



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

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January 22, 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 Third 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

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

**THIRD 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 July 30, 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 third request for an extension of time in this matter. On January 22, 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.

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 and granted the Region until November 16, 2006, to respond to the petition.

On November 13, 2006, the Region filed a Second Motion for Extension of Time to File Response, with the concurrence of Dow. The parties requested an extension to January 31, 2007. While significant strides had been made to settle this matter, the second extension was needed primarily to allow the parties to continue their good faith efforts in sharing and reviewing all the relevant technical information related to the feed rates for mercury, chlorine, and particulate matter required by U.S. EPA's risk assessment experts. Additional time was also necessary for the parties to gather information on the scores of contested Solid Waste Management Units ("SWMUs") and Areas of Concern ("AOCs") to determine which might be removed from the permit, if any, given the government's current level of knowledge. On November 15, 2006, the Board issued an Order Granting Second Motion for Extension of Time to File Response, and granted the Region until January 31, 2007, to respond to the petition.

Needing more time to complete the negotiations, the Region respectfully moves for an additional extension of time, until July 30, 2007, to respond to the petition. That day is 180 days from January 31, 2007. Both parties agree that further discussions are needed, and both parties concur that an extension to July 30, 2007, is appropriate. The extension is needed for the following reasons.

After the Board granted the Region's second extension request, the parties immediately engaged in further information exchange relating to the analyses for the proposed feed rates for mercury, chlorine, and particulate matter. The parties then held a comprehensive and detailed conference call on December 5, 2006, which involved not only the regular representatives of U.S. EPA and Dow, but also two U.S. EPA risk assessment experts and several additional technical and staff personnel from Dow. This discussion focused upon the revised assumptions used in new risk assessments performed by Dow, and provided U.S. EPA an opportunity to give feedback and raise questions. The issues were significantly clarified for the parties, but the parties agreed that additional materials and information from Dow was needed for U.S. EPA's risk assessment experts to review. By correspondence from December 12, 2006, to the end of December, 2006, Dow supplied U.S. EPA with the requested materials. On January 15, 2007, Dow submitted to U.S. EPA a proposal to resolve the contested feed rate limit for particulate matter.

U.S. EPA staff in this matter have been informed that the U.S. EPA risk assessment experts referenced above, who are not formally assigned to this case, have significant workloads and that they will not be able to devote adequate attention to the received materials for at least three weeks as of the date of this motion, well beyond January 31, 2007, the date that U.S. EPA's

response to Dow's petition is due. Additionally, Dow has requested U.S. EPA to provide more detail as to the information needed for U.S. EPA to evaluate the list of SWMUs and AOCs; the parties are thus still working on information-gathering for the SWMUs and AOCs.

Consequently, this matter will not be resolved in full prior to January 31, 2007. 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. Having made significant progress up to this point, Dow and the Region both wish to continue their 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 January 31, 2007, to July 30 2007, to submit a response to Dow's Petition for Review. The parties anticipate that this period of time will provide ample opportunity for this matter to be satisfactorily resolved.

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*)
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: January 22, 2007

CERTIFICATE OF SERVICE

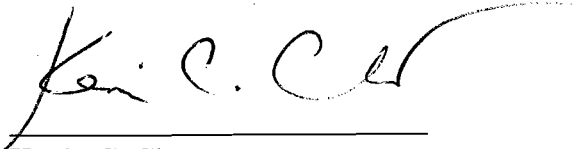
I hereby certify that the foregoing Third Motion for Extension of Time to Respond to Petition for Review was sent on this the 22d day of January, 2007, in the following manner to the below addressees:

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
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Facsimile: 614-227-2100



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