



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION VII  
901 NORTH 5TH STREET  
KANSAS CITY, KANSAS 66101

JAN 15 2004

RECEIVED

JAN 20 2004

LEGAL OFFICE

Mr. Stephen B. Ellingson, Ph.D  
Environmental Compliance Director  
Koch Nitrogen Company  
P.O. Box 2219  
Wichita, Kansas 67201-2219

Dear Mr. Ellingson:

RE: Settlement of Petition for Review of RCRA Post-Closure Permit  
Koch Nitrogen Company - Dodge City, Kansas  
EPA ID No. KSD044625010

The purpose of this letter is to memorialize the agreement between the Environmental Protection Agency Region 7 ("EPA"), the Kansas Department of Health and Environment ("KDHE") and Koch Nitrogen Company ("KNC") regarding the resolution of the Petition for Review of Part II of the Resource Conservation and Recovery Act hazardous waste management permit ("Permit") that was originally issued on March 21, 2003. It is the parties' intent through this agreement to resolve the issues raised in the Petition without a formal appeal proceeding before the Environmental Appeals Board, by modifying the existing original permit through the established procedures for RCRA permit modifications.

The terms of this Agreement shall not be modified except by a subsequent written agreement between EPA, KDHE and KNC (collectively, the "Parties").

Pursuant to this Agreement, EPA and KDHE agree to modify the existing Permit through the formal permit modification procedures outlined in 40 C.F.R. § 270.42. In accordance with these permit modification procedures, no later than February 13, 2004, KNC shall submit a formal permit modification request for Part I of the Permit to KDHE and for Part II of the Permit to EPA, to incorporate the exact language contained in Appendix A. The changes to Part I will be effective only if Part II is modified in a manner that is substantially equivalent to Appendix A. This request must comply with the requirements of 40 C.F.R. § 270.42(b). The Parties acknowledge that the permit must then be placed on public notice and undergo a 60-day public comment period. The Parties contemplate that the Permit, once modified, will be substantively equivalent to the permit enclosed to this letter as Appendix A; however, EPA and KDHE reserve the right to make additional changes to the permit, only if necessary to respond to public comments.



Also, pursuant to this Agreement, KNC has agreed in principle to accept the Permit, as modified in accordance with the foregoing permit modification provisions, provided that KNC reserves the right to contest any changes to the terms and conditions of the modified Permit that are not specifically reflected in Appendix A attached hereto. In the event the changes to Part I of the Permit as set forth in Appendix A do not become effective in accordance with the previous paragraph, KNC reserves the right to void this Agreement.

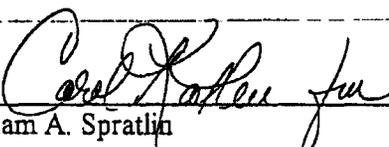
Furthermore, no later than January 13, 2004, the Parties (KNC and EPA) shall file a joint motion before the Environmental Appeals Board to inform the Board of the execution of this Agreement and to seek a stay of the Petition for Review of Appeal Number RCRA-03-01, filed on April 24, 2003, to provide the Parties with sufficient time to modify the Permit as contemplated in this Agreement. KDHE is not a party to the appeal to the EAB, but has no objection to the Motion for Stay. Upon issuance of the revised Final Permit at the conclusion of the permit modification procedures, and following the applicable appeals period without the filing of any appeals contesting any further permit modifications, KNC agrees to withdraw the Petition for Review pending before the Environmental Appeals Board, and its Motion for Reconsideration pending before KDHE. The Parties each agree to bear their own costs and attorneys' fees.

KNC understands that this Agreement in no way affects EPA and KDHE's statutory authority to bring any existing or future enforcement action(s), if necessary, to enforce the terms of the Permit, as modified.

This Agreement shall be binding upon EPA, KDHE and KNC, and KNC's successors and/or assigns. By signing below, EPA, KDHE and KNC signify their assent to all of the terms of this Agreement. Each signatory to this Agreement certifies that he or she is fully authorized to enter into the terms of the Agreement on behalf of his or her respective party.

**For the Environmental Protection Agency Region 7:**

1/12/04  
Date

  
\_\_\_\_\_  
William A. Spratlin  
Director  
Air, RCRA & Toxics Division

**For the Kansas Department of Health and Environment:**

1/12/04  
Date

  
\_\_\_\_\_  
Ronald F. Hammerschmidt  
Director, Division of Environment  
Kansas Department of Health and Environment

**For Koch Nitrogen Company**

\_\_\_\_\_  
Date

\_\_\_\_\_  
Stephen M. Richmond, Esq  
Counsel for Koch Nitrogen Company

**For the Kansas Department of Health and Environment:**

\_\_\_\_\_  
Date

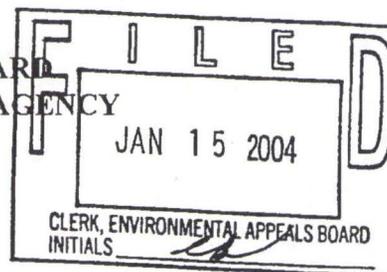
\_\_\_\_\_  
Ronald F. Hammerschmidt  
Director, Division of Environment  
Kansas Department of Health and Environment

**For Koch Nitrogen Company**

1/12/04  
Date

  
\_\_\_\_\_  
Stephen M. Richmond, Esq.  
Counsel for Koch Nitrogen Company

BEFORE THE ENVIRONMENTAL APPEALS BOARD  
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C.



\_\_\_\_\_  
In re: )  
)  
)

Koch Nitrogen Company )

RCRA Appeal No. 03-01

RCRA Permit No. KSD044625010 )  
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**ORDER GRANTING STAY**

In the above-referenced Petition for Review, filed March 21, 2003, Farmland Industries ("Farmland") sought review of a Resource Conservation and Recovery Act ("RCRA") hazardous waste management permit decision made jointly by United States Environmental Protection Agency, Region VII ("Region") and the Kansas Department of Health and Environment ("KDHE"). That permit decision approved the issuance of a RCRA permit, number KSD044625010 to Farmland, requiring Farmland to conduct post-closure care, groundwater monitoring, and corrective action for a closed surface impoundment at its anhydrous ammonia manufacturing facility in Dodge City, Kansas. Subsequently, Koch Nitrogen Company ("Koch" or "Petitioner") substituted Farmland as the Petitioner in this matter based on Koch's acquisition of all right, title, and interest to certain assets, properties, rights and claims of Farmland as debtor-in-possession under the U.S. Bankruptcy Code, 11 U.S.C. § 101, *et seq.*<sup>1</sup> See Notice of Transfer of Interest and Request for Substitution of Parties (May 28, 2003); *see also* Order Granting Request for Substitution of Parties (June 12, 2003).

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<sup>1</sup> Accordingly, we now caption this matter under the name of "Koch Nitrogen Company," in place of the previously-captioned "Farmland Industries, Inc."

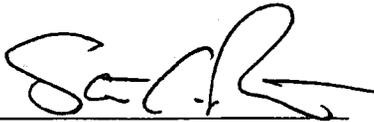
The Region and Koch jointly move for a stay of the proceedings before the Board. Over the past several months, the Board issued orders granting extensions of time to respond to the Petition. The parties now state that they have executed a settlement agreement with the intent of resolving the issues raised in the Petition. They explain that under the terms of this agreement, the Region and KDHE will modify the permit originally issued March 21, 2003, in accordance with the formal permit modification procedures outlined in 40 C.F.R. § 270.42. Furthermore, the parties represent that they have already agreed upon the terms of the permit. The parties request a stay because, as they explain, the permit modification procedures require a 60-day public comment period.

Upon consideration of the foregoing and for good cause shown, the Board grants a stay of all proceedings in this matter, until further notice. At the conclusion of the 60-day public comment period, the parties shall promptly notify the Board as to the status of this matter. In addition, the parties must file a status report 180 days from the date of this Order Granting Stay ("Order"). If at any time following the filing of this Order, the agreement referenced herein is dissolved or otherwise terminated, the parties shall promptly notify the Board and recommend an appropriate modification or termination of these proceedings.

So ordered.

ENVIRONMENTAL APPEALS BOARD

Dated: January 14, 2004

By: 

Scott C. Fulton

Environmental Appeals Judge

## CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Order Granting Stay, in the matter of Koch Nitrogen Company, RCRA Appeal No. 03-01, were sent to the following persons by the method indicated:

**By Certified Mail, Return Receipt Requested:**

Alex Chen, Esq.  
U.S. Environmental Protection Agency  
( Region VII )  
901 North 5th Street  
Kansas City, KS 66101

Stephen M. Richmond, Esq.  
Bowditch & Dewey, LLP  
161 Worcester Road  
Framingham, MA 01701-9320

William Anderson, Esq.  
Kansas Department of Health & Environment  
Office of Legal Services  
Charles Curtis State Office Building  
1000 S.W. Jackson, Suite 560  
Topeka, KS 66612-1368

Dated: January 15, 2004

  
Annette Duncan  
Secretary