



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGIONS 5
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CHICAGO, IL 60604-3590

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July 20, 2007

ENVIR. APPEALS BOARD

REPLY TO THE ATTENTION OF:

C-14J

VIA FEDERAL EXPRESS

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

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 Fourth Motion for Extension of Time to Resolve Petition for Review in the above referenced matter.

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

Sincerely,

A handwritten signature in blue ink that reads "Kevin C. Chow".

Kevin C. Chow
Associate Regional Counsel

Enclosures

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

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

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ENVIR. APPEALS BOARD

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

FOURTH MOTION FOR EXTENSION OF TIME
TO RESOLVE PETITION FOR REVIEW

U.S. EPA Region 5 ("the Region") hereby moves the Environmental Appeals Board ("the Board") for an extension of time, until November 27, 2007, to allow the Region and The Dow Chemical Company ("Dow" or "Petitioner") to complete their negotiations and finalize a resolution of the matters contested in Dow's Petition for Review, filed in response to the Region's issuance of a federal Resource Conservation and Recovery Act ("RCRA") Permit to Dow (U.S. EPA ID No. 039 128 913). This is the fourth request for an extension of time in this matter. On July 19, 2007, Robert J. Schmidt, counsel for Dow, represented to me by telephone that he concurs with this extension request. Dow would not be prejudiced by this extension of time.

Appeal to the Board of RCRA permits issued by the Environmental Protection Agency is governed by 40 C.F.R. Part 124 ("Part 124"). While there are no regulatory requirements for motions filed in permit proceedings under Part 124, the Environmental Appeals Board Practice

Manual of June, 2004 ("the Practice Manual") at section III(D)(7) recognizes that parties may make routine procedural motions like motions for extensions of time. ENVIRONMENTAL APPEALS BOARD, PRACTICE MANUAL (2004).

Dow filed its Petition for Review on June 22, 2006. The Board forwarded Dow's petition to the Region on June 29, 2006. Seeking assistance in deciding whether the matters raised by the Petitioner should be reviewed, the Board requested Region staff to prepare a response that addresses Petitioner's contentions and whether Petitioner has satisfied the requirements for obtaining review under 40 C.F.R. § 124.19(a), by no later than August 18, 2006. Subsequently, the Region, with the concurrence of Dow, made three requests for extensions of time to respond to the petition, to allow the parties to engage in and continue their good faith negotiations to resolve Petitioner's contentions. The Board granted each request. In the Board's latest order, that is, the Order Granting Third Motion for Extension of Time to File Response, issued on January 25, 2007, the Board granted the Region an extension to July 30, 2007.

Having made substantial progress in negotiations but needing more time to finalize the terms that are expected to resolve Dow's petition, the Region respectfully moves for an additional extension, until November 27, 2007. That day is 120 days from July 30, 2007. Both parties agree that additional time is needed, and both parties concur that an extension to November 27, 2007, is appropriate. The extension is needed for the following reasons.

After multiple exchanges of detailed information and conference calls involving technical personnel from both Dow and the Region, as well as frequent consultations between counsel for both parties, the parties are near an agreement in principle to fully resolve the contested issues

pertaining to the feed rates for mercury, chlorine, and particulate matter, and related issues. Additionally, having received and reviewed information from Dow pertaining to the many Solid Waste Management Units ("SWMUs") and Areas of Concern ("AOCs") that are contested in the Corrective Action portion of the permit, the Region has discussed its conclusions with Dow. The parties are now close to agreeing that certain SWMUs and AOCs will not need further investigation through the permit's Corrective Action process, thereby resolving the Corrective Action matters contested in Dow's petition. The staffs and representatives of the Region and Dow have exchanged firm settlement proposals and have identified potentially mutually-agreeable modifications to the permit. However, the staffs of both parties require further time to confirm a few technical details, and to then obtain the necessary approvals or authorizations from managers within their respective organizations who have the authority to formally accept the proposals that have been made. After the expected settlement in principle is in place, the parties will then have to engage in the process of modifying Dow's permit to reflect the negotiated changes, including a public comment period and a final review and approval process for the Region. In spite of the diligent efforts of the parties to settle this matter by July 30, 2007, these activities cannot be completed by that date.

Thus, having nearly achieved a settlement in principle, Dow and the Region wish to continue the settlement process and take the final steps toward fully resolving the appeal. The Region, with Dow's concurrence, respectfully requests the Board to grant an extension from

July 30, 2007, to November 27, 2007, by which time the parties expect that any response by the Region to Dow's petition will be rendered unnecessary.

Respectfully submitted,



Kevin C. Chow (*Authorized to Receive Service*)
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

Dated: July 20, 2007

CERTIFICATE OF SERVICE

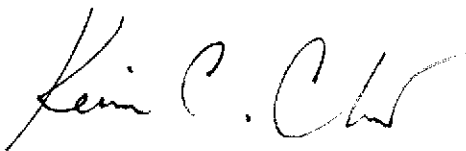
I hereby certify that the foregoing Fourth Motion for Extension of Time to Resolve Petition for Review was sent on this the 20th day of July, 2007, in the following manner to the below addressees:

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
Facsimile: 614-227-2100



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