



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5

77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

November 20, 2008

REPLY TO THE ATTENTION OF:

VIA FEDERAL EXPRESS

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

RECEIVED
U.S. E.P.A.
2008 NOV 21 AM 9:40
C-14J
ENV. APPEALS BOARD

Re: The Dow Chemical Company, Hanging Rock Plant
U.S. EPA Identification Number: OHD 039 128 913
Appeal Number: RCRA 06-01

Dear Ms. Durr:

Enclosed please find an original (signed in blue ink) and five copies of a Status Report in Lieu of Certification of Withdrawal of Petition in the above referenced matter.

Please feel free to contact me at (312) 353-6181 with any questions.

Sincerely,

Kevin C. Chow
Associate Regional Counsel

Enclosures

cc: Robert J. Schmidt, Esq.
Porter, Wright, Morris & Arthur
41 South High Street
Columbus, OH 43215

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

IN RE:

THE DOW CHEMICAL COMPANY,
HANGING ROCK PLANT
Resource Conservation and Recovery Act (RCRA)
U.S. EPA ID No. OHD 039 128 913

Appeal No. RCRA 06-01

ENVIR. APPEALS BOARD

NOV 21 AM 9:41

RECEIVED
U.S. E.P.A.

**STATUS REPORT IN LIEU OF
CERTIFICATION OF WITHDRAWAL OF PETITION**

U.S. EPA, Region 5 ("the Region") hereby provides the Environmental Appeals Board ("the Board") with a status report on the efforts of the Region and The Dow Chemical Company ("Dow") (together, the "Parties") to settle this matter through Dow's efforts to demonstrate that its fuels do not constitute hazardous waste under the comparable fuels exclusion set forth at Ohio Administrative Code Rule 3745-51-38(A) [40 C.F.R. § 261.38], thereby rendering the boiler and industrial furnace ("BIF") portions of the permit, and Dow's appeal, moot. The Parties had agreed that once Dow made its demonstration, the Region would write a letter acknowledging that the BIF permit is moot (except for the corrective action portion of the permit, the terms of which have been settled and which will be incorporated into a modified, corrective action-only permit), whereupon Dow would then withdraw its petition. This agreement was articulated to the Board by teleconference on August 12, 2008. Based upon the Parties' representations, the Board issued an Order Extending Stay ("Order") on the same day, which provided that: "The parties shall, by November 21, 2008, certify that Dow has withdrawn the petition or, if the parties cannot make such representation by that date, the Region shall

then file its response to the petition no later than December 22, 2008.” As explained further below, the Parties will not be able to certify by November 21, 2008, that Dow’s petition has been withdrawn, but it is anticipated that the petition will be withdrawn very shortly thereafter or in any event by December 22, 2008.

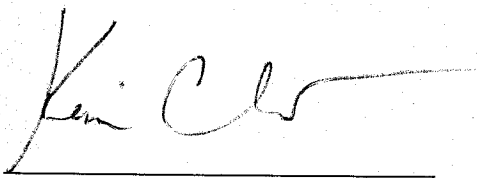
Since the date of the Board’s Order, Dow has worked on and completed its comparable fuels demonstration. By letter dated November 18, 2008, Dow issued a “Comparable Fuels Notice” to the Ohio Environmental Protection Agency (“OEPA”) as required under Ohio Administrative Code Rule 3745-51-38(C), and further certified that the requirements for the comparable fuels demonstration have been met. The notice to OEPA also included an attachment pertaining to the demonstration. The Region received an electronic copy of the Comparable Fuels Notice on November 18th, as well as a hard copy by express mail on November 19th. However, the mailing did not include the attachment as anticipated. The Region has just received the attachment today, November 20th, and has issued its letter of acknowledgement to Dow. However, it is the Region’s understanding that due to unavoidable schedule conflicts for Dow’s representatives in this matter, Dow will not be able to withdraw its petition by November 21st as originally anticipated.

Dow has self-certified that the demonstration has been made in accordance with the comparable fuel exclusion rules, and the Region has issued its letter of acknowledgement. All conditions for the withdrawal of the petition are therefore in place. Even though the petition will not be withdrawn by November 21st, the Region has every reason to believe that Dow will expeditiously withdraw its petition very soon after November 21st or in any event prior to December 22, 2008, when the Region’s answer to

the petition is due under the Board's Order of August 12, 2008. If Dow does not withdraw its petition by such date, the Region will file its answer to the petition as required.

Upon withdrawal of the petition, the Parties will immediately file a Certification of Withdrawal of Petition with the Board.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Kevin Chow", written over a horizontal line.

Kevin Chow
Associate Regional Counsel
U.S. Environmental Protection Agency,
Region 5 (C-14J)
77 West Jackson Boulevard
Chicago, IL 60604-3590
Telephone: (312) 353-6181
Facsimile: (312) 886-0747

CERTIFICATE OF SERVICE

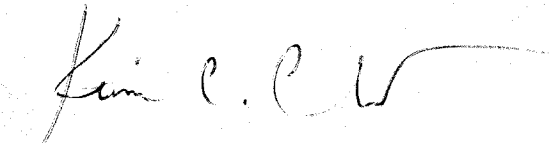
I hereby certify that the foregoing Status Report in Lieu of Certification of Withdrawal of Petition was sent on this the 20th day of November, 2008, in the following manner to the below addressees:

By Federal Express:

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

By fax and first class mail:

Robert J. Schmidt, Esq.
Porter, Wright, Morris & Arthur
41 South High Street
Columbus, OH 43215
Telephone: 614-227-2028
Facsimile: 614-227-2100



Kevin C. Chow
Associate Regional Counsel
United States Environmental Protection Agency
Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604
Phone: (312) 353-6181
Facsimile: (312) 886-0747