

Department of
Conservation &
Development

Contra
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County

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Phone: (925) 335-1208

April 21, 2010

Mr. Rand Swenson
ConocoPhillips Company
San Francisco (Rodeo) Refinery
1380 San Pablo Avenue
Rodeo, CA 94572

Re: Notice to Comply
Land Use Permit for *ConocoPhillips Clean Fuels Expansion Project*
County File #LP05-2048

Dear Mr. Swenson:

On November 18, 2009, the County sent a letter to ConocoPhillips ("Conoco") indicating that Conoco had not demonstrated full compliance with conditions of approval 15, 17, 19, 45, and 46 of Land Use Permit LP05-2048. Conoco responded on November 23, 2009, to one item discussed in the November 18 letter. On March 15, 2010, we received a letter from Mr. Kevin Schmitt, Environmental Superintendent, dated March 10, 2010, which responds to the remaining items outlined in the November 18, 2009, letter. We have reviewed the March 10 letter and its attachments and determined that the requirements of several conditions remain unfulfilled. The outstanding issues are explained below. As you are aware, conditions 45 and 46 require compliance with third-party agreements that each have multiple parts. The numbers or letters under conditions 45 and 46 correspond to the numbers or letters contained in the third-party agreements. The text of each outstanding condition of approval appears in italics.

Conditions of Approval Now Satisfied

Conoco's land use permit contains 47 conditions of approval and the majority of those conditions have been satisfied. Conoco has demonstrated compliance with the following conditions since the County's November 18, 2009, letter was issued.

Condition 17 - Sulfur Dioxide and Particulate Matter Reductions at Carbon Plant

Complete - The photographs and documents attached to Mr. Schmitt's March 15, 2010, letter demonstrate compliance with this condition.

Condition 19 - B1 Boiler Shutdown

Complete - The documents attached to Mr. Schmitt's March 15, 2010, letter demonstrate compliance with this condition.

Condition 45 - Settlement Agreement with the California Attorney General ("AG")

- b. **Complete** - Attached to Mr. Schmitt's letter is the cover sheet of a steam system assessment report prepared under the direction of Dr. Greg Harrell of the University of Tennessee, Knoxville. This document demonstrates compliance when combined with letters from Mr. Stuart Vincent of Conoco dated June 26, 2008, yourself dated May 18, 2009, and Ms. Jean Roggenkamp of the Bay Area Air Quality Management District (BAAQMD) dated November 18, 2009.
- d. **Complete** - Attached to Mr. Schmitt's letter is a copy of a November 18, 2009, letter from Jean Roggenkamp confirming that Conoco will achieve 102,799 tons of greenhouse gas reductions at the Rodeo Refinery. Based on the terms of the settlement agreement, this appears to reduce Conoco's carbon offset fund payment obligation to approximately \$4,443,025.00. On April 12, 2010, Conoco submitted proof of completion of a wire transfer in this amount.

Condition 46 - Agreement with the Community Working Group ("CWG")

- 1. **Complete** - The explanation provided in Mr. Schmitt's March 15, 2010, letter, combined with other submittals related to the drift eliminators, allows us to verify compliance with this requirement.
- 5. **Complete/Compliance Ongoing** - Conoco fulfilled its obligation to purchase the odor monitor; the maintenance requirement is ongoing per the terms of the CWG Agreement.
- 10. **Complete** - As indicated in a letter from this department dated December 9, 2009, this requirement has been satisfied.

Conditions of Approval Yet to be Satisfied

Condition 15 - Dissolved Air Flotation Unit (DAF) Thermal Oxidizer Installation

Mitigation Measure 4.2-2a: The four Dissolved Air Flotation (DAF) vents associated with the onsite wastewater treatment plant shall be routed to a Thermal Oxidizer with a destruction efficiency of no less than 98 percent. The DAF outlet channel and downstream sumps shall be sealed by a solid cover with gaskets. Any vents installed on the covered channel shall be routed to the thermal oxidizer. Installation of these controls shall reduce organic emissions by at least 242 pounds per day and 44.1 tons per year (assumed efficiency of 98 percent for both the thermal oxidizer and the channel covers).

The CFEP shall not be permitted to come on-line until ConocoPhillips has demonstrated to the satisfaction of the Zoning Administrator that this mitigation measure has been implemented and that the necessary reductions have been achieved.

Incomplete - In previous correspondence, Conoco indicated that it would conduct source testing at the DAF thermal oxidizer prior to October 2009. The County's November 18 letter requested the results of the source testing and a copy of BAAQMD Permit Condition 1440 Part 7. As of the date of this letter, neither of these items has been submitted.

On April 12, 2010, Mr. Schmitt submitted a copy of the DAF Unit Emission Reduction Technical Report that was sent to the BAAQMD on April 5, 2010. This report states that Conoco has achieved the required emission reduction through a combination of precursor organic compound destruction at the Thermal Oxidizer and a reduction in the amount of hydrocarbon material sent to the wastewater treatment plant. The BAAQMD has confirmed that it is reviewing Conoco's submittal.

It is clear that Conoco is addressing this condition of approval. However, Conoco was required to demonstrate compliance with this condition, to the satisfaction of the County Zoning Administrator, prior to any portion of the Clean Fuels Expansion Project coming online. The hydrocracker has come online. Therefore, Conoco is currently out of compliance.

Conoco must submit documentation from the BAAQMD verifying that the required emission reduction of 44.1 tons per year (242 pounds per day) of organic compounds has been achieved.

Condition 45

ConocoPhillips shall comply with all of the conditions cited in the California State Attorney General Settlement Agreement, as agreed by ConocoPhillips, dated September 10, 2007.

The County is involved in a collaborative effort with the AG to assess compliance with the eight-part Settlement Agreement ("AG Agreement"). The comments below reflect the County's assessment of compliance, unless otherwise noted.

- a. **Incomplete** - Attached to Mr. Schmitt's letter is an Emission Reduction Credit Certificate issued by the San Luis Obispo County Air Pollution Control District that acknowledges permanent shutdown of the calciner at the Santa Maria Refinery. However, the AG has indicated that acceptance of emission reduction credits for shutdown of the calciner is contrary to the AG Agreement's intent to reduce CO₂ emissions because those credits could be used to start another unit that emits CO₂. Conoco has indicated that it disagrees with the AG's position.

Conoco must submit, for the review of the County Zoning Administrator, a detailed explanation of its position that the requirements of this part of the AG Agreement have been satisfied.

- c. **Decision Pending** - Attached to Mr. Schmitt's letter is Conoco's Annual Emissions Report for 2008 filed with the California Climate Action Registry. This report quantifies emissions of greenhouse gases from Conoco's California operations. The County has forwarded this report to the AG for comment and will determine compliance with this condition upon receiving a response.
- h. **Incomplete/Compliance Pending** - The BAAQMD indicated that the hydrogen plant began normal operation on December 26, 2009, and is operating at approximately 55% of

capacity. At this rate of production, CO₂ emissions would exceed the 500,000 metric tons per year trigger for providing CO₂ offsets.

Conoco must submit, for the County Zoning Administrator's review, a detailed explanation of its plans for compliance with this part of the AG Agreement.

Condition 46

ConocoPhillips shall comply with all of the conditions cited in the Agreement between ConocoPhillips and the members of the Community Working Group, as agreed by ConocoPhillips, dated received at the County Planning Commission hearing on April 24, 2007.

The County has been in contact with the CWG to assess compliance with the fourteen-part Settlement Agreement ("CWG Agreement").

4. **Incomplete** - The CWG confirmed the statements in Mr. Schmitt's letter regarding this portion of the CWG Agreement. However, the requirement is for Conoco to fund a short-term study to evaluate particulate matter emissions from the Refinery.

Conoco must either submit the required study or submit a plan, for the review of the County Zoning Administrator, to implement an equivalent alternative or substitute action. Please be aware that the Zoning Administrator may determine that implementation of an alternative or substitute action requires modification of this condition of approval.

6. **Incomplete** - Completion of this part of the CWG Agreement was predicated on collaboration with the BAAQMD. Both Conoco and the CWG have indicated that the BAAQMD has decided not to participate.

Conoco must provide, for the review of the County Zoning Administrator, correspondence from the BAAQMD verifying that it will not participate. Though not required, the County requests an update from Conoco on whether an alternative or substitute measure is being contemplated.

12. **Incomplete** - The software and analyzer upgrades required by this part of the CWG Agreement have been completed and the CWG confirmed the statements in Mr. Schmitt's letter regarding the status of the Memorandum of Understanding (MOU). However, the CWG Agreement states that the MOU was to be issued by August 1, 2007.

Conoco must submit, for the review of the County Zoning Administrator, a detailed explanation of the delay in completing the MOU, including the outstanding issues.

To summarize, Conoco has yet to satisfactorily demonstrate compliance with conditions of approval 15, 45-a, 45-h, 46-4, 46-6, and 46-12 and a decision is pending regarding compliance with condition 45-c.

Compliance Measure

By 5:00 p.m., Wednesday, May 5, 2010, ConocoPhillips must make a complete submittal that demonstrates compliance with the conditions of approval of Land Use Permit LP05-2048, including the following:

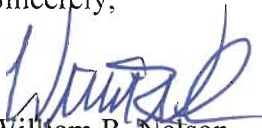
1. Documentation from the BAAQMD verifying that the required emission reduction of 44.1 tons per year (242 pounds per day) of organic compounds has been achieved. (Condition 15)
2. A detailed explanation of its position that the requirements of Part A of the AG Agreement have been satisfied. (Condition 45-a)
3. A detailed explanation of its plans for compliance with Part H of the AG Agreement. (Condition 45-h)
4. The particulate matter study required by Part 4 of the CWG Agreement or a plan to implement an equivalent alternative or substitute action. (Condition 46-4)
5. Correspondence from the BAAQMD verifying that it will not participate in Part 6 of the CWG Agreement. (Condition 46-6)
6. A detailed explanation of the delay in completing the MOU required by Part 12 of the CWG Agreement, including the outstanding issues. (Condition 46-12)

Possible County Action if ConocoPhillips Fails to Timely Respond

The County may consider scheduling a noticed public hearing before the appropriate division of the Planning Agency to determine if cause exists to modify, suspend or revoke Land Use Permit #LP05-2048 for failure to comply with the conditions of approval, pursuant to the provisions of Contra Costa County Ordinance Code sections 26-2.2020, et seq. The County's decision will be based on the timeliness and completeness of Conoco's compliance submittal.

If you have any questions regarding this letter or need assistance in resolving the issues outlined above, please contact me at (925) 335-1208 or william.nelson@dcd.cccounty.us. I would be happy to arrange a meeting to discuss this matter in detail.

Sincerely,


William R. Nelson
Senior Planner

cc: Howard Adams

Catherine Kutsuris, Conservation & Development Director
Aruna Bhat, Deputy Director
Bob Drake, Principal Planner

Randy Sawyer, County Hazardous Materials
Sandra Goldberg, California Deputy Attorney General
Barry Young, Bay Area Air Quality Management District

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