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ENVIRONMENTAL APPEALS BOARD

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December 5, 2008

U.S. Environmental Protection
Agency
Clerk of the Board
Environmental Appeals Board
(1103B)
Ariel Rios Building
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460-0001

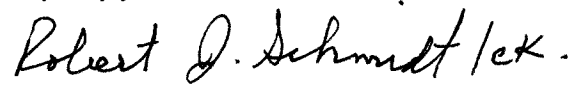
Re: The Dow Chemical Company, Hanging Rock Plant
U.S. EPA ID No. RCRA OHD 039 128 913
Environmental Appeals Board, U.S. EPA, Washington, D.C.

To the Clerk:

Enclosed for filing, please find the original and 5 copies of a *Notice of Withdrawal of Petition for Review* 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 and first class mail)

RECEIVED
U.S. E.P.A.

**BEFORE THE ENVIRONMENTAL APPEALS BOARD
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY 11 01 9449
WASHINGTON, D.C.**

ENVIRONMENTAL APPEALS BOARD

_____)
In re: The Dow Chemical Company)
Hanging Rock Plant)
_____)
Permit No. RCRA OHD 039 128 913)
_____)

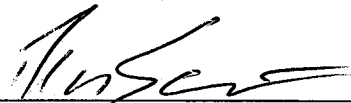
NOTICE OF WITHDRAWAL OF PETITION FOR REVIEW

Now comes Petitioner, The Dow Chemical Company to provide notice to the Environmental Appeals Board that it is withdrawing its Petition for Review of RCRA Permit RCRA OHD 039 128 913. Petitioner Dow originally filed its Petition for Review on June 23, 2006. As the Board is aware, Petitioner Dow and Region V of the United States Environmental Protection Agency have engaged in extensive and detailed negotiations to address Petitioner Dow's concerns raised in the Petition for Review. As reported to the Board by Region V in a Status Report filed November 7, 2007, the parties reached a settlement on all of the matters raised in the Petition For Review. Due to changes in the operation of the Hanging Rock Facility during the early part of 2008, however, the parties had to consider several different alternatives for implementing the settlement. The option that ultimately resolved this matter was the completion of the necessary work to change operations at the Hanging Rock Facility to allow Dow to certify that the Hanging Rock Facility met the comparable fuels exemption to the definition of solid waste pursuant to Ohio Administrative Code Rule 3745-51-38(A). As a result of this certification, the Hanging Rock Facility is no longer burning hazardous waste subject to regulation under the RCRA permit at issue in this case.

By letter dated November 20, 2008, Region V confirmed that the terms and conditions of the permit applicable to the combustion of hazardous waste were rendered moot by Petitioner Dow's completion of the comparable fuels demonstration and Petitioner Dow's certification of the results to Ohio EPA (Attachment A). As the terms and conditions of the portion of the RCRA permit applicable to the combustion of hazardous waste at the Hanging Rock Facility are moot, Petitioner Dow no longer needs the Board to review RCRA permit RCRA OHD 039 128 913.

Based on the fact that the portion of the RCRA permit applicable to the combustion of hazardous waste is no longer applicable to the Hanging Rock Facility, Petitioner Dow hereby withdraws the Petition For Review of RCRA Permit RCRA OHD 039 128 913. Region V and Dow will complete the necessary permit modifications to implement the balance of their settlement and to remove the portions of the RCRA permit applicable to the combustion of hazardous waste in the near future.

Respectfully submitted,



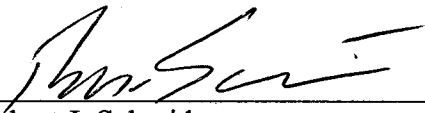
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Facsimile: (614) 227-2100

Attorney for Petitioner The Dow Chemical
Company

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing "Notice of Withdrawal of Petition for Review" was served upon the following by first class mail on this 5th day of December, 2008:

Kevin Chow
Associate Region Counsel
United States Environmental Protection Agency
Region 5
77 West Jackson Boulevard (C-14J)
Chicago, IL 60604-3590



Robert J. Schmidt

ATTACHMENT A



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

November 20, 2008

REPLY TO THE ATTENTION OF:

VIA FAX AND U.S. MAIL

C-14J

Robert J. Schmidt, Esq.
Porter, Wright, Morris & Arthur LLP
Huntington Center
41 South High Street
Columbus, OH 43215-6194

Re: Dow/Americas Styrenics Hanging Rock Plant, Ironton, OH
RCRA Appeal No. 06-01; Comparable Fuels Exclusion

Dear Mr. Schmidt:

By this letter, the U.S. Environmental Protection Agency, Region 5, acknowledges receipt of the Comparable Fuels Notice dated November 18, 2008, and the November 20, 2008, public notice issued in The Ironton Tribune, pertaining to the facility at 925 County Road 1A, Ironton, Ohio 45638, owned and/or operated by The Dow Chemical Company and Americas Styrenics, LLC.

U.S. EPA further acknowledges that, as represented and certified in the Comparable Fuels Notice, the wastes currently being combusted in the regulated boilers meet the definition of comparable fuels in Ohio Administrative Code Rule 3745-51-38(A), are excluded from the definition of solid waste pursuant to the Ohio Administrative Code Rules 3745-51-38 [40 C.F.R. § 261.38], and therefore are not hazardous wastes. Thus, the federal RCRA permit for the facility is rendered moot except for any portion of the permit concerning corrective action. The permit will be modified accordingly and will incorporate any changes to the corrective action terms as previously agreed upon by the parties.

U.S. EPA anticipates that Dow will now proceed with the withdrawal of its petition in this matter. Thank you for cooperation in the resolution of this matter. If you have any questions, please contact me at (312) 353-6181 or chow.kevin@epa.gov.

Sincerely,

A handwritten signature in black ink, appearing to read "Kevin Chow".

Kevin Chow
Associate Regional Counsel

cc: Jae Lee (LR-8J)