

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

CONOCOPHILLIPS COMPANY,)	
)	
Petitioner,)	
)	
v.)	PCB No. 12-101
)	(Permit Appeal NPDES)
ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Respondents.)	

NOTICE OF ELECTRONIC FILING

To: See Attached Service List

PLEASE TAKE NOTICE that on April 26, 2012, I electronically filed with the Clerk of the Pollution Control Board of the State of Illinois, c/o John T. Therriault, Assistant Clerk, James R. Thompson Center, 100 W. Randolph St., Ste. 11-500, Chicago, IL 60601, RESPONDENT'S OBJECTION TO PETITIONER'S MOTION TO CLARIFY, OR IN THE ALTERNATIVE, MOTION TO RECONSIDER, a copy of which is attached hereto and herewith served upon you.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

LISA MADIGAN,
Attorney General of the
State of Illinois

MATTHEW J. DUNN, Chief
Environmental Enforcement/Asbestos
Litigation Division

BY: *Rachel R. Medina*

Rachel R. Medina
Assistant Attorney General
Environmental Bureau

500 South Second Street
Springfield, Illinois 62706
217/782-9031
Dated: April 26, 2012

CERTIFICATE OF SERVICE

I hereby certify that I did on April 26, 2012, cause to be served by First Class Mail, with postage thereon fully prepaid, by depositing in a United States Post Office Box in Springfield, Illinois, a true and correct copy of the following instruments entitled NOTICE OF ELECTRONIC FILING and RESPONDENT'S OBJECTION TO PETITIONER'S MOTION TO CLARIFY, OR IN THE ALTERNATIVE, MOTION TO RECONSIDER upon the persons listed on the attached Service List.



RACHEL R. MEDINA
Assistant Attorney General

This filing is submitted on recycled paper.

SERVICE LIST

David Rieser
Kathleen M. Cunniff
McGuire Woods, LLP
77 W. Wacker Suite 4100
Chicago IL 60601

Chad Kruse
IEPA/DLC
1021 North Grand Avenue East
P.O. Box 19276
Springfield, IL 62794-9276

Carol Webb
Hearing Officer
Pollution Control Board
1021 North Grand Avenue East
Springfield, IL 62794-9276

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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

RESPONDENT'S OBJECTION TO PETITIONER'S MOTION TO CLARIFY, OR IN THE ALTERNATIVE, MOTION TO RECONSIDER

Respondent, ILLINOIS ENVIRONMENTAL PROTECTION AGENCY, pursuant to 35 Ill. Adm. Code Section 101.520(b), respectfully responds and objects to the Petitioner's Motion to Clarify, or in the alternative, Motion to Reconsider ("Motion"), for the following reasons: 1) the Board's April 5, 2012 Order is explicit, and 2) the Board lacks authority over the 2009 permit.

The Board's Order Is Explicit

1. The Board's Order explicitly provides for a stay of certain conditions in the NPDES permit issued in December 2011. Thus, no clarification is needed.
2. On April 14, 2004, Illinois EPA issued an NPDES permit (no. IL0000205) to the Petitioner. On September 30, 2008, the Petitioner timely applied to renew the permit. In the interim, the Petitioner applied to modify the existing permit. On February 5, 2009, Illinois EPA issued a modified permit to the Petitioner ("2009 permit"). On December 22, 2011, the Illinois EPA issued a renewal permit ("2011 permit"), which expires on December 31, 2016.
3. The Board, in its April 5, 2012 Order, explicitly finds that "a stay of the contested conditions set forth in ConocoPhillips renewal permit is appropriate." (Order at 6.) The 'renewal permit' is the 2011 permit which is the subject of this permit appeal action. The Board then specifically lists the contested conditions as follows: "Special Condition 21(which relates to the

discharge to Smith Lake), Special Conditions 26 and 28 (relating to fecal coliform discharge), Special Condition 27 and the effluent limit for mercury, and the effluent limit for dissolved oxygen." (Order at 6.) Nowhere in the Board's list is there any mention of either the modified 2009 permit or any of its conditions.

4. In *AmerenEnergy Generating Company v. Illinois EPA, 2006 WL 529477; PCB 06-67 (February 16, 2006)*, the Board determined that where a permittee elects not to avail itself of an automatic stay, "the permittee then would be operating under the terms of the most-recently issued permit, as to all but the conditions explicitly stayed by Board order." In this case, the Board has explicitly stayed only certain conditions of the 2011 permit. Thus, according to the Board's Order, the 2011 permit is in effect as to all but the 2011 permit conditions explicitly stayed.

The Board Lacks Authority Over the 2009 Permit

1. The Board lacks authority over the 2009 permit for two reasons. First, the time for appealing the 2009 permit has expired. Secondly, the 2011 permit is properly in effect.

2. The Board's General Provisions state that "if a person who may petition the Board...wishes to appeal the Agency's final decision to the Board...the person must file the petition with the Clerk within 35 days after the date of service of the Agency's final decision." 35 Ill. Adm. Code Section 105.206(a). The 2009 permit was issued on February 5, 2009. The time for appealing the 2009 permit or any of its conditions expired on March 12, 2009. Petitioner's time has passed for appealing the 2009 permit decision or any conditions therein. Therefore, the Board cannot stay conditions in the 2009 permit.

3. In addition, as the Board has not applied an automatic stay to the entire 2011 permit, nor has the Petitioner requested a stay of the effective date of the 2011 permit, the 2011 permit is in effect. The 2009 permit is expired and superseded by the 2011 permit. Therefore, the 2009 permit is simply not subject to any review or action by the Board, despite Petitioner's conjecture that "it could be argued that Petitioner's obligation would revert to ...the 2009 permit

which contains an identical requirement" and may be considered "independent of the prior condition and subject to both appeal and stay" [Petition at paragraph 11]. The 2009 permit is not properly before the Board and cannot be resurrected.

Conclusion

The Petitioner's Motion is legally unsupported where 1) the Board's Order explicitly provides for a stay of the conditions in the NPDES permit issued in December 2011, and 2) the time for appealing the 2009 permit has expired.

WHEREFORE, the People pray that the Respondent's Motion to Clarify, or in the alternative, Motion to Reconsider be DENIED.

Respectfully submitted,
PEOPLE OF THE STATE OF ILLINOIS
ex rel. LISA MADIGAN
Attorney General of the State of Illinois

MATTHEW J. DUNN, Chief
Environmental Enforcement/Asbestos
Litigation Division

BY: 

RACHEL R. MEDINA,
Assistant Attorney General
Environmental Bureau

500 South Second Street
Springfield, Illinois 62706
217/782-9031
Dated: April 26, 2012