

ILLINOIS POLLUTION CONTROL BOARD
May 16, 2013

PHILLIPS COMPANY,)
)
Petitioner,)
)
v.) PCB 12-101
) (Permit Appeal - NPDES)
ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
)
Respondent.)

ORDER OF THE BOARD (by D. Glosser):

On April 25, 2013 ConocoPhillips Company (Phillips¹) filed a motion (Mot.) asking the Board to reconsider its March 21, 2013 opinion and order affirming the Illinois Environmental Protection Agency's (IEPA) permit decision. On May 9, 2013, IEPA filed a response (Resp.) in opposition to the motion to reconsider. As explained below, the Board denies the motion to reconsider.

The Board briefly summarizes its March 21, 2013 opinion and order and then summarized Phillips arguments along with IEPA's response. The Board will then discuss its conclusion.

BOARD OPINION AND ORDER OF MARCH 21, 2013

The Board affirmed IEPA's imposition of a condition requiring that Phillips meet the human health water quality standard in its effluent. The Board found that Phillips waived arguments regarding the inclusion of a condition in the 2011 permit when Phillips accepted the same condition as a part of a permit modification in 2009. Further, the Board found that even if the arguments had not been waived, Phillips cannot be granted a mixing zone for mercury as the human health water quality standard is exceeded in the receiving stream, based on the information provided in this record.

The Board declined to accept a stipulation regarding amendment of permit conditions, as stipulations regarding permit conditions are not appropriate in the context of a permit appeal. The conditions remain in effect as those conditions were included in the permit.

The Board also found that IEPA's imposition of a mass limit was not arbitrary or capricious; however consistent with IEPA's concern regarding the calculation of the limit, the Board will remand the permit to address the calculation of the mass limit for mercury.

¹ On October 19, 2012, an agreed motion was filed changing the name of petitioner from ConocoPhillips Company to Phillips 66 Company.

MOTION TO RECONSIDER

Phillips argues in its motion that the Board's decision that Phillips waived a challenge to the permit condition by accepting the condition in the 2009 permit is not supported by the record. Mot. at 2. Phillips points to testimony by its witnesses indicating that the IEPA would reconsider the permit condition as support for this argument. Mot. at 2-3. Phillips also argues that the Board's decision is also unsustainable as a matter of law, maintaining that the facts of this case are more aligned with IEPA v. Jersey Sanitation Corp., 336 Ill. App. 3d 582, 784 N.E.2d 867 (4th Dist. 2003), than the other cases relied upon by the Board. Mot. at 3-4.

Phillips also argues that the Board's decision that Phillips is not entitled to a mixing zone is not supported by the law and facts of the case. Mot. at 6-9. Finally, Phillips maintains that the Board's remand did not identify the correct relief. Mot. at 9.

IEPA responds that Phillips' arguments "misconstrue facts and inappropriately look for the burden of proof to be placed on IEPA or the Board." Resp. at 2. IEPA argues that Phillips failed to meet the standard under a motion to reconsider and the motion should be denied. Resp. at 2. IEPA maintains that Phillips response to the Board's decision regarding waiver includes no references to facts or law new since the Board decision. Resp. at 3. Further, IEPA argues that Phillips arguments regarding the water quality issue fails to cite any new evidence or change in law that would indicate the Board's decision was in error. *Id.*

DISCUSSION

The Board has reviewed Phillips' arguments in its motion to reconsider. However, the Board is unconvinced that it should reconsider the March 21, 2013 opinion and order. In ruling on a motion for reconsideration, the Board will consider factors including new evidence or a change in the law, to conclude that the Board's decision was in error. 35 Ill. Adm. Code 101.902. In Citizens Against Regional Landfill v. County Board of Whiteside, PCB 93-156 (Mar. 11, 1993), the Board observed that "the intended purpose of a motion for reconsideration is to bring to the court's attention newly discovered evidence which was not available at the time of hearing, changes in the law or errors in the court's previous application of the existing law." Korogluyan v. Chicago Title & Trust Co., 213 Ill. App. 3d 622, 627, 572 N.E.2d 1154, 1158 (1st Dist. 1992). The Board finds that Phillips provided no new evidence or a change in the law that would indicate the Board's March 21, 2013 decision affirming IEPA's imposition of conditions was in error. Therefore, the motion to reconsider is denied.

IT IS SO ORDERED.

Board Member J. A. Burke abstains.

Chairman T. A. Holbrook abstains.

Section 41(a) of the Environmental Protection Act provides that final Board orders may be appealed directly to the Illinois Appellate Court within 35 days after the Board serves the order. 415 ILCS 5/41(a) (2010); *see also* 35 Ill. Adm. Code 101.300(d)(2), 101.906, 102.706.

Illinois Supreme Court Rule 335 establishes filing requirements that apply when the Illinois Appellate Court, by statute, directly reviews administrative orders. 172 Ill. 2d R. 335. The Board's procedural rules provide that motions for the Board to reconsider or modify its final orders may be filed with the Board within 35 days after the order is received. 35 Ill. Adm. Code 101.520; *see also* 35 Ill. Adm. Code 101.902, 102.700, 102.702.

I, John T. Therriault, Assistant Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on May 16, 2013, by a vote of 3-0.

A handwritten signature in black ink that reads "John T. Therriault". The signature is written in a cursive style with a long horizontal flourish extending to the right.

John T. Therriault, Assistant Clerk
Illinois Pollution Control Board