

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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

NOTICE OF FILING

TO: See Attached Service List

Please take notice that on April 18, 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., Suite 11-500, Chicago, IL 60601, Petitioner's Motion to Clarify, or in the alternative, Motion for Reconsideration, a copy of which is herewith served upon you.

Respectfully submitted,

s/ David L. Rieser
David L. Rieser

David L. Rieser
Kathleen M. Cunniff
McGuireWoods LLP
77 West Wacker, Suite 4100
Chicago, IL 60601
312-849-8100 (Phone)
312-849-3690 (Fax)

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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

**MOTION TO CLARIFY, OR IN THE ALTERNATIVE,
MOTION FOR RECONSIDERATION**

Petitioner, ConocoPhillips Company (“Petitioner”), by its attorneys and pursuant to Ill. Adm. Code 35 § 101.520, moves the Pollution Control Board (the “Board”) to clarify its April 5, 2012 Order so that it is more clear that the mercury limits condition contained in the 2009 permit is stayed, along with the conditions in the 2011 renewal permit, and that Petitioner does not currently have to take measures to initiate design and engineering studies to construct mercury control facilities. If, upon clarification, the Board has denied Petitioner’s Request for Stay of the mercury limits condition in the 2009 Permit, Petitioner moves the Board to reconsider this decision. In support of this Motion, Petitioner states as follows.

1. The April 5, 2012 Order holds, in part, “For the reasons discussed below the Board grants the motion for stay.” (Order at 1.) The Order further states:

ConocoPhillips has requested a stay of certain new conditions in its permit as well as a condition that was included in the 2009 permit. . . . After reviewing the arguments, the Board finds that a stay of the contested conditions set forth in ConocoPhillips renewal permit is appropriate. The Board stays 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.)

2. Petitioner interprets the Board's unconditional statement that Petitioner's motion to stay is granted combined with the language cited above to mean that **all** contested conditions are stayed, including the conditions related to mercury limits contained in the 2009 permit.

3. If that is the correct interpretation of the Order, Petitioner requests that the Board amend its Order to read as follows:

ConocoPhillips has requested a stay of certain new conditions in its 2011 permit as well as a mercury limits condition that was also included in the 2009 permit. While the Respondent objects to the stay, after reviewing the arguments, the Board finds that a stay of **all** contested conditions set forth in ConocoPhillips 2011 renewal permit, **and the permit condition relating to mercury levels contained in the 2009 permit** is appropriate. Accordingly, the Board stays 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. During the pendency of the Board's review, Petitioner is not required to begin measures to comply with any of these permit conditions.

4. The Board has authority to modify its April 5, 2012 Order pursuant to 35 Ill. Adm. Code 101.520, as Petitioner has filed this motion within 35 days after the Order was received.

5. If, however, the Board intended to indicate that the mercury limits condition contained in the 2009 permit are not stayed and that Petitioner must begin to take measures to comply with the permit, Petitioner urges the Board to reconsider this ruling.

6. Pursuant to 35 Ill. Adm. Code 101.520, a motion to reconsider may be brought "to bring to the [Board's] attention newly discovered evidence which was not available at the time of the hearing, changes in the law or errors in the [Board's] previous application of existing law." *Korogluyan v. Chicago Title & Trust Co.* 213 Ill. App.3d 622, 627 (1st Dist. 1992).

7. As the Board did not identify the basis for limiting its stay to the 2011 permit, it is difficult to point to specific grounds on which to ask the Board to reconsider. Consistent with

the Environmental Protection Act as well as numerous Board and court opinions, the Board may have been reluctant to issue an order essentially limiting the authority of the IEPA to enforce a condition in an existing permit not before the Board despite the fact that the Agency acknowledged that the Board has the authority to grant a stay on the mercury limits condition in the 2009 Permit. (Order at 3.) If this was the Board's reasoning, it fails to take into account the anomalous procedural posture of this issue and should be reconsidered and reversed.

8. Both the Agency's Internal Response to Comments produced at the time of its issuance of the 2011 permit found in the record, and the internal email communications and memorandum now included in the supplemental record, demonstrate that the Agency reconsidered its legal basis for determining that Petitioner failed to demonstrate to the Agency's satisfaction that a mixing zone was warranted. (Both the Internal Response to Comments and the Supplemental Record are attached hereto and incorporated herein as Attachment A).

9. Because the Agency reconsidered and reissued as new the mercury condition, the Board should find that a stay of the mercury condition is justified in both permits. Should the Board fail to do so, Petitioner faces the prospect that it will have to spend significant sums to comply with a permit condition which the Board may well find invalid, exactly the circumstance which the Board's stay decision finds inappropriate. Petitioner's additional choice would be to seek some other relief in a duplicative and needless proceeding resulting in a misuse of state and private resources.

10. Thus, the mercury limits condition contained in the 2009 permit should be stayed along with the challenged conditions in the 2011 permit, and the Board has the authority to issue such stay.

Conclusion

For the reasons stated above, Petitioner respectfully requests that the Board clarify its April 5, 2012 Order so that it is more clear that the mercury limits condition contained in the 2009 permit is stayed, along with the conditions in the 2011 renewal permit, and that Petitioner does not currently have to take measures to initiate design and engineering studies to construct mercury control facilities. If, upon clarification, the Board has denied Petitioner's Request for Stay of the mercury limits condition in the 2009 Permit, Petitioner moves the Board to reconsider this decision.

Respectfully submitted,

Dated: April 18, 2012

s/ David L. Rieser
David L. Rieser

David L. Rieser
Kathleen M. Cunniff
McGuireWoods LLP
77 West Wacker, Suite 4100
Chicago, IL 60601
312-849-8100 (Phone)
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/38408582_1

EXHIBIT A

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 11, 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, a SUPPLEMENT TO THE RECORD, 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

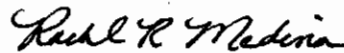
BY: 

Rachel R. Medina
Assistant Attorney General
Environmental Bureau

500 South Second Street
Springfield, Illinois 62706
217/782-9031
Dated: April 11, 2012

CERTIFICATE OF SERVICE

I hereby certify that I did on April 11, 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 SUPPLEMENT TO THE RECORD upon the persons listed on the 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,)	
)	
Plaintiff,)	
)	
v.)	PCB 12-101
)	(NPDES Permit Appeal)
ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Defendant.)	

SUPPLEMENT TO THE RECORD

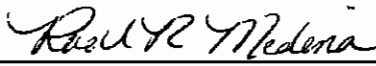
Respondent, ILLINOIS ENVIRONMENTAL PROTECTION AGENCY, in accordance with 35. Ill. Adm. Code 105.212 and 105.116, hereby supplements the Record with the following documents, previously withheld or redacted, as follows:

Current Permit Documents

1. E-mail dated July 22, 2011 from Deborah Williams to Messrs. Rabins, Keller, LeCrone, Sofat, and Mosher; and, Memorandum dated July 22, 2011 from Deborah J. Williams to Sanjay Sofat (see Record, paragraph 41); and,
2. E-mails on August 30, 2011 and September 1, 2011, among Messrs. Rabins, Mosher, LeCrone, Keller, and Heacock, and Deborah Williams (see Record, paragraph 43.).

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 10, 2012

Keller, Al

From: Williams, Deborah
Sent: Friday, July 22, 2011 4:24 PM
To: Rabins, Jaime; Keller, Al; LeCrone, Darin; Sofat, Sanjay; Mosher, Bob
Subject: ConocoPhillips
Attachments: 20110720111642508.pdf; BDTMemo.docx

I looked over this letter from ConocoPhillips and they do a fairly good job of summarizing the issues we are grappling with in this permit. Also, they clear up the unresolved matter of the fact that their application and prior correspondence may not have actually mentioned that they wanted a mixing zone for mercury.

Sanjay had asked me to give some suggestions on how we need to proceed in this case. I've attached a draft memo that tries to give a general roadmap. If we feel we have sufficient information to make and document a decision, I think the best course of action is to finalize the permit promptly and let the chips fall where they may. Fortunately ConocoPhillips did not send us a bunch of new documents that we need to consider before making a decision.

Let me know if you have questions or can use additional help.

Thanks,

Debbie

Sanjay K. Sofat
Division Manager
Division of Water Pollution Control
Bureau of Water
Illinois EPA
1021 North Grand Ave. East
Springfield, IL 62794-9276

Phone: 217-558-2012
Fax: 217-782-5549
e-mail: sanjay.sofat@illinois.gov

-----Original Message-----

From: Milner, Dawn R. [mailto:dmilner@mcguirewoods.com]
Sent: Wednesday, July 20, 2011 11:38 AM
To: Sofat, Sanjay
Cc: Rieser, David L.; Carvalho, Donna H. (LDZX); Jay.D.Rankin@conocophillips.com
Subject: RE: ConocoPhillips

Please find the attached letter from David Rieser. Thank you.

**ATTORNEY WORK PRODUCT/PRIVILEGED AND CONFIDENTIAL
DRAFT**

To: Sanjay Sofat
From: Deborah J. Williams
Date: July 22, 2011
Re: ConocoPhillips

The purpose of the memo is to develop a road map for making a final determination on ConocoPhillips' permit renewal and mixing zone determination. Keep in mind that I have not reviewed the permit record and these comments are intended to be "big picture" in nature.

Based on the meeting held with the Agency, ConocoPhillips argues that they are eligible for a mixing zone for the parameter mercury in its discharge based on the fact the mixing zone regulations do not provide different standards for bio-accumulative chemicals of concern and the fact that they have sufficient dilution with the receiving stream to justify a mixing zone for other parameters.

Section 302.208(c) provides that "The human health standard (HHS) for the chemical constituents listed in subsection (f) shall not be exceeded when the stream flow is at or above the harmonic mean flow pursuant to Section 302.658 nor shall an annual average, based on at least eight samples, collected in a manner representative of the sampling period, exceed the HHS except as provided in subsection (d)." Subsection (d)(3) of that Section provides that "(3) The HHS shall not be exceeded outside of waters in which mixing is allowed pursuant to Section 302.102."

In making a determination of whether mixing is available to a particular discharger, Section 302.102(a) provides an important prerequisite to the use of mixing or establishment of a mixing zone:

Whenever a water quality standard is more restrictive than its corresponding effluent standard, or where there is no corresponding effluent standard specified at 35 Ill. Adm. Code 304, an opportunity shall be allowed for compliance with 35 Ill. Adm. Code 304.105 by mixture of an effluent with its receiving waters ***provided the discharger has made every effort to comply with the requirements of 35 Ill. Adm. Code 304.102***

Prior to an evaluation by the Standards Unit of whether mixing is available in the receiving stream or what size of mixing zone can be established under the remaining provisions in Section 302.102, the Permit Section should make the initial determination of whether the facility has met the requirements of Section 304.102.

The complete language of Section 304.102 is as follows:

Section 304.102 Dilution

- a) Dilution of the effluent from a treatment works or from any wastewater source is not acceptable as a method of treatment of wastes in order to meet the standards set forth in this Part. Rather, it shall be the obligation of any person discharging contaminants of any kind to the waters of the state to provide the best degree of treatment of wastewater consistent with technological feasibility, economic reasonableness and sound engineering judgment. In making determinations as to what kind of treatment is the "best degree of treatment" within the meaning of this paragraph, any person shall consider the following:
 - 1) What degree of waste reduction can be achieved by process change, improved housekeeping and recovery of individual waste components for reuse; and
 - 2) Whether individual process wastewater streams should be segregated or combined.
- b) In any case, measurement of contaminant concentrations to determine compliance with the effluent standards shall be made at the point immediately following the final treatment process and before mixture with other waters, unless another point is designated by the Agency in an individual permit, after consideration of the elements contained in this section. If necessary the concentrations so measured shall be recomputed to exclude the effect of any dilution that is improper under this Section.

Discussions with ConocoPhillips regarding the source of mercury in its wastestream have already focused on some of the concepts in this regulation. As suggested in subsection (a)(2), ConocoPhillips has attempted to look at whether certain wastestreams are the source of mercury and whether those wastestreams could be treated individually. ConocoPhillips has claimed this cannot be done. The Bureau should make an independent determination of whether it is feasible to segregate mercury wastestreams in this case or whether end of process treatment is the only available treatment option.

ConocoPhillips may also have done an analysis under subsection (a)(1) of whether mercury reductions can be achieved through a waste reduction strategy. If so, the Bureau should consider whether any appropriate waste reduction measures were not considered or implemented that should have been.

Best Degree of Treatment Factors

Section 304.102 provides three factors for "best degree of treatment of wastewater." Such treatment must be consistent with technical feasibility, economic reasonableness and sound engineering judgment. With regard to "technical feasibility" and "sound engineering judgment," the analysis should begin with the permit reviewer. In this case, the permit reviewer has the

benefit of design and pilot studies conducted by the facility to determine what technologies are available and what mercury reductions these technologies can achieve. If this information was not available, or if it is inadequate to make a conclusion, the permit record may need to be supplemented with additional research by the permit reviewer or supplemental information from the facility.

If the Agency determines that readily available and effective technologies for mercury treatment that are consistent with sound engineering judgment will achieve mercury reductions, the only remaining consideration is whether these technologies are economically unreasonable. It is not entirely clear what methodology should be used for this economic reasonableness determination, but it is likely to be case-by-case determination based on a variety of factors including: level of pollutant reductions achieved relative to the cost, the significance (environmental benefit) of those reductions, the ability of the facility to absorb these costs, etc. I have not reviewed the 2008 anti-degradation study referred to by ConocoPhillips, but it seems possible that study might have relevant economic information the Permit Section and Standards Unit will need to consider in making an economic reasonableness decision.

As might be expected from the title of this Section, most disputes before the Board involving Section 304.102 have considered whether a facility is able to use dilution to comply with its final effluent limitations. I reviewed the few cases in which the courts have interpreted this provision and a number of these Board cases. The Board has said that "allowed mixing is never to be used as a substitute for technically feasible and economically reasonable treatment; or put more colloquially, "in-stream dilution is not the solution to pollution." *IBP v. Illinois EPA*, PCB 93-179 (1996). However, the Board will likely make its own determination as to whether it believes BDT has been achieved and will not give too much deference to the Agency's decision. Also, the Board will probably allow ConocoPhillips to supplement the record later with additional information as to why they believe they have met BDT. But if the Agency does a thorough job of documenting that treatment exists that will reduce mercury levels that is not be implemented at the facility, the Agency may be successful in requiring mercury reductions from ConocoPhillips.

Rabins, Jaime

From: Mosher, Bob
Sent: Thursday, September 01, 2011 11:51 AM
To: Rabins, Jaime
Subject: RE: ConocoPhillips

See red below.

Bob Mosher
Water Quality Standards Unit, Division of Water Pollution Control
Illinois EPA
1021 North Grand Ave. E.
P.O. Box 19276
Springfield, IL 62794-9276
217/558-2012
217/782-5549 (Fax)

From: Rabins, Jaime
Sent: Thursday, September 01, 2011 9:28 AM
To: Mosher, Bob
Subject: FW: ConocoPhillips

Bob,

Deb has reviewed the permit and identified several potential issues.

1. Review special condition 20 for the following:
 - a. Mercury does not need to be included because the permit limits the discharge at the WQ standard correct? **Correct**
 - b. If temperature which was found not to have a reasonable potential is included in the condition why isn't manganese which was recently found not to have a reasonable potential? **Any parameter that does not meet WQSs at end-of-pipe (has RP) needs to be mentioned in the mixing zone condition. My January 18, 2011 e-mail to you recommends no limit for manganese because of no RP.**
 - c. Fecal coliform is proposed to be limited at the effluent standard which is above the WQ standard. Should it be included? **Yes**
 - d. Confirm that nickel is correctly referenced in the below condition. **The last thing I have that looked at this was the June 12, 2008 WQBEL memo. Should we look at recent monitoring data? If we are going with existing decisions, then they have RP to exceed the acute Ni WQS and SP #20 is correct for nickel.**
 - e. What about sulfides and dissolved oxygen? **We have no WQS for sulfides, so no, do not include. We always assign a DO limit to meet the WQS at end-of-pipe. No mixing is ever given.**

SPECIAL CONDITION 20. The Agency has reviewed a mixing zone delineation study conducted by the permittee on the Mississippi River in the vicinity of this effluent outfall dated October, 2007. From the results of that study and the Agency's own modeling, it is recognized that adequate mixing exists in compliance with 35 Ill. Adm. Code 302.102 for the following parameters: pH, ammonia, phenols, chloride, chromium (Hexavalent), sulfate, nickel, temperature and available cyanide. Of these parameters, a zone of initial dilution is recognized for acute whole effluent toxicity, hexavalent chromium, ammonia, nickel, and available cyanide. The limits given for these parameters were established to result in compliance with the water quality standards of 35 Ill. Adm. Code Part 302 outside of these mixing zones and zones of initial dilution. All parameters known to be present in this effluent at levels above water quality standards are listed above.

2. Do you have the submittal from ConocoPhillips which shows that the ultrafiltration treats mercury to level below the WQ standard. This was passed around during the meeting we had with Deb, Al, Sanjay a month or two ago? **Yes, it's in the form of graphs and PP slides.**

3. What is the name of the affordability guidance? **Interim Economic Guidance for Water Quality Standards EPA-823-B-95-002**

Jaime Rabins

Environmental Protection Engineer, Industrial Unit
Permit Section
Division of Water Pollution Control
Illinois Environmental Protection Agency

ph: 217-524-3035
fax: 217-782-9891
Jaime.Rabins@Illinois.gov

From: Williams, Deborah
Sent: Tuesday, August 30, 2011 8:54 AM
To: Rabins, Jaime; Mosher, Bob; LeCrone, Darin; Keller, Al; Heacock, Dan
Cc: Sofat, Sanjay
Subject: ConocoPhillips: Attorney/Client privilege

I reviewed Jaime's file for the ConocoPhillips permit renewal and I'd like to summarize the areas I've identified that we should try to tighten up or expand upon before the permit is issued. Don't try to send email responses to me on these items. But please do your best to assist Jaime with the pieces you are able to help add to the record and, if necessary, we can schedule a meeting to discuss.

1. Mercury
 - A. Conoco-Phillips attempts to incorporate the record from their 2009 permit modification into this permit renewal record. I don't think the whole record needs to be part of this decision, but they specifically point to 2 letters: 7/7/2008 and 11/14/2008 that should definitely be included in the record and reviewed again. The only other document we need to evaluate for inclusion is the 2008 Anti-degradation study. If they did not evaluate the cost or technology of treating for mercury, then it's probably not relevant. But if they did, we need include those portions of the study in the permit record for this decision.
 - B. Mercury Progress reports and studies. The only info in the permit file right now about the company's investigation of mercury treatment are the power point summaries that were provided at the meetings with the company. The record needs to include the various reports they were required to provide under the old permit that serve as our basis for concluding it is technologically feasible to treat for mercury down to the water quality standard. Also, I believe it was discussed that Bob was provided some mercury data by the company. That data doesn't appear in the permit file.
 - C. Jaime's notes point out that C-P has the burden of proof and they have not met that burden as to economic unreasonableness. However, taken at face value the cost of treatment will appear more expensive if it is not given some context. We should try to include in the file some of the publically available information that demonstrates a project of this size is easily affordable by the company.
 - D. Jaime did not locate the affordability guidance that was referenced in our meetings with ConocoPhillips. If it's important to our decision to reference that memo, we should get him a copy or citation.
 - E. If there is information in the progress reports that will help us, we should use it to dispute the conclusion that all waste streams need treatment as an example of inflation of cost figures by the company.
2. Smith Lake issue

ConocoPhillips relies on a jurisdictional determination by the Corps to conclude that the Agency can't regulate discharges to Smith Lake. Our permit record relies on a memo from Bob Mosher to conclude Smith Lake is a water of the State.

We should supplement the record with facts that we would rely on to make this conclusion. If we think there is a surface discharge to the Mississippi, we could look for past inspection reports to make this conclusion or send out the inspector.

Another tactic would be to look into whether we have a 401 file on Smith Lake or whether we can contact the Corps for the supporting information they relied on to conclude that Smith Lake does not have a significant nexus with the Mississippi River.

If we don't have facts to support our decision, it would be preferable to go after the company for not getting an operating permit (with groundwater monitoring) for this treatment works rather than going forward without facts to rebut/overrule the Corps memo and risk a bad decision from the Board on such a controversial issue.

3. Special Condition 20. Jaime is going to check with Bob regarding Special Condition 20 and whether it needs any tweaking (with regard to manganese and/or nickel). I'd also like some feedback on whether the language is consistent with our mercury condition.

Thanks,
Debbie

STATE OF ILLINOIS
ENVIRONMENTAL PROTECTION AGENCY

MS
12-22-11

Subject: ConocoPhillips WRR
Data: IL0000205
Reviewed By: Jaime Rabins

Page 1 of 6

Date: November 16, 2011

30-Day Notice Review Notes:

The Agency received the following comments on January 14, 2011 from the permittee:

1. Our July 15, 2010 letter provided detailed information regarding the inappropriate nature of the fecal coliform standard for our discharge. We request the limit be removed from the permit.

Response: The July 15, 2010 comments concerning fecal coliform were already considered prior to issuing the public notice permit and are discussed in the 15-day review notes. No new additional information has been offered at this time. Also see the response to the comment 1 received on April 15, 2011.

2. We understand the USEPA has requested the addition of manganese limits to our permit, but we do not believe this inclusion is warranted. Additional manganese data is included.

Response: The USEPA requested that manganese be added to the permit based on the June 12, 2008 WQBEL memo as stated in the June 24, 2010 email from David Soong. David also brought this concern up to me in our phone conversation which took place prior to receiving his comments. The comment and additional manganese data was forwarded to Bob Mosher and he concluded that if the data for only the last 5 years was considered that there is no reasonable potential to exceed manganese limits and that the current proposal to change the manganese WQ standards is further reason to drop the proposed manganese limits in the permit. Since a reasonable potential no longer exists, the proposed manganese limits will be removed and replaced with a quarterly monitoring requirement. See January 18, 2011 email from Bob Mosher. Special Condition 24 will be modified to include manganese.

3. We request the Special Condition 20 be modified to include temperature in the mixing zone language based on discussions with the IEPA. Additional temperature data is attached.

Response: The comment and additional temperature data was forwarded to Bob Mosher and he concluded that after seeing the data and the mixing scenario that the temperatures discharged are not going to heat the river very much and that temperature limits are not warranted. He suggested that the temperature limits be removed from the permit and it be added to the list of parameters in which adequate mixing exists, Special Condition 18. See January 18, 2011 email from Bob Mosher. Based on the recommendations from Bob Mosher temperature limits will be removed from the permit.

4. Special Condition 15 should be modified to reflect that WRR has an existing SWPPP for stormwater outfalls 004-008, and allow for reasonable time period to revise the plan to reflect the new requirements. In addition, Special Condition 15.S should be revised to reflect that annual stormwater inspection reports are already being completed on an

STATE OF ILLINOIS
ENVIRONMENTAL PROTECTION AGENCY

Subject: ConocoPhillips WRR
Data: IL0000205
Reviewed By: Jaime Rabins

Page 2 of 6

Date: November 16, 2011

annual cycle, due to IEPA by October 4 annually. We suggest revising the condition as follows:

~~A. A stormwater pollution prevention plan shall be maintained by the permittee for stormwater associated with industrial activity at this facility.~~ A SWPPP is in place for the storm water associated with industrial activity at this facility. Permittee shall be allowed 90 days to revise its existing plan to reflect the new requirements of this condition.

~~S. The first report shall contain information gathered during the one year time period beginning with the effective date of coverage under this permit and shall be submitted no later than 60 days after this one year period has expired.~~ ending August 5 of each year, and shall be submitted to IEPA by October 4 annually.

Response: Part A will be changed to allow the permittee 90 days to revise the existing plan to reflect the new SWPPP requirements. Part S will be changed to allow the permittee to maintain their existing compliance deadlines.

5. Special Condition 23 should be deleted in its entirety.

Response: Special Condition 23 requires that the facility obtain coverage for stormwater discharges to Smith Lake. The applicant has already submitted documentation implying that Smith Lake is not a Water of the State with the renewal application. The Standards Unit reviewed the information and determined that Smith Lake is Waters of the State. See the December 29, 2009 email from Bob Mosher. Furthermore, the commenter's references to determinations made by the USACE that Smith Lake is an "isolated water" and not a navigable water are not relevant because final determination for CWA determinations rest with EPA as stated in the definition of Waters of the U.S. at 40 CFR 122.2 "... the final authority regarding CWA jurisdiction remains with EPA". The requirement will remain in the permit.

6. The commenter is concerned about the challenge of meeting the mercury standard and wishes to incorporate by reference the materials placed in the record for the modified permit issued February 5, 2009.

Response: The discharger is requesting that allowed mixing be granted for mercury in accordance with 35 IAC 302.102. In order to be granted allowed mixing, Section 302.102 requires that every effort has been made to comply with Section 304.102.

Section 304.102 requires that dischargers provide the best degree of treatment of wastewater consistent with technological feasibility, economic reasonableness and sound engineering judgment. The discharger has studied mercury in the wastewater and concluded that it is bound to the solids in the wastewater. They proposed that by removing solids from the wastewater mercury concentrations could be reduced to comply with water quality standards. They pilot tested two technologies, granular media (GMF)

STATE OF ILLINOIS
ENVIRONMENTAL PROTECTION AGENCY

Subject: ConocoPhillips WRR
Data: IL0000205
Reviewed By: Jaime Rabins

Page 3 of 6

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and cloth drum filtration. In the April 29, 2011 letter to Sanjay Sofat of the Agency, David Rieser of McGuire Woods states "To date, one technology, GMF, has produced mercury results that are below the proposed permit limits. GMF has averaged in the 2 - 3 ng/l range." Thus the discharge acknowledges that compliance with the mercury water quality standard is technologically feasible.

Now, ConocoPhillips is arguing that GMF technology is not economically reasonable due to its high capital cost of \$9,400,000 to \$14,100,000 and annual operation and maintenance costs of \$380,000. As of September 6, 2011 12:21 p.m. EDT ConocoPhillips had a Market Capitalization of \$89.43 Billion. ConocoPhillips reported on the Form 10-Q on August 21, 2011 that Net Income attributable to ConocoPhillips was \$6430 million dollars for the six months ended June 30, 2011. An *Interim Economic Guidance for Water Quality Standards* affordability evaluation is necessary, (EPA-823-B-95-002). ConocoPhillips should explore less expensive treatment options based on their findings that the \$14.1 million treatment will allow compliance. This option treats the entire effluent. Removing mercury from 14.8 ng/L to 12 ng/L is all that is necessary. For example, what would be the cost of a system that only filters one-half the effluent? ConocoPhillips should perform an *Interim Economic Guidance for Water Quality Standards* affordability evaluation on any less expensive, partial filtration options they identify. Conoco should provide support for their assertion that putting filtered effluent into the current lagoon system would possibly lead to the acquisition of mercury into the effluent before final discharge (i.e., from rain deposition or storm water runoff into the lagoons??). They must justify why it is necessary to bore through the levee to accommodate the filtered effluent discharge pipe and not simply discharge filtered effluent into the lagoons.

At the June 29, 2011 meeting, ConocoPhillips was asked to submit an affordability analysis in accordance with the *Interim Economic Guidance for Water Quality Standards* (EPA-823-B-95-002). ConocoPhillips declined, maintaining that the documents submitted thus far adequately demonstrate that it is economically unreasonable to comply with the mercury limits. Since the dischargers pilot testing demonstrates that achieving the mercury water quality standard is technologically feasible and the discharger has not submitted an affordability analysis in accordance with the *Interim Economic Guidance for Water Quality Standards* (EPA-823-B-95-002) demonstrating that complying with the mercury limits is economically unreasonable, the Agency concludes that the discharger is not providing best degree of treatment of wastewater consistent with technological feasibility, economic reasonableness and sound engineering judgment the discharger is not eligible for allowed mixing for mercury and mercury will remain limited in the permit at the water quality standard.

The dischargers claims that many uncertainties remain and may not be completely known until after startup of the CORE refinery expansion including variation in mercury levels with crude feeds, impact of expansion on distribution of mercury within various refining processes, etc. Pursuant to 415 ILCS 5/39(a) "[I]t shall be the duty of the [IEPA] to issue such a permit upon proof by the applicant that the facility, equipment, vehicle, vessel, or

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aircraft will not cause a violation of this Act or of regulations hereunder." Thus if the discharger is now claiming that mercury levels differ from what was originally considered in the record of the modified permit issued March 2009 then the burden is upon the discharger to adequately determine the proposed levels of mercury in the wastewater. Any proposed or anticipated changes in the mercury levels of the discharge is a cause for modification pursuant to 40 CFR 122.62(a) because it is new information not available at the time the modified permit was issued and must be brought before the Agency as a modification request.

A meeting was held with the permittee on March 15, 2011 regarding the public noticed permit. The proposed fecal coliform limit was discussed. The permittee was notified that additional samples should be submitted to the Agency and that the samples would need to be obtained from both the clarifier and the effluent from the polishing pond.

The requested information and additional comments were received on April 15, 2011.

1. Based on the 30 samples submitted for fecal coliform we believe an adjusted standard may be appropriate because of the very low occurrence of fecal coliform in our discharge relative to the cost of providing disinfection and the continued evidence that false positives are present.

Response: The effluent data submitted does not represent the current discharge conditions because they were obtained from the WWTP clarifier discharge which is prior to mixing with the Roxana STP effluent and is therefore likely to contain more fecal coliform.

Of the 30 data points submitted the 9/15/2009, 10/01/2009, 10/19/2009, 10/26/2009 exceed the 400 / 100 mL standard of 35 IAC 304.121 with reported values of 1200, 800, 700 and < 1000 per 100 mL. The 10/13/2009 data point is reported to be 400 and the 10/08/2009, 10/29/2009 and 3/25/2011 data points are reported to be 300.

Even if the data is considered representative of the discharge when the Roxana STP effluent is ceased the fecal coliform data that was submitted and the fact that sanitary waste from 1200 refinery employees and Air Liquide (a separate operation not owned or operated by ConocoPhillips but which discharges to the WRR WWTP) warrants inclusion of a permit limit to ensure compliance with the effluent standard of 35 Ill. Adm. Code 304.121.

The cost of providing disinfection is not considered when determining the applicability of an effluent standard. The request for an adjusted standard was not considered because only the IPCB issues adjusted standards.

A schedule of compliance is proposed which includes 12 months for evaluation of alternatives followed by 30 months for a technology installation period. At the March 15, 2011 meeting the permittee was notified that the compliance schedule will start at one

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year. Numerous technologies were discussed including using GMF which was also proposed for mercury removal. If the mercury removal technology was utilized the permittee could not be expected to comply with the fecal limit prior to the mercury compliance date and thus to allow the permittee maximum flexibility the compliance date will be set at the mercury compliance date of February 5, 2014.

2. Same as comment 4 received on January 14, 2011. See similarly numbered response.

3. We understand that IEPA has agreed to remove temperature limitations and the proposed manganese limit.

Response: See responses to comments 2 and 3 received on January 14, 2011.

4. Same as comment 5 received on January 14, 2011 but includes additional request to extend the application deadline from 90 to 180 days so that the specific sampling requirements can be complied with. The submittal deadline will be changed as requested due to allow for compliance with storm event sampling requirements.

5. Same as comment 6 received on January 14, 2011. See similarly numbered response.

6. The Village of Roxana has advised WRR staff that the new WWTP will be complete and operational by June 30, 2011.

Response: The Agency was notified in a letter dated November 11, 2011 that the Roxana STP effluent is no longer discharged to the treatment lagoons and the associated discharge credits should be removed from the permit. Credits were given for BOD, COD, TSS, ammonia and phosphorus discharged from outfall 001. Since Roxana STP Effluent is no longer a component of the discharge, the load limit credits will be removed from the permit as requested.

Dissolved oxygen must meet water quality standards of 35 IAC 302.206 and is not eligible for mixing. See the September 1, 2011 email from Bob Mosher.

The Compliance Unit has indicated they took issue with outfall 001/002 because it is not a point source. I talked with Jay Rankin about removing the reference to outfall 001/002 and he was in agreement with it. Special Condition 19 will be revised, 22 will be deleted and any reference to outfall 001/002 will be removed from the permit.

Special Condition 1 will be modified to the Agency's standard pH condition and to ensure pH is within 6.0 to 9.0 standard units as required by 40 CFR 419.22 and .23.

The modified NPDES permit included a metals monitoring condition. The permittee previously made a request that metals that were required to be monitored or limited elsewhere in the permit not be included in the list. The request was granted. Construction of the wastewater conveyance structure allowed for an expanded zone of initial dilution and mixing zone for nickel and so the

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Nickel limits removed from the permit which was recognized in the draft and public noticed permits. Since Nickel limits were removed from the permit Nickel must be added back to the metals monitoring list. Nickel will be added to the metals monitoring list of Special Condition 24.

Special Condition 18 identifies all pollutants that are present in the effluent above water quality standards. Fecal Coliform was not included, but will be present in the effluent above water quality standards. As recommended by the Standards Unit, Fecal Coliform will be added to Special Condition 21. See September 1, 2011 email from Bob Mosher

Action: Re-issue Permit

CERTIFICATE OF SERVICE

I hereby certify that on April 18, 2012, I caused to be served by First Class Mail, with postage thereon fully prepaid, by depositing in a United States Post Office Box at 77 W. Wacker, Chicago, IL 60601, true and correct copies of Petitioner's Motion to Clarify, or in the alternative, Motion for Reconsideration, upon the following:

Illinois Environmental Protection Agency
Division of Legal Counsel
1021 North Grand Avenue East
Post Office Box 19276
Springfield, IL 62794-9276

Carol Webb
Hearing Officer
Illinois Pollution Control Board
1021 North Grand Avenue East
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s/ David L. Rieser
One of the Attorneys for Petitioner

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