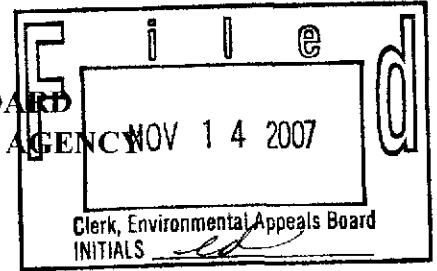


BEFORE THE ENVIRONMENTAL APPEALS BOARD  
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C.



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

**ORDER EXTENDING STAY**  
**AND**  
**CANCELING STATUS CONFERENCE**

By order issued July 26, 2007, the Environmental Appeals Board (“Board”) granted a motion from the United States Environmental Protection Agency Region 5 (the “Region”) requesting a fourth extension of time to file its response to the petition filed by The Dow Chemical Company (“Dow”) in the above-captioned matter.<sup>1</sup> The order grants the Region until November 27, 2007, to file its response, and requires the parties to submit a report describing the status and progress of their settlement negotiations on or before November 10, 2007. *See* Order Granting Motion for Extension of Time and Scheduling Status Conference (EAB July 26, 2007).

---

<sup>1</sup> 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, 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, and July 26, 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.

The order also scheduled a status conference for December 4, 2007, in the event that the parties do not reach complete resolution of this matter by that time. *Id.*

On November 8, 2007, the Region filed a status report and its fifth motion requesting an additional 180-day extension of time -- until May 27, 2008 -- to modify the permit that is the subject of this appeal, and requesting that the Board cancel the status conference. *See* Status Report, Request to Cancel Status Conference, and Request for Time to Modify Permit (Nov. 8, 2007). The Region represents that it consulted with Dow regarding this motion and that counsel for Dow concurs with these requests. *Id.* at 2.

In support of its motion, the Region explains that Dow and the Region have reached an agreement in principle on all remaining substantive issues raised in Dow's appeal and have resolved all disputed issues.<sup>2</sup> *Id.* at 1, 2. According to the Region, "[t]he parties have already exchanged proposals for modifying the permit to reflect the substantive changes, and have settled upon permit language." *Id.* at 1. The only remaining task, the Region explains, is "the purely procedural matter of modifying the permit." *Id.* at 2. Therefore, the Region requests that the Board cancel the status conference, and asks for additional time to proceed with the modification process, including public notice and comment. *See id.*

---

<sup>2</sup> In its previous motion for extension of time, the Region explained that the parties were near an agreement in principle to fully resolve the contested issues pertaining to the feed rates for mercury, chlorine, particulate matter, and related issues, and also that the parties were close to resolving the "Corrective Action" matters contested in Dow's petition. *See* Fourth Motion for Extension of Time to Resolve Petition for Review (dated July 20, 2007).

Upon consideration of the foregoing, the Board has decided to stay the petition until March 27, 2008. The Region's response must now be filed no later than March 27, 2008. In addition, on or before March 13, 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.<sup>3</sup> In addition, based on these representations, the status conference for December 4, 2007, is hereby canceled.

So ordered.

ENVIRONMENTAL APPEALS BOARD

By: 

Anna L. Wolgast

Environmental Appeals Judge

Dated: November 14, 2007

---

<sup>3</sup> 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 and Canceling Status Conference 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

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: NOV 14 2007



---

Annette Duncan  
Secretary