



KOCH NITROGEN COMPANY

February 11, 2004

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BUREAU OF WASTE MANAGEMENT

*VIA FEDERAL EXPRESS*

Mr. Roderick L. Bremby  
Secretary  
Kansas Department of Health and Environment  
1000 SW Jackson, Suite 320  
Topeka, Kansas 66612

And

Mr. William A. Spratlin  
Division Director  
Air, RCRA and Toxics Division  
U.S. Environmental Protection Agency – Region VII  
RCRA Corrective Action & Permits Branch  
901 North Fifth Street  
Kansas City, Kansas 66101

RE: Request for Class 2 Permit Modifications  
Hazardous Waste Management Facility Permit (Parts I and II)  
Dodge City, Kansas  
USEPA Identification Number KSD044625010

Dear Secretary Bremby and Director Spratlin:

Pursuant to the requirements of 40 CFR 270.42(a), as incorporated into Kansas regulations at K.A.R. 28-31-9(a), Koch Nitrogen Company (“KNC”) submits this request for Class 2 permit modifications to Hazardous Waste Management Facility Permit No. KSD044625010, issued to Farmland Industries, Inc. and transferred to KNC as of May 20, 2003. Part I of the permit has an effective date of May 20, 2003, and has been modified by letter approvals dated June 20, 2003 and September 12, 2003 (the “Part I Permit”). Part II of the permit has been stayed pending the outcome of an appeal now before the Environmental Appeals Board (the “Part II Permit”) (collectively, the Part I Permit and the Part II Permit are referred to herein as the “Permit”).

RCRA



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Request for Class 2 Permit Modifications, Hazardous Waste Management Facility Permit (Parts I and II)  
Koch Nitrogen Company, Dodge City, Kansas  
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KNC, the Kansas Department of Health and Environment ("KDHE") and the U.S. Environmental Protection Agency ("EPA") have entered into a settlement agreement, dated January 15, 2004 (the "Settlement Agreement"), under the terms of which KNC has agreed to submit this request for permit modification. A copy of the Settlement Agreement, without attachments, is included as Attachment A to this letter. The changes that are sought in this application for modification are the exact changes to the Permit that were agreed upon by the parties in the Settlement Agreement. The requested changes to the Part I Permit are included as Attachment B to this letter, and the requested changes to the Part II Permit are included as Attachment C to this letter. Each party has reserved certain rights with respect to this application for permit modification, as set forth in the Settlement Agreement, and this application is intended to incorporate those reservations of rights in their entirety.

In addition to the above listed changes, KNC is proposing one other change to the Part II Permit to ensure that changes made to the Part B permit application will be incorporated into the Permit. This change would be made to the first page of the Part II Permit, in the fifth paragraph, and would add after the term "the facility will be operated as specified in the application" the following: "as that application is revised from time to time."

In accordance with 40 CFR §270.42(b), the following information is provided on this request for permit modification:

- The language changes requested to the Part I Permit and the Part II Permit are described in Attachments B and C to this letter. These changes are intended to reflect the exact language agreed to in the Settlement Agreement.
- The requested changes, which allow for application of the Post-Closure Rule, have been determined by EPA, in a letter dated November 4, 2003, to constitute a request for Class 2 modification.
- The requested changes are necessary to resolve a pending appeal of the Permit and to harmonize the Permit with the Post-Closure Rule.
- No changes to information previously supplied by KNC are required at this time to address the requirements of 40 CFR §270.13 - §270.21, §270.62 or §270.63.

Consistent with the requirements of 40 CFR §270.42, KNC will draft a notice describing this modification request, a 60-day public comment period, and information on the convening of a public meeting, in accordance with the requirements of §270.42(b)(2), and will (i) mail this notice to all persons identified on the facility mailing list that was previously provided to KNC by KDHE; (ii) request publication of such notice in a major local newspaper of general circulation; and (iii) provide a copy of this letter to the Dodge City Public Library to ensure that it is available to the public. The mailing, newspaper publication and provision of this document to the public library are expected to occur within seven days before or

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after the date of submittal of this request. KNC will provide evidence of the mailing and publication to KDHE and EPA.

If you should have any questions or require additional information on this request, please contact Brian Moore at (620) 227-8631, extension 350 for technical issues, and Stephen Richmond at (508) 416-2410 for legal issues.

As provided in 40 CFR 270.11(d), I certify under penalty of law that this document and all attachments were prepared under my direction or supervision according to a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

Sincerely yours,

KOCH NITROGEN COMPANY

By: Larry Angell  
Larry Angell  
Its Vice President

maf

cc: M. Kamal, KDHE  
B. Anderson, KDHE  
R. Hammerschmidt, KDHE  
A. Stone, EPA  
A. Chen, EPA  
B. Moore, KNC  
S. Ellingson, KNC  
G. LeRock, KNC  
L. Sahatjian, KNC  
F. VanRyn, Reiss  
M. Eversman, ERM  
S. Richmond, Bowditch & Dewey, LLP

Attachment A  
Settlement Agreement



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

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

**JAN 15 2004**

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.

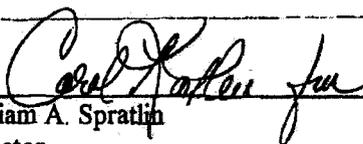
Furthermore, no later than January 13, 2004, the Parties (KNC and EPA) shall file a joint motion before the Environmental Appeals Board to inform the Board of the execution of this Agreement and to seek a stay of the Petition for Review of Appeal Number RCRA-03-01, filed on April 24, 2003, to provide 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:**

4/12/04  
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

Attachment B

**REQUEST FOR CLASS 2 PERMIT MODIFICATION  
HAZARDOUS WASTE MANAGEMENT FACILITY PERMIT (PART I)  
DODGE CITY, KANSAS  
US EPA IDENTIFICATION NO. KSD044625010**

The following modifications are requested to the Part I Permit:

**Table of Contents**

Change references in heading and Attachment D listing from "Farmland Industries, Inc." to "Koch Nitrogen Company".

**Section I – Standard Permit Conditions**

In Section I.A, in the first sentence, change "Farmland Industries, Inc." to "Koch Nitrogen Company".

In Section I.A, add the following new paragraph at the end of this section:

"This permit makes use of the Post-Closure rule published in Federal Register dated October 22, 1998 (63 FR 56,710). Although Kansas is not authorized for these regulations, EPA Region VII has approved the use of these regulations for the Permittee to defer certain permit conditions in Part I for the regulated unit with alternative requirements established in Part II of this Permit."

**Duties and Requirements**

In Section I.E.8, in subparagraph (d), add the following new sentence at the end of this subparagraph: "When obtaining samples, the Permittee shall be allowed to collect duplicate samples for separate analysis."

**Documents to be Maintained at the Facility**

In Section I.J.7, change "Section II.K" to "Section II.J".

**Location Standards**

In Section II.F, in the second paragraph, change "Farmland Industries, Inc." to "Koch Nitrogen Company".

**General Closure Requirements**

In Section II.H, add the following new paragraph after the first sentence of this section:

“The Permittee may choose to complete the alternative requirements established in Sections C.5.f. and C.6.a. of Part II of this Permit in lieu of the requirements of this Section [40 CFR 264.110(c)]. In the event the Permittee is unable to complete the requirements of Sections C.5.f. and C.6.a., the Secretary shall require the Permittee to complete the requirements of Section II.H. of Part I of this Permit.”

#### **General Post-Closure Requirements**

In Section II.I, add the following new paragraph after the first sentence of this section:

“The Permittee may choose to complete the alternative requirements established in Sections C.5.f. and C.6.a. of Part II of this Permit in lieu of the requirements of this Section [40 CFR 264.110(c)]. In the event the Permittee is unable to complete the requirements of Sections C.5.f. and C.6.a., the Secretary shall require the Permittee to complete the requirements of Section II.I. of Part I of this Permit.”

#### **Section III - Closure and Post-Closure Care**

Insert the following paragraph at the beginning of Section III, before the beginning of Section III.A:

“The Permittee may choose to complete the requirements of Sections C.5.f. and C.6.a. of Part II of this Permit in lieu of the requirements established in this Section [40 CFR 264.110(c)]. In the event the Permittee is unable to complete the requirements of Section C.5.f., and C.6.a. of Part II of this Permit, the Secretary shall require the Permittee to complete the requirements of Section III of Part I of this Permit.”

#### **Section IV – Groundwater Corrective Action**

Insert the following paragraph at the beginning of Section IV, before the beginning of Section IV.A:

“The Permittee may choose to complete the requirements of Section C.5.e. of Part II of this Permit in lieu of Section IV of Part I of the Permit [40 CFR 264.90(f)]. If the Part II portion of the Permit is implemented, the Permittee will no longer be required to complete the requirements of Section I.B.3 of Part I of this Permit. In the event the Permittee is unable to complete the requirements of Section C.5.e. of Part II of this Permit, the Secretary shall require the Permittee to complete the requirements of Section IV of Part I of this permit.”

Attachment C

**REQUEST FOR CLASS 2 PERMIT MODIFICATION  
HAZARDOUS WASTE MANAGEMENT FACILITY PERMIT (PART II)  
DODGE CITY, KANSAS  
US EPA IDENTIFICATION NO. KSD044625010**

The following modifications are requested to the Part II Permit:

**Preamble**

Change references in heading and in first paragraph from "Farmland Industries, Inc." to "Koch Nitrogen Company".

On Page 1 of 34, at the end of the second paragraph, add the following:

"In issuing this permit, the Regional Administrator's delegated representative has determined in accordance with 40 CFR 264.90(f) that the regulated unit addressed in Part I of this permit is situated among solid waste management units (or areas of concern), a release has occurred, both the regulated unit and one or more solid waste management unit(s) (or areas of concern) are likely to have contributed to the release, and it is not necessary to apply the groundwater monitoring and corrective action requirements of §§264.91 through 264.100 because alternative requirements for groundwater monitoring and corrective action implemented under this permit will protect human health and the environment."

**Definitions**

On Page 6 of 34, in the first paragraph, add "266," after "264,"

**Corrective Action – Interim Measures and Stabilization**

On Page 20 of 34, add the following new subparagraphs (e) and (f) to the end of Section C.5:

"e. The interim measures system consisting of the current groundwater monitoring, recovery and treatment system and requirements described in Section IV-Groundwater Corrective Action of Part I of the Permit are hereby incorporated by reference. These interim measures shall continue in effect until such time as EPA approves of alternative requirements. These alternative requirements may be proposed by Permittee in either an Interim Measures Work Plan (IMWP) or as part of the Corrective Measures Study Work Plan (CMSWP) as required by Section C.8 of Part II of the Permit, outlining changes to the current interim measures. The IMWP or CMSWP will be reviewed in accordance with the procedures set forth in Section C.14. ("Review and Approval Procedures") of Part II of this Permit. Upon approval thereof, the alternative requirements of the IMWP or CMSWP will replace the requirements of Section IV of Part I.

f. The General Closure Requirements and the Closure Requirements found in Sections II.H and III.B, respectively, of Part I of this Permit are incorporated by reference. If the Permittee demonstrates clean-closure (264.228(a)) of the regulated unit (former Chrome Destruct Unit) to EPA's satisfaction, the general post-closure and post-closure care requirements found in Sections II.I and III of Part I of this Permit will be satisfied. If the Permittee fails to demonstrate clean-closure (264.228(a)) of the regulated unit to EPA's satisfaction, then all of the requirements of Sections II.H, II.I and III of Part I of this Permit will be deemed to be satisfied by the Permittee through its implementation of Section C (Corrective Action) of Part II of this Permit, in accordance with a schedule established through said Section C [264.110(c); RCRA Post-Closure Rule, 63 Fed. Reg. 56,710 (Oct. 22, 1998)]. The requirements in said Section C are designed and will be administered by EPA to protect human health and the environment and to satisfy the closure performance standard [264.110(c) and 264.111(a) and (b)]. Sections II.J (Financial Requirements) and III.F (Financial Assurance) of Part I shall remain in force for the duration of this permit unless Permittee proposes and EPA approves alternative requirements in the IMWP or CMSWP as required by C.5.e. above [264.140(d)].

In the event that as part of the implementation of Section C of Part II of this Permit, the Director selects a corrective measure remedy (or remedies) other than the existing groundwater corrective action program described in Section IV of Part I of this Permit, the Permittee shall not be required to secure additional financial assurance for the remedy (or remedies) which already have a financial assurance mechanism in place under Part I of the Permit. However, this provision is not intended to release Permittee from any other financial assurance requirements in this Permit; Permittee is still required to secure additional financial assurance for any selected corrective measures remedy (or remedies) which were not covered under the existing financial assurance in place for the said groundwater corrective action program."

#### **Corrective Action - RCRA Facility Investigation Work Plan**

Also on Page 20 of 34, add the following to the end of Section C.6.a:

"The Permittee may submit the closure and post-closure plans required by Sections III.B and III.C. of Part I of this Permit, as part of the RFI Work Plan. If the Permittee demonstrates clean-closure (264.228(a)) of the regulated unit (former Chrome Destruct Unit) to EPA's satisfaction, the general post-closure and post-closure care requirements found in Sections II.I and III of Part I of this Permit will be satisfied. If the Permittee fails to demonstrate clean-closure (264.228(a)) of the regulated unit to EPA's satisfaction, then all of the requirements of Sections II.H, II.I and III of Part I of this Permit will be deemed to be satisfied by the Permittee through its implementation of Section C (Corrective Action) of Part II of this Permit [264.110(c); RCRA Post-Closure Rule, 63 Fed. Reg. 56,710]. The requirements in said Section C are designed and will be administered by EPA to protect human health and the environment and to satisfy the closure performance standard [264.110(c) and 264.111(a) and (b)]. Sections II.J (Financial Requirements) and III.F (Financial Assurance) of Part I shall remain in force for the

duration of this permit unless Permittee proposes and EPA approves alternate requirements in the IMWP or CMSWP as required by C.5.e. above [264.140(d)].”

#### **Corrective Action – RCRA Facility Investigation Report**

On Page 22 of 34, add the following at the end of Section C.7.f:

“The RFI Work Plan will develop the information necessary to design an alternative groundwater monitoring and corrective action system for releases to groundwater that will protect human health and the environment as set forth in 40 CFR 264.90(f). The alternative program will be proposed in the Corrective Measures Study described below.”

#### **Corrective Action – Corrective Measures Study Work Plan**

On Page 25 of 34, add the following at the end of the second sentence in Section C.8.b:

“Corrective measures described in the CMS Work Plan may include measures that incorporate engineering or institutional controls subject to EPA's approval.”

Also on Page 25 of 34, delete Section C.8.b(4)(b) and replace with the following:

“b) Attainment of media cleanup standards set by, or risk-based standards approved by, EPA;”

#### **Corrective Action – Corrective Measures Study Report**

On Page 26 of 34, delete Section C.9.a.2 and replace with the following:

“(2) Proposed media cleanup or risk-based standards for the protection of human health and the environment;”

#### **Corrective Action – Quarterly Progress Report**

On Page 28 of 34, add the following at the end of the fourth sentence of Section C.13:

“The Director may reduce reporting requirements if technical documentation demonstrates reduced reporting requirements will not impact operation and monitoring of remedial actions.”