



# HODGE • DWYER • ZEMAN

ATTORNEYS AT LAW

KATHERINE D. HODGE

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December 3, 2007

**VIA ELECTRONIC SUBMISSION**

(Original via Federal Express)

U.S. Environmental Protection Agency  
Clerk of the Board  
Environmental Appeals Board (1103B)  
Ariel Rios Building  
1200 Pennsylvania Avenue, N.W.  
Washington, D.C. 20460-0001

RE: PSD APPEAL NO. 07-02  
CONOCOPHILLIPS COMPANY  
PERMIT NO. 06050052  
OUR FILE NO. – CNPH:005

Dear Clerk of the Board:

Enclosed please find an original and one copy of the SUPPLEMENT TO MOTION FOR EXPEDITED CONSIDERATION for ConocoPhillips Company, in the above-referenced matter. Please file the original and return a file-stamped copy to me in the enclosed self-addressed stamped envelope.

Thank you for your assistance. Please feel free to contact me if you have any questions regarding the enclosed.

Sincerely,

Katherine D. Hodge

KDH:csf

enclosures

pc: Donna H. Carvalho, Esq. (via U.S. Mail; w/enclosures)

CNPH-005\ConocoPhillips Appeal\Clerk Letter - Supplement to Motion for Expedited Consideration

**CERTIFICATE OF SERVICE**

The undersigned, Katherine D. Hodge, certifies that copies of the foregoing

SUPPLEMENT TO MOTION FOR EXPEDITED CONSIDERATION have been served upon:

Ann Alexander  
Natural Resources Defense Council  
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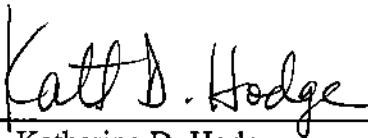
Robert Kaplan, Regional Counsel  
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U.S. Environmental Protection Agency  
(MC-6101A)  
Ariel Rios North Room 5406  
1301 Constitution Avenue  
Mail Code: 6101A  
Washington, DC 20460

by depositing said document in the United States Mail, postage prepaid, in Springfield, Illinois  
on December 3, 2007.

  
Katherine D. Hodge

**BEFORE THE ENVIRONMENTAL APPEALS BOARD  
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C.**

IN THE MATTER OF: )  
 )  
CONOCOPHILLIPS COMPANY ) PSD APPEAL NO. 07-02  
PERMIT NO. 06050052 )

**NOTICE**

PLEASE TAKE NOTICE that I have today sent, by electronic submission and Federal Express, to the Clerk of the Environmental Appeals Board, a **SUPPLEMENT TO MOTION FOR EXPEDITED CONSIDERATION** on behalf of the Permittee, ConocoPhillips Company, a copy of which is herewith served upon each of the representatives identified in the attached service list.

Respectfully submitted,

ConocoPhillips Company

By: Kath D. Hodge  
One of Its Attorneys

Date: December 3, 2007

Katherine D. Hodge  
Gale W. Newton  
HODGE DWYER ZEMAN  
3150 Roland Avenue  
Post Office Box 5776  
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**BEFORE THE ENVIRONMENTAL APPEALS BOARD  
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C.**

**IN THE MATTER OF:** )  
 )  
**CONOCOPHILLIPS COMPANY** ) **PSD Appeal No. 07-02**  
 )  
**PERMIT NO. 06050052** )

**SUPPLEMENT TO  
MOTION FOR EXPEDITED CONSIDERATION**

Permittee, ConocoPhillips Company (“ConocoPhillips”), on behalf of itself as operator of ~~the Wood River Refinery (the “Facility”), and WRB Refining LLC, as owner of the Facility,~~ hereby supplements the Motion for Expedited Consideration filed by ConocoPhillips on September 26, 2007, and moves for expedited consideration of PSD Appeal No. 07-02 (this “Matter”). The permit approval under appeal was applied for in May 2006, and is for a multi-billion dollar project to add clean fuel production capacity using North American produced crude oil at an existing petroleum refinery. Every day of delay prevents the implementation of a project that will lead to the production of 3.4 million gallons of cleaner burning fuels, delays environmental improvement projects that will decrease emissions of sulfur dioxide by 11,000 tons per year, and decrease nitrogen oxide emissions by 700 tons per year, and may ultimately threaten the economic viability of the project. In support of this Motion, ConocoPhillips states as follows:

1. On July 19, 2007, the Illinois Environmental Protection Agency (the “Illinois EPA”) issued a grant of permission to construct certain emission units and control equipment (the “Construction Grant”) and a federal prevention of significant deterioration (“PSD”) approval (“PSD Approval”) to ConocoPhillips for certain activities at the Facility.

2. On August 22, 2007, Petitioners filed a Petition for Review of the PSD Approval, thereby automatically delaying the effectiveness of the PSD Approval.

3. On September 26, 2007, ConocoPhillips filed a combined Motion to Participate and Motion for Expedited Consideration. The initial Motion for Expedited Consideration is hereby incorporated by reference into this motion.

4. On October 28, 2007, Petitioners filed a Motion for Leave to File a Reply Brief in two Phases, along with a Partial Reply Memorandum in Support of Petition for Review – Responsiveness Summary Issues.

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5. On November 2, 2007, Respondent Illinois EPA submitted its second and final response in this Matter.

6. On November 6, 2007, the Environmental Appeals Board (the “Board”) granted Petitioners’ request to reply in two parts, and accepted Petitioners’ Partial Reply, as well as granted an extension of time, until November 26, 2007, for Petitioners to reply to the Illinois EPA’s second response brief.

7. On November 26, 2007, Petitioners submitted a Supplemental Reply Memorandum in Support of Petition for Review (“Petitioners’ Supplemental Reply”) to the Illinois EPA’s second response.

8. Upon review of Petitioners’ Supplemental Reply, ConocoPhillips has determined that the document merely reiterates the arguments brought forth by Petitioners in the Petition for Review. Therefore, ConocoPhillips believes that sufficient information upon which a decision to grant or deny review is now before the Board.

9. A petitioner bears the burden of convincing the Board that review is warranted. 40 C.F.R. Part 124. Under the Board’s procedural rules, review may be granted under two

circumstances. The PSD Approval in this Matter may only be reviewed by the Board upon a showing by the Petitioner that the issuance of the PSD Approval was based on “(1) A finding of fact or conclusion of law which is clearly erroneous, or (2) An exercise of discretion or an important policy consideration which the Environmental Appeals Board should, in its discretion, review.” 40 C.F.R. § 124.19(a). As discussed in ConocoPhillips’ Motion to Participate and the Illinois EPA’s two responses to the Petitioners’ Petition for Review, the Petitioners have clearly failed to meet either of these criteria with regard to the procedural and flaring issues.

10. With regard to the BACT based CO<sub>2</sub> limit issue, a petitioner must demonstrate that matters have been properly preserved for appeal. This burden requires a petitioner to show that the issue presented on appeal was brought to the attention of the permitting authority during the public comment period. In particular, a petitioner must have identified “all reasonably ascertainable issues” and must have put forth “all reasonably available arguments supporting [its] position by the close of the public comment period . . .” 40 C.F.R. § 124.13. Further, the Board has previously ruled that “the requirement that an issue must have been raised during the comment period in order to preserve it for review is not an arbitrary hurdle placed in the path of potential petitioners. Rather, the requirement serves an important function related to the efficiency and integrity of the overall administrative permitting scheme.” *In re Indeck-Elwood, LLC*, PSD Appeal No. 03-04, slip op. at 58 (EAB September 27, 2006) (Citation omitted). As noted in ConocoPhillips’ Memorandum in Support of Permittee’s Motion to Participate and Illinois EPA’s Response to Motion, the Petitioners have clearly waived any appeal on this issue because they failed to make “all reasonably available arguments” before the end of the public comment period. See ConocoPhillips’ Memorandum in Support of Permittee’s Motion to Participate at 39 – 42 and Illinois EPA’s Response to Motion at 95 – 99.

11. Additionally, as stated in earlier filings, both ConocoPhillips and Respondent Illinois EPA believe that oral arguments are not necessary in this Matter. This Matter is primarily focused on three issues: a) procedural issues; b) issues related to the analysis of flaring; and, c) whether a CO2 BACT analysis is required. Each of these issues has been addressed repeatedly in the Petitioners' Petition for Review; ConocoPhillips' Memorandum in Support of its Motion to Participate; Illinois EPA's Partial Response to Petition; Petitioners' Partial Reply Memorandum in Support of Petition for Review - Responsiveness Summary Issues; Illinois EPA's Response to Petition; and Petitioners' Supplemental Reply.

12. It must be noted that the most controversial issue raised by Petitioners involves greenhouse gases and whether the Illinois EPA must include a BACT based CO2 limit in the PSD Approval. ConocoPhillips is aware that the Board recently issued an order in *In re Deseret Power Electric Cooperative*, PSD Appeal No. 07-03 (EAB, November 1, 2007), requiring briefing on this specific issue and anticipating the need for oral arguments. However, unlike the situation in *Deseret*, here the Petitioners waived any issue relating to the applicability of the BACT provisions of the federal Prevention of Significant Deterioration regulations. See ConocoPhillips' Memorandum in Support of Permittee's Motion to Participate at 39 – 42 and Illinois EPA's Response to Motion at 95 – 99. Therefore, oral arguments would not assist the Board in this matter.

13. The Board's Practice Manual states that “[i]n the interest of prompt and informed resolution of permit appeals, the Board, in practice, endeavors to resolve as many cases as possible during the first stage of the appeals process by obtaining more information than contemplated by the regulations.” Practice Manual at 30. In this Matter, the Board has obtained far more information than the amount required by the regulations.

14. The Board has granted motions for expedited consideration in the past. See Order Denying Review, *In re Hawaii Electric Light Company, Inc.*, 10 E.A.D. 219 (EAB 2001) (“*Hawaii Electric Light*”). Before denying review in *Hawaii Electric Light*, the Board issued, on October 18, 2001, its Order Granting Motion to Intervene and To Expedite. The October 18, 2001 Board Order noted that “[i]t is the Board’s practice to assign permit appeals under 40 C.F.R. Part 124 involving new source construction the highest priority. Of course, any such priority consideration must be consistent with the Board’s obligation to give appropriate consideration to the issues presented to it for resolution.” Order Denying Review, *In re Hawaii Electric Light Company, Inc.*, 10 E.A.D. 219, 223, n. 7 (EAB 2001) (citing Order Granting Motion to Intervene and to Expedite, *In re Hawaii Electric Light Company, Inc.*, PSD Appeal Nos. 01-24 through 01-29, slip op. at 2 (EAB, October 18, 2001)).

15. There are several reasons why this Matter should be assigned the highest priority and be considered in an expedited manner. First, this Matter involves a multi-billion dollar construction project at an existing, operating petroleum refinery, resulting in even greater timing concerns than for new source construction. The facility applied for this permit over 18 months ago and months of pre-work preceded the application. Continued delay in this Matter places the Facility in a debilitating state of uncertainty regarding many of the construction activities associated with the PSD Approval, until the Board’s decision is rendered.

16. Second, and as set forth by ConocoPhillips in its initial Motion for Expedited Consideration, the Facility has planned a turnaround for February 2008, during which necessary refurbishment and maintenance of certain processing units must take place. At significant risk, due to continued delay in this Matter, is the ability of the Facility to move forward with necessary critical project construction activities for that same turnaround period. If the Facility



misses the opportunity for construction activities during the February 2008 turnaround, then an additional turnaround will be required in order to perform the construction activities. An additional turnaround will result in about 2 million gallons per day of clean fuel product being taken out of the marketplace each day over a 30-day period in what has already been demonstrated in our previous motion to be a tight market. Additionally, this project was intended to add an additional 3.4 million gallons per day of clean products (gasoline, jet and diesel) to the Midwest market. This constitutes about 2% of the Midwest (PADD II) demand for those products. Continued construction delays prevent the ability to put these products into the market. Facility costs associated with a second turnaround are estimated to be \$25 million. In addition to the costs associated with a subsequent turnaround, the Facility will also incur additional project costs in the range of tens of millions of dollars per month of construction delay in escalated project costs. Extended delays will ultimately cause ConocoPhillips to question whether it should continue the project when there is no certainty regarding the ability to timely obtain a permit, particularly where it has already invested 18 plus months in the process.

17. Third, ConocoPhillips continues to be concerned about its ability to meet its Consent Decree obligations, as described in the initial Motion for Expedited Consideration. Construction associated with these obligations will result in annual emission reductions of approximately 11,000 tons sulfur dioxides and 700 tons of nitrogen oxides from various existing units at the refinery. The construction schedule, as required by the Consent Decree and as permitted by the Construction Grant and PSD Approval issued by the Illinois EPA on July 19, 2007, is impaired *only* by Petitioners filing of the Petition for Review. The severe consequences of delay imposed during the pendency of the appeal affect not only ConocoPhillips, but other

parties to the Consent Decree, and those with which ConocoPhillips has contracted to oversee and complete the construction.

18. Fourth, as noted in the initial Motion for Expedited Consideration, at the height of the project, the Facility will employ approximately 2,500 additional skilled workers. On average, it will employ about 1,500 additional individuals as construction commences and is completed three years later. Arrangements to meet these substantial manpower needs have been proceeding for many months. After all construction is complete, the Facility will add 100 new permanent jobs. There are also several hundred engineering contractor positions being filled to address both project engineering and field construction. A delay in resolving this Matter would jeopardize ConocoPhillips' ability to attract and retain skilled labor and engineering contractors for this project, thus jeopardizing the success of the project. Expedited review, by contrast, would mitigate this potentially negative result. Exhibit 1 is an Affidavit from Dale Stewart, the Executive Secretary of the Southwestern Illinois Building and Construction Trades Council, AFL-CIO, attesting to this very real concern.

19. Finally, continued delay puts ConocoPhillips at a distinctly unfair competitive disadvantage. Not only is its project delayed, it apparently is currently the only refinery in the United States required to justify why it was not required to address greenhouse gases in its permit. Other refineries and plants are apparently receiving construction permits for expansions without any challenge to their CO<sub>2</sub> emissions. We are aware that the Chevron Pascagoula Refinery in Mississippi was issued a PSD permit (Permit No. 1280-00058) on May 8, 2007, which did not address greenhouse gases. Similarly, Motiva's Port Arthur plant and Marathon's Garyville, Louisiana plant were issued construction permits in late 2006 and 2007, which permits did not address CO<sub>2</sub> emissions from the planned expansions at those plants. The EAB process

should not be used arbitrarily to stifle competition within an industry, particularly where the issue has been waived and is meritless.

20. Neither the Petitioners nor the Illinois EPA will suffer any hardship due to the expedited consideration of this Matter. Expedited consideration of this Matter is therefore appropriate.

21. ConocoPhillips again moves that the Board grant expedited consideration of this Matter for the reasons stated above, as well as the reasons set forth in the initial Motion for Expedited Consideration.

Respectfully submitted,

ConocoPhillips Company,  
Permittee

By: Kath D. Hodge  
One of Its Attorneys

Dated: December 3, 2007

Katherine D. Hodge  
Gale W. Newton  
HODGE DWYER ZEMAN  
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Springfield, Illinois 62705-5776  
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*Counsel for Permittee ConocoPhillips Company*

CNPH-005\ConocoPhillips Appeal\Supplement to Motion for Expedited Consideration (FINAL)



*Southwestern Illinois*  
*Building & Construction Trades Council*  
AFL-CIO

2A MEADOW HEIGHTS PROFESSIONAL PARK, COLLINSVILLE, IL 62234  
PHONE 618-344-6050 FAX 618-344-6285

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**AFFIDAVIT of Dale Stewart.**

Dale Stewart, being first duly sworn, states as follows:

1. My name is Dale Stewart. I am the Executive Secretary of the Southwestern Illinois Building and Construction Trades Council, AFL-CIO. The Council office is located at 2A Meadow Heights Professional Park, Collinsville, Illinois, 62234. I have personal knowledge of the facts about which I hereby testify.
2. The Council represents the following individual Trades:
  - a. Insulators & Asbestos Workers
  - b. Boilermakers
  - c. Bricklayers
  - d. Carpenters
  - e. Electricians
  - f. Elevator Constructors
  - g. Iron Workers
  - h. Laborers
  - i. Operating Engineers
  - j. Cement Masons
  - k. Painters and Glaziers
  - l. Pipefitters, Steamfitters, Sprinkler Fitters, and Plumbers
  - m. Roofers
  - n. Sheet Metal Workers
  - o. Teamsters
3. The Wood River Refinery currently employs 300 Trades members. About 33% of the Wood River workforce are Trades members.
4. The Trades Council supports the expansion of the Wood River Refinery as described in Construction Permit/PSD Approval No. 06060052 for the Wood River Refinery Coker and Refinery Expansion (CORE) Project issued by the Illinois Environmental Protection Agency on July 19, 2007.
5. Additional Trades members will be employed both temporarily during the construction and permanently after the completion of the CORE project.

Dated this 31 day of November, 2007

Page 1 of 2

EXHIBIT 1

6. There will be an average of 1500 temporary jobs through out the construction and about 100 full-time refinery related jobs following construction in addition to currently existing jobs.
7. The jobs created are good paying jobs for skilled craftsmen and will benefit the Trades Council.
8. Delays in construction due to the appeal directly affect our members' livelihoods.

STATE OF ILLINOIS       §  
  §  
COUNTY OF MADISON   §

I, Dale Stewart, being of lawful age and being first duly sworn upon oath, state that the facts contained in the foregoing affidavit are true and correct to the best of my knowledge, information and belief.



Dale Stewart

SUBSCRIBED AND SWORN TO before me on this 27<sup>th</sup> day of November, 2007



Notary Public, State of Illinois

Name: JUDITH A. SCHREWE  
Printed

My Commission Expires: October 21, 2010

