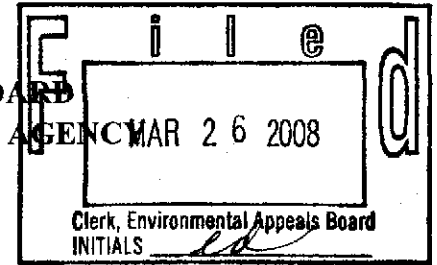


BEFORE THE ENVIRONMENTAL APPEALS BOARD
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C.



In re:)
)
The Dow Chemical Company,)
Hanging Rock Plant) RCRA Appeal No. 06-01
)
Permit No. OHD 039-128-913)
_____)

ORDER EXTENDING STAY

By order issued November 14, 2007, the Environmental Appeals Board (“Board”) granted a motion from the United States Environmental Protection Agency Region 5 (the “Region”) requesting a fifth extension of time to file its response to the petition filed by The Dow Chemical Company (“Dow”) in the above-captioned matter.¹ The order grants the Region until March 27, 2008, to file its response, and requires the parties to file a joint report regarding the status of this matter no later than March 13, 2007. *See* Order Extending Stay and Canceling Status Conference (EAB Nov. 14, 2007).

¹ On June 22, 2006, Dow filed a petition seeking review of a Resource Conservation and Recovery Act (“RCRA”) permit decision issued by Region 5 on May 24, 2006, under the Boilers and Industrial Furnaces (“BIF”) Regulations codified at 40 C.F.R. § 266.100, allowing Dow to manage certain hazardous waste by using the hazardous waste as fuel for two boiler units. On July 26, 2006, the Board issued its first order granting the Region’s request for extension of time to file its response. Thereafter, on November 15, 2006, January 25, 2007, July 26, 2007, and November 14, 2007, upon request and for good cause shown, the Board issued similar orders allowing additional time for the filing of the Region’s response in view of the parties efforts to resolve this matter via settlement.

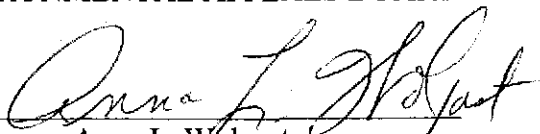
On March 13, 2008, the parties filed a joint status report and their sixth motion requesting to stay this matter. In the previous motion requesting a stay, the Region represented that Dow and the Region reached an agreement in principle on all substantive issues raised in Dow's petition and resolved all disputed issues, and that the only remaining task was to modify the permit. In their current motion, the parties reiterate that they have reached an agreement on all substantive matters that were raised in Dow's petition, but explain that two developments have taken place since their last status report. *See* Joint Status Report and Motion for Extension of Stay at 1 (filed March 13, 2004). The first development, the parties explain, is that the Ohio Environmental Protection Agency ("EPA") is now authorized to operate the Boilers and Industrial Furnaces program in the state of Ohio. *Id.* at 1-2. The second development, the parties add, is a change in ownership at the permitted facility coupled with small changes in the chemical processes. *Id.* at 2. The parties now ask for a six month extension of time, until September 30, 2008, to allow time for one of the following two things to happen: (1) "a comparable fuels demonstration under 40 C.F.R. § 261.38, that would take the boilers at the [permitted] facility out of the [Resource Conservation and Recovery Act] RCRA program; or (2) issuance of a final state boilers and industrial furnaces permit by the Ohio Environmental Protection Agency ("EPA"), and subsequent termination of the federal RCRA permit by the Region once the Ohio EPA issues a final permit.

Based on Dow's representations that it has submitted a permit application to Ohio EPA, the Board hereby grants a 90-day stay. The Region's response must now be filed no later than June 25, 2008. In addition, on or before May 26, 2008, the parties shall file a joint report

regarding the status of this matter, which shall include a discussion of whether it is appropriate to continue the stay, dismiss the petition, or establish a new schedule for the Region to file a response to the petition.²

So ordered.

ENVIRONMENTAL APPEALS BOARD

By: 
Anna L. Wolgast
Environmental Appeals Judge

Dated: *March 26, 2008*

² Documents are "filed" with the Board on the date they are *received* by the Clerk.

CERTIFICATE OF SERVICE

I hereby certify that copies of the forgoing Order Extending Stay in the matter of The Dow Chemical Company, Hanging Rock Plant, RCRA Appeal No. 06-01, were sent to the following persons in the manner indicated:

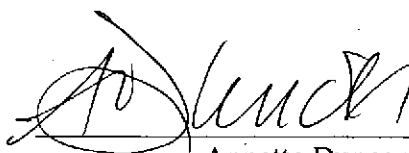
First Class Mail
and Facsimile:

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

EPA Pouch Mail and
Facsimile:

Kevin C. Chow
Associate Regional Counsel
U.S. EPA Region 5
77 West Jackson Boulevard
Chicago, IL 60604
Fax: 312-886-0747

Dated: MAR 26 2008



Annette Duncan
Secretary