



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

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

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ENVIR. APPEALS BOARD

May 30, 2008

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 Joint Status Report 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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2009 JUN -2 AM 10:01

ENV. 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

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 March 26, 2008, to provide a status report by May 26, 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. Counsel for the Region apologizes for filing this report on May 30<sup>th</sup>; he has been on extended paternity leave but has now returned.

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. As explained in the Parties’ previous status report of March 13, 2008, the Parties are attempting to appropriately implement the settlement by pursuing either: (1) the issuance of a Boiler and Industrial Furnace (“BIF”) permit by the Ohio Environmental Protection Agency incorporating the terms agreed upon by the Parties, with subsequent termination of the federal BIF permit, or (2) a comparable fuels demonstration by a newly-formed joint venture between Dow and Chevron Phillips Chemical Company pursuant to 40 C.F.R. § 261.38 that would take the boilers at issue here out of the

RCRA program and render any BIF permit, and this appeal, moot.

Since that status report, the Ohio Environmental Protection Agency has been reviewing Dow's Part B application for the state-issued permit, and the joint venture has been continuing its formation with concomitant preparations for the comparable fuels demonstration. The Parties, including the Ohio Environmental Protection Agency, conducted a conference call on April 28, 2008, to discuss progress up to that date and various issues pertaining to the permit application and comparable fuels demonstration going forward.

In early May, 2008, the Hanging Rock facility was formally transferred to the joint venture between The Dow Chemical Company and Chevron Phillips Chemical Company. The joint venture, Americas Styrenics, has preliminarily indicated that it will continue to pursue either the comparable fuels demonstration or securing from the Ohio Environmental Protection Agency a State-issued RCRA permit that will incorporate the agreement Dow reached with the Region. Due to the transfer in ownership of the facility, however, it was necessary for Dow and Americas Styrenics to take extra time to review issues related to joint representation and other case management issues. It appears at this time that Americas Styrenics will retain the same counsel representing Dow in these proceedings, but the details of that representation have not been finalized. Due to the change in ownership, it also appears likely that Americas Styrenics will need to be substituted as the party in interest in these proceedings. This substitution will likely have to follow the submittal of the proper notices to U.S. EPA of the change in ownership and the transfer of the underlying permit. Counsel for Dow believes that this transfer should happen in the next 30-45 days, but would require at least an additional 60 days to complete the transfer and file the appropriate notices with the Board.

Under the Board's March 26, 2008, Order, Dow's petition is stayed until June 25, 2008, on which date the Region is currently required to file its response to the petition. Based on the fact that the Ohio Environmental Protection Agency is still processing Dow's Part B application on an internal timeline in which the anticipated issue date for the State permit is September 30, 2008, and that the joint venture and the comparable fuels demonstration are still being developed, as well as the need to finalize legal representation for Americas Styrenics and to eventually substitute it as the party in interest in this matter, the Parties believe that it is appropriate to continue the stay beyond June 25, 2008. The Parties therefore request the Board to issue an Order extending the stay until at least September 30, 2008 (the currently estimated date for a final State permit), and requiring a Joint Status Report on or before July 31, 2008, detailing the progress made by the Parties to conclude this appeal. An extension to September 30, 2008, should provide sufficient time for the joint venture and comparable fuels demonstration to be completed, or for Ohio 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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s/ Robert J. Schmidt\*  
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\* Pursuant to e-mail approval on  
May 30, 2008

CERTIFICATE OF SERVICE

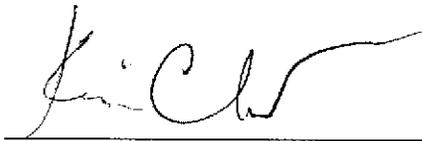
I hereby certify that the foregoing Joint Status Report was sent on this the 30th day of May, 2008, in the following manner to the below addressees:

**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:**

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