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ENVIR. APPEALS BOARD

September 26, 2007

VIA HAND DELIVERY

U.S. Environmental Protection Agency
Clerk of the Board, Environmental Appeals Board
Colorado Building
1341 G Street, N.W., Suite 600
Washington, D.C. 20005

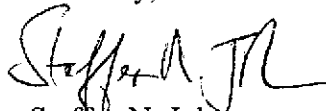
Re: *ConocoPhillips Company*, PSD Appeal Number 07-02

Dear Clerk of the Board:

Enclosed please find an original and six copies of ConocoPhillips Company's (1) Motion to Participate and Motion for Expedited Consideration, and (2) Memorandum in Support of Permittee's Motion to Participate. Additionally, please find enclosed four copies of ConocoPhillips Company's supporting Exhibits. Please return a file-marked copy of each document to the awaiting courier.

Please do not hesitate to contact me at (202) 282-5000 if you have any questions or concerns.

Sincerely,



Steffen N. Johnson

Clerk of the Board
August 16, 2007
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Via Federal Express with enclosures
Sally Carter, Illinois Environmental Protection Agency
Ann Alexander, Natural Resources Defense Council
Karla Raettig, Environmental Integrity Project

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

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ENVIR. APPEALS BOARD

In re:)
)
ConocoPhillips Company) PSD Appeal No. 07-02
)
Permit No: 06050052)

MOTION TO PARTICIPATE AND
MOTION FOR EXPEDITED CONSIDERATION

Pursuant to Section III.D.4 of the Environmental Appeals Board (“EAB”) Practice Manual,¹ Permittee, ConocoPhillips Company (“ConocoPhillips”), on behalf of itself as operator of the Wood River Refinery, and WRB Refining LLC as owner, asks to participate in the above-captioned proceeding by filing the attached Memorandum. As explained in the Memorandum, the petition for review is sufficiently meritless that oral argument will not assist the EAB’s decision. If the EAB does hear oral argument, however, ConocoPhillips requests the opportunity to participate.

ConocoPhillips further moves for expedited consideration of this matter, which the EAB has granted in past cases such as *In Re Hawaii Electric Light Company*, PSD Appeal Nos. 01-24 through 01-29 (EAB Nov. 27, 2001, Order Denying Review). In support, ConocoPhillips states as follows:

1. On January 27, 2005, ConocoPhillips executed a comprehensive Consent Decree that applies to several of its refineries in different states. See Consent Decree, *United States of Amer-*

¹ The EAB Practice Manual directs that “the EAB will provide a permittee with notice that a petition for review has been filed concerning the permittee’s permit at the same time that the EAB requests a response from the permit issuer and will entertain a motion by a permittee to participate in the proceeding.” (Section III.D.4., page 35).

ica and the States of Illinois, Louisiana and New Jersey, Commonwealth of Pennsylvania and the Northwest Clean Air Agency v. ConocoPhillips Company, Civil Action No. H-05-0258 (S.D. Tex. Dec. 5, 2005) (ConocoPhillips Exhibit 6).² The Consent Decree is several hundred pages long and required approximately thirty (30) months to negotiate and complete. ConocoPhillips is currently the only Defendant party to the Consent Decree.³ Plaintiffs to the Consent Decree are the United States of America and the States of Illinois, Louisiana, New Jersey, Commonwealth of Pennsylvania, and the Northwest Clean Air Agency. The State of Illinois appeared on behalf of the Illinois Environmental Protection Agency (“IEPA”).

2. The Consent Decree has compliance deadlines for the facility involved in this permit appeal. Failure to comply with those deadlines could result in fines and penalties as described in Paragraphs 289, 296, 301, 307, and 309 of the Consent Decree in the amounts ranging from \$750.00 per day to \$10,000 per day. At a minimum, a potential failure to comply will require ConocoPhillips to re-enter negotiations with the Plaintiffs to revise the agreed-upon compliance deadlines.

3. As part of complying with the Consent Decree, ConocoPhillips applied for a state Construction Permit and federal prevention of significant deterioration (“PSD”) approval, both of which IEPA issued on July 19, 2007. The PSD approval is the subject of this permit appeal. *See* Petition at 1.

4. On August 22, 2007, thirty-three days after notice (on July 20) of permit issuance, Petitioner filed this appeal pursuant to 40 C.F.R. § 124.20(d), thus automatically delaying the effec-

² Available at <http://www.epa.gov/compliance/resources/decrees/civil/caa/conocophillips-cd.pdf> (last visited September 19, 2007).

³ The U.S. Department of Justice, the U.S. Environmental Protection Agency, the State of Illinois, ConocoPhillips Company, and WRB Refining LLC are developing a joint motion to add WRB Refining LLC as a defendant for the Wood River, Illinois and Borger, Texas refineries. Ownership of the Wood River Refinery was transferred to WRB Refining LLC on January 1, 2007. ConocoPhillips Company continues to be the permittee and operator of the Refinery, and owns 50% of WRB Refining LLC.

tive date of IEPA's final PSD approval under 40 C.F.R. § 124.15 and 19, and preventing ConocoPhillips from commencing construction on those elements of the project requiring PSD approval.

5. The mere filing of this appeal by Petitioner has jeopardized, and continues to jeopardize, ConocoPhillips' good-faith efforts to comply with the comprehensive Consent Decree, as well as its ability to implement the PSD-related elements of the Construction Permit issued by IEPA.

6. The EAB'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." Manual at 30. ConocoPhillips believes that its legal Memorandum in support of its Motion to Participate satisfies this requirement.

7. The Board has granted motions for expedited consideration in the past. *See In Re Hawaii Electric Light Company, Inc.*, PSD Appeal Nos. 01-24 through 01-29 (EAB Nov. 27, 2001, Order Denying Review). Before denying review in *Hawaii Electric Light*, the Board issued, on October 18, 2001, its Order Granting Motion to Intervene and To Expedite. Paragraph II of that Order (at 2) stated: "It is the Board's practice to assign permit appeals under 40 CFR 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. Accordingly, the petitions for review in this matter will be considered on an expedited basis and a decision on review will be issued upon completion of the Board's deliberations."

8. The construction schedule, as required by the Consent Decree and as permitted by the Construction Permit issued by IEPA on July 19, 2007, is impaired *only* by Petitioner's filing of this permit appeal. Yet the severe consequences of delay imposed during the pendency of the appeal affect only ConocoPhillips and other parties to the Consent Decree—not the Petitioner, and not IEPA. Expedited consideration of the appeal is therefore appropriate.

9. In addition to the Consent Decree, several other factors make expedited consideration particularly appropriate. First, for the past several years, the Midwest has experienced continuing and varied fuel supply disruptions.⁴ These disruptions have resulted in consistently high fuel prices in the region—with prices in the Midwest higher on average than all other parts of the country except the West Coast—and various gubernatorial directives relaxing state restrictions

⁴ For example, *This Week in Petroleum* (Energy Information Administration, Sept. 19, 2007) (ConocoPhillips Exhibit 8), notes that “continued erosion in gasoline inventories over the past few weeks, with stocks reaching an all-time low in terms of days of supply, coupled with sporadic refinery problems in some parts of the county, and low imports, have been key factors in the marketplace this year. *Pressure from these sources has been particularly acute in the Midwest where gasoline prices were the highest in the Nation over the latter part of August to mid-September.*” *Id.* at 2 (emphasis added).

Fuel supply disruptions have prompted many Midwestern governors to issue emergency executive orders relaxing state restrictions on fuel use and transportation. *See, e.g.* (attached seriatim as ConocoPhillips Exhibit 9):

- Minnesota: Executive Order 07-08 (June 28, 2007) (declaring state of emergency because of the number of fuel terminals “experiencing difficulties in obtaining their full supply of gasoline”); Executive Order (August 31, 2007) (same);
- Kansas: Executive Order 07-19 (July 9, 2007) (suspending restrictions on fuel carriers because of “long wait times for motor carrier vehicles needing to load fuel”);
- Iowa: Proclamation of Governor Chester J. Culver (July 12, 2007) (declaring state of emergency because of “shortages and interruptions in the availability and/or delivery of the petroleum products at various locations throughout Iowa”);
- North Dakota: Executive Orders 2007-08 (June 29, 2007), 2007-09 (July 5, 2007), 2007-10 (July 18, 2007), and 2007-12 (Aug. 20, 2007) (declaring state of emergency because of “extremely low inventories and outages of petroleum products, particularly gasoline and diesel supplies, caused by the temporary reduction of production as a result of maintenance to several refineries and other natural disasters”); and
- Nebraska: Richard Piersol, *Governor Extends Waiver for Fuel Haulers*, Lincoln J. Star, Aug. 31, 2007 (summarizing Nebraska executive order and noting that “[s]upply shortages continued to ‘run rampant’ in many pockets of the Midwest”).

Several other state governors, including many from the Midwest, have lamented the supply shortages and called on President Bush to “press[] oil companies to invest their profits in fixing refinery capacity issues that have become an annual foil for swiftly escalating prices.” Letter from the Democratic Governors Association to President George W. Bush (May 22, 2007) (attached as ConocoPhillips Exhibit 10).

on fuel uses and transportation. The CORE project will alleviate some of this sensitivity by increasing supplies of gasoline in the Midwest area that the Refinery supplies by about 2.5% and diesel by over 5.5%.

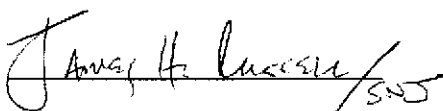
10. Second, petroleum refineries generally shut down their primary processing units (e.g., the fluid catalytic cracking units, steam generating boilers, etc.) and cease to make clean fuels (low sulfur gasoline, ultra low sulfur diesel, jet fuel, and other refinery products) every four to five years for a period of four to six weeks to refurbish and maintain the processing units. These shutdowns, also called "turnarounds," are planned 12-18 months in advance so that, among other things, the refinery may ensure that it has stored sufficient refinery products to continue to supply products to the public while it is no longer producing. The Wood River Refinery currently has such a turnaround planned for February, 2008. At that time, the refinery plans to perform the necessary refurbishments and begin making (to the extent possible) changes to the catalytic cracking units as envisioned under the permit. If this appeal is still pending, and ConocoPhillips cannot begin to make facility changes as envisioned by the permit at the same time it is normally refurbishing the units that are in turnaround, it will be forced to take an additional turnaround at a later time. The lost production of the clean fuels during this unplanned turnaround could aggravate the fuel supply concerns discussed above. In addition, the delayed turnaround would cost ConocoPhillips substantial amounts in lost production and fuel sales over the additional four to six week period. An expedited review would preclude this additional hardship on the Midwestern fuels market and expense for ConocoPhillips.

11. Finally, at the height of the CORE project, the facility will employ approximately 2500 additional skilled workers. On average it will employ about 1500 additional individuals as construction commences and is completed three years later. After all construction is complete,

the refinery will add 100 new permanent jobs. Arrangements to meet these substantial manpower needs have been proceeding for several months. A delay in resolving this permit appeal would jeopardize ConocoPhillips' ability to attract and retain skilled labor for this project. Expedited review, by contrast, would mitigate this potentially negative result.

ConocoPhillips therefore requests to participate in this matter by filing the attached Memorandum, and further moves that the Board grant expedited consideration of this matter for the reasons stated above.

Respectfully submitted.

A handwritten signature in cursive script, appearing to read "James H. Russell", with a horizontal line drawn through it. To the right of the signature, the initials "SJS" are written.

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Dated: September 26, 2007