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ENVIRONMENTAL APPEALS BOARD

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March 12, 2008

VIA UPS NEXT DAY AIR

U.S. Environmental Protection Agency
Clerk of the Board
Environmental Appeals Board
Colorado Building
1341 G. Street, NW, Suite 600
Washington, D.C. 20005

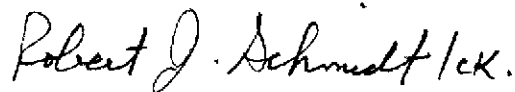
Re: The Dow Chemical Company, Hanging Rock Plant
U.S. EPA ID No. RCRA OHD 039 128 913
Environmental Appeals Board, U.S. EPA, Washington, D.C.

To the Clerk:

Enclosed for filing, please find the original and 5 copies of a *Joint Status Report and Motion For Extension Of Stay* to be filed in the above-referenced matter. Please time-stamp and return the additional copy in the enclosed postage paid envelope.

Please do not hesitate to contact me if you have any questions.

Very truly yours,



Robert J. Schmidt, Jr.

RJS:clk
Enclosures

cc: Kevin Chow (*via e-mail*)

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**BEFORE THE ENVIRONMENTAL APPEALS BOARD
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY AM 9: 52
WASHINGTON, D.C.**

ENVIR. APPEALS BOARD

IN RE:)
)
THE DOW CHEMICAL COMPANY,)
HANGING ROCK PLANT)
Resource Conservation and Recovery Act (RCRA))
U.S. EPA ID No. RCRA OHD 039 128 913)
)
)
)

Appeal No. RCRA 06-01

JOINT STATUS REPORT
AND MOTION FOR EXTENSION OF STAY

Now come U.S. EPA Region 5 (“U.S. EPA” or “the Region”) and The Dow Chemical Company (“Dow”) (together, “the Parties”), per the Environmental Appeals Board’s Order of November 14, 2007, to provide a status report by March 13, 2008, on the Parties’ efforts to modify the existing RCRA permit issued for The Dow Chemical Company Hanging Rock facility (“Hanging Rock Facility”) to include the modified conditions agreed to by the Parties and thereby resolve this pending permit appeal. As previously indicated to the Board, the Parties have reached an agreement on all substantive matters that were raised in Dow’s Petition for Review. The Parties are attempting to appropriately implement the settlement by fully considering the time and expense of RCRA permit modifications, and also addressing two important new developments since the Parties filed their last status report dated November 8, 2007.

First, the Ohio Environmental Protection Agency (“Ohio EPA”) is now authorized to operate the Boilers and Industrial Furnace (“BIF”) program (40 CFR Part 266, Subpart H) in the State of Ohio. U.S. EPA delegated the program to Ohio EPA on October 29, 2007 (72 Fed. Reg. 61063). As part of the transition from the Region to Ohio EPA in the administration of the BIF

program, Dow is in the process of applying for a State-issued RCRA permit under the State of Ohio BIF program. Dow is attempting to secure an agreement with Ohio EPA that the State permit will also include the same corrective action requirements as the federal permit, including those modified as a result of the Parties' settlement negotiations. The Parties believe that it is both more efficient and more timely to incorporate the terms of their settlement into the State BIF permit than to undertake a modification of the federal permit that would be duplicative and subject to termination by the Region once the State permit becomes final.

The second development, which is explained in more detail below, is a change in ownership at the Hanging Rock Facility coupled with small changes in the chemical processes at the facility. These changes should allow either Dow or the new owner of the facility to make a comparable fuels demonstration under 40 CFR § 261.38 that would take the boilers at the facility out of the RCRA program altogether, rendering the federal BIF permit moot. Since the comparable fuels demonstration has not been completed, Dow is pursuing both options: incorporating the settlement into the State-issued BIF permit and making the comparable fuels demonstration. Once either of these approaches is completed, Dow, or the successor to the Hanging Rock Facility, will be in a position to request the termination of the federal RCRA permit and move the Board to dismiss this appeal.

Dow has submitted a RCRA Part B permit application to Ohio EPA due to the recent delegation of the BIF program. Ohio EPA is now processing the application for an Ohio permit that would include BIF and corrective action requirements that would replace corresponding portions of the federal permit that is currently under appeal. The Parties have concluded that incorporating the federal permit conditions into the State permit will be the most effective method for implementing the settlement. If the application is accepted by Ohio EPA, it will be a far more

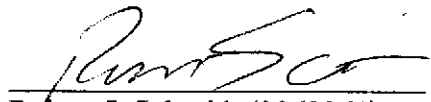
efficient resolution of the pending appeal than a Class 3 permit modification under the federal program which could take more than six months and perhaps as long as a year to process. It is Dow's understanding that Ohio EPA has established an internal timeline for issuing a BIF permit to Dow by September 1, 2008.

The Hanging Rock Facility has recently also been designated as a facility that will be transferred to a newly-formed joint venture between The Dow Chemical Company and Chevron/Phillips Chemical Company, each of which will be a fifty percent owner of the joint venture. Currently, the product streams at the Hanging Rock Facility have changed slightly which should allow the Hanging Rock Facility owner to make a comparable fuels demonstration under 40 CFR § 261.38. If successful, the comparable fuels demonstration will allow the Hanging Rock Facility owner to complete closure and request termination of the federal RCRA permit because the fuels burned at the facility would no longer be considered hazardous waste. Closure and termination of the RCRA permit would render the appeal moot, and the Hanging Rock Facility owner would seek the dismissal of the appeal.

The Parties note that because the sampling to support the comparable fuels demonstration is currently underway, the Parties cannot categorically state that this approach will prove successful. As a result, in order to ensure that the settlement is implemented and this appeal dismissed, Dow will proceed along parallel tracks by moving to make the necessary demonstration to qualify for the comparable fuels exclusion and transferring the conditions in the federal BIF permit to Ohio. By pursuing both approaches concurrently, Dow will be able to seek dismissal upon the occurrence of either of the following: (1) the final closure of the boilers under the RCRA program; or, (2) the final issuance of a BIF permit by Ohio EPA. Dow will continue to pursue both options until one is completed.

Under the Board's previous Order, Dow's petition is stayed until March 27, 2008, on which date the Region is currently required to file its response to the petition. As a result of the intervening factors described above, the Parties believe that it is appropriate to continue the stay beyond March 27th. The Parties therefore request the Board to issue an Order extending the stay until September 30, 2008 (the currently estimated date for a final State permit), and requiring a Joint Status Report on or before June 13, 2008, detailing the progress made by the Parties to conclude this appeal. An extension to September 30, 2008, should provide sufficient time for either the comparable fuels demonstration to be completed, or for Ohio EPA to issue a final State BIF permit by, and for U.S. EPA to consequently terminate the federal RCRA permit.

Respectfully submitted,


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*pursuant to email approval March 11, 2008