-mail from Katherine Hodge (HD&D) to Chris Pressnall (Illinois EPA) regarding moisture language in the Construction Permit, marked by Petitioner as Exhibit 40, Bates stamped K:000755-K:000756*

The Illinois EPA does not object to the inclusion of this document.

oo. *A June 16, 2010 Illinois EPA Project Summary for an Application from KCBX for Renewal of FESOP, marked by Petitioner as Exhibit 41, Bates stamped K:000757-K:000759*

The Illinois EPA does not object to the inclusion of this document.

pp. *A July 16, 2010 KCBX letter and attachments to Illinois EPA regarding comments on the FESOP, marked by Petitioner as Exhibit 42, Bates stamped K:000760-*

K:000867(the version of the letter in the Record includes attachments that are separated and out of order)

The Illinois EPA does not object to the inclusion of this document.

qq. *A September 2, 2010 e-mail from Terry Steinert (KCBX to George Kennedy (Illinois EPA forwarding emissions calculations spreadsheets, marked by Petitioner as Exhibit 43, Bates stamped K:000868-K:000873*

The Illinois EPA does not object to the inclusion of this document.

rr. *The Renewal FESOP issued by Illinois EPA to KCBX on December 29, 2010, marked by Petitioner as Exhibit 44, Bates Stamped K:000874-K:000897*

The Illinois EPA does not object to the inclusion of this document.

ss. *A January 6, 2011 Illinois EPA letter to KCBX regarding the January 4, 2011 inspection at the Facility, marked by Petitioner as Exhibit 45, Bates stamped K:000898-K:000907*

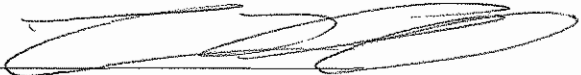
The Illinois EPA objects to the inclusion of this document as it was not relied upon by the Illinois EPA in the drafting and issuance of the FESOP renewal. Furthermore, the Illinois EPA objects as the January 4, 2011 inspection occurred after the issuance of FESOP on December 29, 2010 and therefore could not have been relied upon by the Illinois EPA.

WHEREFORE Respondent, ILLINOIS ENVIRONMENTAL PROTECTION AGENCY,
for the above-stated reasons, respectfully prays that the Board deny inclusion in the Record of
the documents identified and objected to above.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

by LISA MADIGAN
Attorney General of the
State of Illinois



Christopher R. Pressnall
Special Assistant Attorney General
Illinois Environmental Protection Agency
1021 N. Grand Avenue, East
Springfield, Illinois 62794-9276
(217) 524-3003