



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5  
77 WEST JACKSON BOULEVARD  
CHICAGO, IL 60604-3590

received  
EPA/EAB 9:55AM  
7-25-06  
ad

July 24, 2006

REPLY TO THE ATTENTION OF:

C-14J

**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

Re: The Dow Chemical Company, Hanging Rock Plant  
Permit 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 Motion for Extension of Time to Respond to Petition for Review 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

**received**  
EPA/EA/06-01  
7-26-06  
ad

**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) )  
Permit No. OHD 039 128 913 )  
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Appeal No. RCRA 06-01

**MOTION FOR EXTENSION OF TIME TO RESPOND TO PETITION FOR REVIEW**

U.S. EPA Region 5 (“the Region”) hereby moves the Environmental Appeals Board (“the Board”) for a ninety day extension of time, until November 16, 2006, to submit a response to the Petition for Review filed in response to the Region’s issuance of a federal Resource Conservation and Recovery Act (“RCRA”) Permit (Permit No. OHD 039 128 913) to The Dow Chemical Company (“Dow” or “Petitioner”). On July 20, 2006, 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).

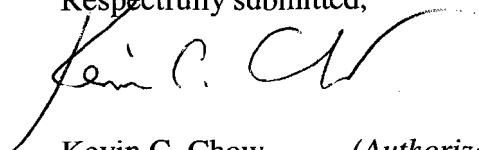
Dow filed its Petition for Review on June 22, 2006. The Board forwarded Dow's petition to the Region on June 29, 2006. Seeking assistance in deciding whether the matters raised by the Petitioner should be reviewed, the Board requested Region staff to prepare a response that addresses Petitioner's contentions 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.

The Region respectfully moves for a ninety day extension of the time allowed to respond to the petition. This motion thus requests until November 16, 2006, to respond. Subsequent to the Region's receipt of the Petition for Review, counsel for Dow and counsel for the Region discussed by telephone the possibility of mutually resolving the contested permit conditions or at least limiting the scope of the pending appeal, prior to the Region's response to Dow's petition. The parties have agreed to pursue discussions to that end, and both parties concur that an extension of ninety days for such discussions is appropriate. Ninety days is appropriate for the following reasons. Most of the contested permit provisions are of a highly technical and fact-specific nature. Due to the technical nature of the issues and the scheduling difficulties arising from the need to ensure the participation of all relevant technical staff for Dow and the Region, the earliest that the parties will be able to meet to comprehensively discuss a resolution of the contested permit provisions will be August 15, 2006, which is only three days prior to the due date for the Region's written response. Even after this initial meeting, further rounds of discussions are likely to be required. Additionally, if a resolution is achieved and changes to the contested permit conditions are required, the Region will need time to modify the permit and notify the public of such modification. Finally, the undersigned counsel for the Region will be out of the country for several weeks in the month of October, 2006, to attend his nuptials. As a

result, the Region, with Dow's concurrence, respectfully requests that the Board grant an extension of ninety days from August 18, 2006, to November 16, 2006, to submit a response to Dow's Petition for Review.

If this motion is granted, the Region intends to submit a response within the ninety day extension period requested, including relevant portions of the administrative record and a certified index of the entire administrative record, if it appears that a full resolution of the appeal or a limitation to the scope of the appeal will not be possible.

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  
Fax 312-886-0747

Dated: July 24, 2006

CERTIFICATE OF SERVICE

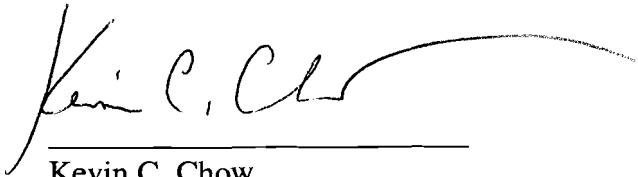
I hereby certify that the foregoing Motion for Extension of Time was sent on this the 24th day of July, 2006 in the following manner to the below addressees:

**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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