



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

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2006 NOV 13 AM 9: 29

ENVIR. APPEALS BOARD

November 9, 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
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 Second 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,

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.

NOV 13 AM 9:29
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

SECOND 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 an extension of time, until January 31, 2007, 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 to The Dow Chemical Company (“Dow” or “Petitioner”) (U.S. EPA ID No. 039 128 913) . This is the second request for an extension of time in this matter. On November 9, 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.

On July 25, 2006, the Region, with the concurrence of Dow, filed a Motion for Extension of Time to Respond to Petition for Review, seeking a ninety-day extension of time to file its response to Dow's petition, in order for the parties to mutually resolve the issues raised in Dow's petition. On July 26, 2006, the Board issued an Order Extending Time to File Response ("Order") and granted the Region until November 16, 2006, to respond to the petition.

Needing more time to complete the negotiations, the Region respectfully moves for an additional extension of time, until January 31, 2007, to respond to the petition. That day is seventy-six days from November 16, 2006. Both parties agree that further discussions are needed, and both parties concur that an extension to January 31, 2007, is appropriate. The extension is needed for the following reasons.

Since the Board's Order, the parties have diligently and in good faith pursued a resolution of the appeal and have made significant progress. On August 15, 2006, the parties - with the participation of numerous technical staff from Dow, the Ohio Environmental Protection Agency, and the Region - held a comprehensive and productive conference call to review every contested permit provision. Since most of the contested permit provisions are of a highly technical and

fact-specific nature, this discussion went into great detail. Ultimately, the parties made preliminary agreements on what information and tasks were necessary to further settlement discussions. For example, Dow was invited to perform additional calculations and risk analyses related to the contested feed rates for mercury, chlorine, and particulate matter. Additionally, the parties and the Ohio Environmental Protection Agency agreed to further review the contested list of Solid Waste Management Units (“SWMUs”) and Areas of Concern (“AOCs”) to determine which might be removed from the permit, if any, given the agencies’ current level of knowledge. Of more immediate concern to the parties was the need for the Region to issue public notice of the effective date for uncontested permit provisions, which was complicated by Dow’s appeal of the effective date of the permit. After much discussion and correspondence after the August 15th conference call, the parties agreed upon two lengthy lists of stayed permit provisions: those to be stayed pending Dow’s appeal and those to be stayed until November 10, 2006. This resolved a major issue of the appeal to the satisfaction of both parties. The Region subsequently issued its public notice on September 28, 2006.

Further progress was made when staff personnel from the Ohio Environmental Protection Agency visited Dow’s facility on August 31, 2006, to observe the SWMUs and AOCs. As a result, the agencies concluded that three of these did not require further investigation and could be removed from the list in the permit. However, the Region still believed that further information from Dow would be necessary to make conclusions on the remaining SWMUs and AOCs prior to the resolution of this permit appeal, and therefore requested Dow to gather and submit existing information it may have. Due to the number of remaining SWMUs and AOCs, Dow is still engaged in this task.

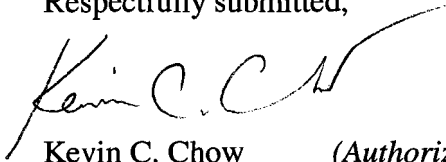
By letter dated October 23, 2006, Dow submitted at the Region's request comprehensive and detailed re-calculations and risk analyses related to the feed rates for mercury, chlorine, and particulate matter in an effort to resolve both the appealed feed rate provisions and the appealed operating condition provisions. On October 25, 2006, the parties held a conference call to discuss these re-calculations. The Region expressed to Dow that it was highly encouraged by the path Dow was taking but that the risk assumptions used will need review and approval by U.S. EPA risk assessment experts, and requested Dow to prepare comparative summaries and additional information for U.S. EPA's risk assessment experts. Due to the comprehensive nature of that request, Dow is still engaged in that task.

Thus, while progress has been made in resolving Dow's permit appeal, the parties are still engaged in complex information-gathering and discussion, and do not anticipate settling the remaining contested issues prior to November 16, 2006. Even if the parties were to immediately settle the issues, the Region would still need time to amend the permit and provide public notice of the changes. Dow and the Region both wish to continue these good faith negotiations in order to fully resolve the appeal, or at least to limit the issues that would proceed on appeal. As a result, the Region, with Dow's concurrence, respectfully requests the Board to grant an extension from November 16, 2006, to January 31, 2007, to submit a response to Dow's Petition for Review.

If this motion is granted, the Region intends to submit a response within the new 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)

Dated: November 9, 2006

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

CERTIFICATE OF SERVICE

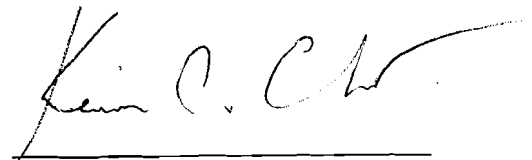
I hereby certify that the foregoing Second Motion for Extension of Time to Respond to Petition for Review was sent on this the 9th day of November, 2006 in the following manner to the below addressees:

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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