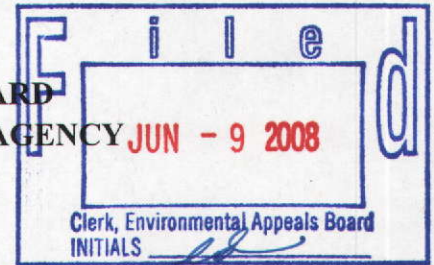


BEFORE THE ENVIRONMENTAL APPEALS BOARD
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C.



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

ORDER EXTENDING STAY

On March 26, 2008, the Environmental Appeals Board (“Board”) granted a motion from the parties in the above-captioned matter, The Dow Chemical Company (“Dow”) and United States Environmental Protection Agency Region 5 (the “Region”), requesting their sixth extension of time and stay of proceedings in this case.¹ The March 26 order granted the Region until June 25, 2008, to file its response, and required the parties to file a joint report regarding the status of this matter no later than May 26, 2008. *See* Order Extending Stay (EAB Mar. 26, 2008).

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, November 14, 2007, and March 26, 2008, 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 June 2, 2008, the parties filed a joint status report and their seventh motion requesting to stay this matter.² In the previous motion requesting a stay, the parties explained that they had reached an agreement on all substantive matters that were raised in Dow's petition, but that a further stay of the proceedings before the Board was required in light of new developments that had taken place after their last status report.³ *See* Joint Status Report and Motion for Extension of Stay at 1 (filed March 13, 2008). The parties asked for a stay of the proceedings 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 program; or (2) issuance of a final state boilers and industrial furnaces permit by the Ohio Environmental Protection Agency ("Ohio 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 had submitted a permit application to Ohio EPA, the Board granted the parties request.

In their current motion, the parties explain that, since their last status report, the Ohio EPA has been reviewing Dow's application, the Hanging Rock facility has been transferred to the

² The regional attorney attributed the tardiness of this filing to a plainly foreseeable circumstance -- his being on paternity leave. However, the parties should have made arrangements to ensure that the Board's deadline was met. We remind the Region, and also petitioners before the Board, that the Board takes all filing deadlines seriously. Failing to meet Board deadlines is not acceptable practice.

³ The first development, the parties explained, was that on October 29, 2007, the Ohio Environmental Protection Agency ("EPA") received authorization to operate the BIF program in the state of Ohio. The second development, the parties added, was a change in ownership at the permitted facility coupled with small changes in the chemical processes. *See* Joint Status Report and Motion for Extension of Stay (filed March 13, 2008).

joint venture between Dow and Chevron Phillips Chemical Company, and that the venture “has been continuing its formation with concomitant preparations for the comparable fuels demonstration.” Joint Status Report at 2 (filed June 2, 2008). Finally, the parties represent, as in their previous report of March 13, 2008, that the Ohio EPA is processing Dow’s permit application “on an internal timeline in which the anticipated issue date for the State permit is September 30, 2008,” and request that the Board extend the stay until then. *Id.* at 3.

Upon consideration, the Board hereby grants the parties’ request. The case is now stayed until September 30, 2008, and the Region’s response must now be filed no later than September 30, 2008, as well. In addition, on or before July 31, 2008, the parties shall timely file a joint report regarding the status of this matter,⁴ which shall include the basis for the parties’ representation that the anticipated issue date for the State permit is September 30, 2008 (e.g., a letter from the Ohio EPA confirming such anticipated time frame).⁵

So ordered.

ENVIRONMENTAL APPEALS BOARD

By: Charles J. Sheehan
Charles J. Sheehan
Environmental Appeals Judge

Dated: 6/9/08

⁴ Documents are “filed” with the Board on the date they are *received* by the Clerk.

⁵ Upon receipt of the July 31 status report, the Board may, if it does not appear that matters are proceeding along the predicted path, schedule a status conference to discuss these and other matters.

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:

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and Facsimile:

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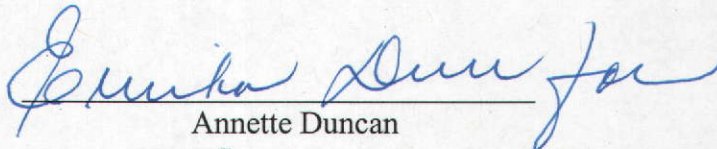
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Dated:

6/9/2008



Annette Duncan
Secretary