

KANSAS DEPARTMENT OF HEALTH AND ENVIRONMENT  
Division of Environment  
Bureau of Waste Management

MEMORANDUM

**DATE:** March 1, 2004  
**TO:** Koch Nitrogen Company Green File  
**FROM:** Katherine Dunn *KD*  
**SUBJECT:** Meeting Memo

A meeting was held at the KDHE Northeast District Office in Lawrence, Kansas on February 27, 2004. Representatives from KDHE/BWM, USEPA Region VII, and Koch Nitrogen Company (Koch) were present. This meeting was requested by Koch to discuss the cost estimate submitted to KDHE on December 12, 2003. Attached to this memo is a copy of the agenda, handouts provided during the meeting (KDHE's internal cost estimate, draft comment on the Class 1a modification, and information related to permit modifications from the *RCRA Public Participation Manual*), and a list of attendees.

After the completion of introductions, KDHE opened the meeting by explaining that Part I of the Permit requires a cost estimate and financial assurance for closure, post-closure and corrective action. The cost estimate submitted by Koch on December 12, 2003 did not include the cost of corrective action. KDHE has developed an internal cost estimate for this facility based on the permit requirements and the tasks outlined in the Part B Permit Application. This cost estimate was developed using an EPA cost estimating software (CostPro), information provided by Koch, internal information from KDHE/BOW, and professional judgement. KDHE's internal cost estimate is consistent with facilities conducting similar post-closure activities. KDHE explained the necessity to have a comprehensive cost estimate and corresponding financial assurance in the event the facility was unable to complete corrective action. Although the remedial system may change, the cost estimate must be based on the current site conditions and permit requirements. If the remedial system is modified, the cost estimate can be adjusted to reflect changes in the system.

The second item on the agenda was the Class 1a modification request submitted by Koch on December 31, 2003. KDHE stated their reluctance to accept this modification package with the qualifying language changes. By inserting language such as "reportedly" and "can not verify" throughout the application, KDHE questioned Koch's intentions to accept responsibility for the environmental issues at the site. Koch stated they acquired the environmental liabilities with the purchase of the facility. Koch explained the language in the Part B was not intended to avoid their responsibility, but to note in the application that they could not verify environmental compliance

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prior to their purchase of the facility. KDHE provided Koch with draft comments to Koch on the Class 1a modification request. All parties agreed that changes in language in the application could resolve this issue. Koch suggested a technical meeting to discuss the requested modification and explore alternative language to use in the application.

The third agenda item discussed was the Part B Permit Application Certification. The certification Koch submitted with the Class 1a modification request deviated from the standard certification language of 40 CFR 270.11. The certification submitted by Koch added a paragraph, which appears to be a disclaimer of the environmental activities of the previous owner of the facility. KDHE pointed out the additional language draws question to Koch's commitment to their environmental responsibilities, as expressed during the discussion concerning the language proposed in the Class 1a modification request. Koch explained they could not certify a document for activities that they could not verify the information. Koch stated there was case law to support the addition of a disclaimer to the certification. KDHE explained the certification language of 40 CFR 270.11 provided for such cases with the portion of the certification that states "to the best of my knowledge." Although Koch appeared to understand the concerns of KDHE, this issue was not resolved. Attorneys from KDHE and Koch will meet to resolve the Part B certification language.

The next item of discussion was the Class 2 permit modification submitted by Koch on February 12, 2004. The public comment period for this modification request started February 17, 2004 and ends on April 16, 2004. KDHE provided a handout from the *RCRA Public Participation Manual*, which outlined the time line for the approval of the Class 2 modification. At the conclusion of the public comment period, KDHE requests a letter from Koch detailing the activities conducted by Koch to fulfil requirements for a Class 2 modification. KDHE informed Koch that after the conclusion of the public comment period, the regulatory agencies have time to review the Class 1a and Class 2 modification request prior to making a decision. Issues relate to the financial assurance, Class 1a modification request, and the Part B Certification must resolved prior to KDHE's approval of the Class 2 request.

As a part of the Class 2 permit modification request, Koch proposed language in the Part II of the Permit to indicate the Part B permit application was subject to change and the September 2001 date specified in Part II of the permit does not reflect subsequent changes to the application. The intent of Koch's request was to ensure the language in Part II would indicate the approved Part B permit application, which may be modified during the term of the permit. Koch suggested deleting the date of the Part B permit application approval and inserting language to indicate the most current application.

At EPA's request, Koch provided an update on the progress of providing an alternative water supply for the Coker and Bogner families. Due to the health risk associated with the impacted groundwater, the residents are not using the groundwater for human consumption. Koch has met with the Dodge City water department to discuss connecting the two residents to the city water supply. A water line

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the city crosses the Coker property, allowing easy access to a water connection. Koch has presented Mr. Coker with the legal documents to initiate the process. Mr. Coker has not signed the documents to allow the work to commence. The initial plan for the Bogner residents was to install a well into the Dakota aquifer because the city had concerns regarding stagnant water in the line due to low volume of water usage by one residential home. After EPA expressed reservations about the potability of the water in the Dakota, Koch approached the city with a proposal to install a recirculation line to prevent stagnant water. After discussing the issue with the city, the recirculation line may not be necessary. The water line, approximately 1 ½ miles and containing 150 gallons, would supply 3 households. With an average daily usage of 250 gallons per household, stagnant water does not appear to be an issue. Koch will continue to provide updates as work progresses toward providing alternative water supplies for the residential homes.

After a break in the meeting, Koch acknowledged there has been a disconnect with regards to the cost estimate and financial assurance to this facility. Koch stated they would review KDHE's internal cost estimate and respond at a late date. To address issues with the Class 1a modification request, Koch suggested a face-to-face meeting with the appropriate technical people from Koch, KDHE, and EPA to discuss the application language. All parties agreed to meet during the afternoon on March 15, 2004, prior to the public meeting for the Class 2 permit modification request.

**Agenda**  
**for**  
**Friday, February 27, 2004, Meeting**  
**Between**  
**EPA, KDHE & Koch Nitrogen Company**  
**1:00 - 4:00 p.m.**  
**at**  
***KDHE North East District Office***  
***800 West 24<sup>th</sup> Street***  
***Lawrence, Kansas 66046-4417***

1. Introductions ..... ALL
2. Cost Estimate and Financial Assurance ..... KDHE
3. Class 1a Permit Modification, submitted by Koch December 31, 2003 ..... KDHE
4. Certification for Part B Permit Application ..... KDHE
5. Class 2 Permit Modification, submitted by Koch February 12, 2004 ..... KDHE
6. Proposed "Application" language in Part II ..... EPA
7. Quick Update on the Bogner's water issue & talks with City ..... EPA
8. Adjourn

**Attachment A**  
**KOCH NITROGEN COMPANY**  
 Closure, Post-Closure, and Corrective Action Cost Estimate  
 Dodge City Nitrogen Plant

TASK	COST	CLOSURE	POST-CLOSURE
<b>Groundwater Monitoring</b>			
Sample Collection (Labor)			
Quarterly (for 25 wells)	\$12,750		
Semi Annual (for 13 wells)	\$3,315		
Residential (10 wells)	\$1,700		\$17,765
Sample Analysis			
Quarterly Chrome/Nitrate (25 wells)	\$5,600		
Semi Annual Chrome/Nitrate (13 wells)	\$1,500		
Semi Annual VOC samples (7 wells)	\$3,600		
Residential (10 wells)	\$2,200		\$12,900
Sample Shipment	\$800		\$800
Semi-Annual Reporting	\$13,600		\$13,600
Well Maintenance			
Mowing	\$2,000		
Well Cap Replacement	\$940		
Maintenance and Equipment Replacement	\$2,000		
Monitoring Well Replacement	\$2,400		\$7,340
Water Level Measurement (quarterly)	\$4,080		\$4,080
Well Depth Measurement			
without pumps installed	\$1,275		
with pumps installed	\$1,020		\$2,295
Annual Groundwater Monitoring			\$58,780
30-YEAR GROUNDWATER MONITORING			<u>\$1,763,400</u>
<b>Remedial System</b>			
Recovery Well Operation (66 wells)			
Electricity Costs	\$26,040		
Maintenance (pump/well)	\$2,800		
Inspection Costs	\$4,420		
Recovery Well Replacement	\$2,400		
Pipeline maintenance	\$1,500		
Storage Tank Maintenance	\$2,000		
Storage Tank Inspection	\$2,400		
Sludge Disposal	\$450		\$42,010
Treatment (ElectroChemical Reduction Unit)			
Chemicals (Acid)	\$5,000		
Electricity Costs	\$3,000		
Plate Replacement	\$16,000		
Inspection Costs	\$4,420		
Operation and Maintenance Costs	\$2,040		
Semi-Annual Reporting	\$1,700		\$32,160
Pre-Disposal Pipeline			
Pipeline maintenance (pump,pH control system)	\$500		
Durco Filter	\$12,000		
Inspection Costs	\$4,420		
Storage Tank Replacement	\$1,000		\$17,920
Disposal Well Operation (2 ICDWs)			
Annual Fall-off Test	\$10,000		
Mechanical Integrity Test (MIT - Internal/External)	\$3,200		
Inspection Costs - Labor	\$31,025		
Operation Monitoring - Analytical	\$6,600		
Reporting	\$680		
Routine Maintenance	\$2,040		
Repermitng	\$3,000		
Workover (new injecting tubing)	\$15,000		\$71,545
Annual Remedial System Operation			\$163,635
30-YEAR REMEDIAL SYSTEM OPERATION			<u>\$4,909,050</u>
<b>Chrome Destruct Unit (Closure/Post-Closure)</b>			
Closure			
Estimate from Koch Nitrogen Company	\$114,000		
TOTAL CDU CLOSURE		<u>\$114,000</u>	
Post-Closure Monitoring			
Inspection Costs	\$170		
Reporting	\$500		
Maintenance	\$400		\$1,070
Annual Post-Closure Care			<u>\$1,070</u>
Post-Closure Certification (one time expense)	\$3,000		
30-YEAR CDU POST-CLOSURE CARE			<u>\$35,100</u>
<b>SUBTOTALS</b>		<u>\$114,000</u>	<u>\$6,707,550</u>
Contingency Cost (10%)	\$11,400		\$670,755
<b>TOTAL</b>		<u>\$125,400</u>	<u>\$7,378,305</u>

General SAP comments:

1. The term "reportedly" is used several times in the SAP document in reference to events that occurred during Farmland's ownership and operation of the facility. Remove the term "reportedly" as documentation can be found in KDHE files.
2. The phrase "appropriate wastewater system disposal points" is used several times in reference to disposal of purge water or decontamination water. General references to "appropriate wastewater system disposal points" is not acceptable. Specify on a map where purge water and decontamination water will be disposed.

Specific SAP Comments:

3. Section 1.1, Page 2: The first paragraph states that sampling of private wells near the facility was initiated in 1973. This information contrasts with KDHE's understanding that private well sampling was initiated in 1982. Verify which situation is accurate and modify the SAP accordingly.
4. Section ??, Page ?: Number of monitoring wells. Permit has 68 wells, Part B application has 62. Boring logs for recovery wells are not included.
5. Section 1.1, Page 2: In past conversations, Farmland Industries, Inc. indicated recovery system piping did not allow for the operation of those recovery wells directed to the plant while the plant was shut down. In contrast, the information provided in the SAP submitted by KNC states that "system valves and piping allow either disposal of the recovered ground water as wastewater in the deep underground injection wells or reuse of the groundwater as cooling water in the industrial process." Verify which situation is accurate and modify the SAP accordingly.
6. Section 2.1, Page 6: Discontinuation of private wells may be appropriate in the future, but will require a permit modification. Specify in this section that KNC will submit a request to modify the permit should KNC wish to change the list of wells.
7. Section 3.0, Page 8: The SAP must specify that quarterly sampling events will be completed within seven days instead of a two-week time period. Rephrase the first sentence of the second paragraph to reflect this requirement.
8. Section 3.1.3.2, Item 4, Bullet 1, Page 11: Specify that the wells will be redeveloped if 10% of the screened interval is occluded by silt.
9. Section 3.1.3.2, Item 8, Page 13 and Section 3.1.3.4, Page 15: Dissolved oxygen was removed from the list of purge parameters. During low-flow sampling, this parameter provides important information to confirm the completion of well purging. Include dissolved oxygen to the list of purge parameters. Koch may wish to evaluate the adequacy of the equipment if personnel has difficulty achieving stabilized dissolved oxygen readings in the field.

10. Section 3.1.4, Item 7, Page 16: Though Koch may sample a nearby well as a replacement for an inoperable well, KDHE will require the designated well be sampled within seven days of initiation of the sampling event. Remove the reference to well substitution.
11. Section 3.2, Page 17: The specified sampling schedule is not designed to be flexible. Remove the word "typical" in reference to the sampling calendar.
12. Section 3.2.2, Page 18: Rephrase the last sentence of the second paragraph to state that KNC will submit a request to modify the permit should KNC wish to reduce sampling frequency on any monitoring well.
13. Section 3.3.3, Page 21, Page 21: The SAP is designed to specify groundwater sampling procedures. However, Section 3.3.3. includes guidelines for collection of soil samples. Remove references to the collection of soil samples. Additionally, remove the all references to the collection of "investigative" samples. The SAP is designed for monitoring and not for the purpose of investigation.

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agency may initiate a permit modification under 40 CFR 270.41. This section of the regulations identifies three causes for which the regulatory agency may require a permit modification: (1) alterations or additions to the permitted facility or activity; (2) new information received by the regulatory agency; or (3) new standards, regulations, or judicial decisions affecting the human health or environmental basis of a facility permit. In addition, the regulatory agency may modify a compliance schedule for corrective action in the permit. Modifications initiated by the regulatory agency are subject to the full 40 CFR Part 124 permitting requirements, as described earlier in this chapter. Specifically, the permitting agency must

- Issue public notice of the draft modification;
- Prepare a fact sheet or statement of basis;
- Announce a 45-day public comment period;
- Hold a public hearing, if requested, with 30-day advance notice;
- Issue notice of the final modification decision; and
- Consider and respond to all significant comments.

More often, however, the facility owner or operator requests a permit modification to improve facility operations or make changes in response to new standards. Facility-initiated modifications are categorized under 40 CFR 270.42 as Class 1, 2, or 3 according to how substantively they change the original permit. Class 1 modifications require the least public involvement; Class 3, the most. Like agency-initiated modifications, a decision to grant or deny a Class 3 permit modification request is subject to the public participation procedures of 40 CFR Part 124.

Since facility owners or operators initiate modifications more often than the regulatory agency, the remainder of this chapter lays out the requirements for facility-initiated modifications. The permitting agency is also encouraged to follow these public participation activities, even if not required under an agency-initiated modification. Appendix L consists of an EPA fact sheet entitled "Modifying RCRA Permits," which provides more detail on permit modifications and associated public participation activities. Exhibit 3-1 at the end of this Chapter presents an easy-to-read synopsis of modification requirements and timelines.

### **When the Facility Owner or Operator Initiates a Modification**

When a facility owner or operator wants to change a RCRA permit, he or she informs the regulatory agency and interested members of the public, either before making the change if it is substantive (Class 2 or 3), or soon after (with a few exceptions), if the change is minor (Class 1). In any case,

Class 2 modifications require a number of activities, including a public notice, comment period, and a public meeting.

segregating waste streams, modifying maintenance procedures, or installing closed loop recycling).

Class 2 modifications require the facility to submit a modification request and supporting documentation to the regulatory agency. In addition, *the facility must notify the people on its mailing list about the modification request and publish this notice in a major local newspaper of general circulation.* The facility must publish the notice and mail the letter within seven days before or after it submits the request to the regulatory agency. The newspaper notice marks the beginning of a **60-day public comment period** and announces the time and place of a public meeting. In addition, the notice must identify a contact person for both the facility and the regulatory agency and must contain the statement, "The permittee's compliance history during the life of the permit being modified is available from the regulatory agency contact person." The notice should state that public comments must be submitted to the permitting agency's contact person.

The public comment period provides an opportunity for the public to review the modification request at the same time as the permitting agency. The facility must place the request for modification and supporting documentation in a location accessible to the public in the vicinity of the facility (see guidance on **information repositories** in Chapter 5 for suitable locations). *The facility must conduct the public meeting no earlier than 15 days after the start of the 60-day comment period and no later than 15 days before it ends.* The meeting, which tends to be less formal than a public hearing held by the regulatory agency in the draft permit stage, provides for an exchange of views between the public and the owner or operator and a chance for them to resolve conflicts concerning the permit modification. The meeting must be held, to the extent practicable, in the vicinity of the permitted facility (*the guidance on the pre-application meeting, earlier in this chapter, is applicable to this public meeting*).

The requirements for this meeting, like the pre-application meeting, are flexible. The facility is not required to provide an official transcript of the meeting, though we encourage owners/operators to consult the community and find out if this information would be useful. The permitting agency is not required to attend the meeting or respond to comments made there; however, EPA recommends that agency staff attend the meeting to clarify questions about the permitting process and to find out about any public concerns and how the owner or operator plans to address them.

*The permitting agency is required to consider all written comments submitted during the public comment period and must respond in writing to all significant comments in its decision.* EPA expects that the meeting will

without prior public notice and comment, to conduct certain activities necessary to respond promptly to changing conditions. *The facility must notify all persons on the facility mailing list about the temporary authorization request within seven days of the request.* Temporary authorizations are useful for allowing a facility owner or operator to perform a one-time or short-term activity for which the full permit modification process is inappropriate, or for allowing a facility owner or operator to initiate a necessary activity while his or her permit modification is undergoing the Class 2 review process. A temporary authorization is valid for up to 180 days, and the permitting agency may extend the authorization for an additional 180 days if the facility initiates the appropriate Class 2 modification process for the covered activity. In addition, any extension of the activity approved in the temporary authorization must take place under Class 2 procedures.

Class 3 modifications are more likely than other modifications to raise concern.

### Class 3 Modifications

Class 3 modifications address changes that substantially alter a facility or its operations. For example, a request to manage new wastes that require different management practices is a Class 3 modification.

Class 3 modifications usually involve changes that are broader or more detailed than Class 1 or 2 modifications; they are also more likely to raise concern. Though the Class 3 modifications process allows significant opportunity for public participation, additional activities may be helpful in some situations. Permit holders, regulators, and community interest groups may want to consider taking steps to encourage earlier participation. Facilities, in particular, should recognize that some Class 3 modifications will significantly alter their operations. In such cases, and in all cases where public interest may be high, *permittees should consider providing information and public participation activities prior to submitting the modification request.*

When concern is high, it is critical for the facility to consult with the agency to make sure that the facility knows how to conduct the required public participation activities. In some cases, the permitting agency might encourage the facility to go beyond the requirements and hold workshops and publish fact sheets to explain the proposed change. Public participation activities held by the agency or public interest groups can supplement the regulatory requirements.

As with Class 2 modifications, Class 3 modifications require the facility to submit a modification request and supporting documentation to the permitting agency, and *notify persons on the facility mailing list about the*

- Issuance of the notice of decision to grant or deny the permit modification; and
- Consideration and response to all significant written and oral comments received during the 45-day public comment period.

With Class 3 permit modifications, the public has 60 days to comment on the facility's requested modification and another 45 days to comment on the agency's draft permit modification or proposed notice of intent to deny the modification. And, in addition to the public meeting held by the facility owner or operator, the public may also request a public hearing with the agency.

The permitting agency must notify persons on the facility mailing list within 10 days of any decision to grant or deny a Class 3 modification request. As with Class 2 modifications, the regulatory agency may grant a facility a temporary authorization to perform certain activities requested in the Class 3 modification for up to 180 days without prior public notice and comment. For example, the agency may grant temporary authorizations to ensure that corrective action and closure activities can be undertaken quickly and that sudden changes in operations not covered under a facility's permit can be addressed promptly. Activities performed under a temporary authorization must comply with all applicable federal and state hazardous waste management regulations. *The facility must issue a public notice to all persons on the facility mailing list within seven days of submitting the temporary authorization request.* The agency may grant a temporary authorization without notifying the public. The permitting agency may reissue a temporary authorization for an additional 180 days provided that the facility has initiated the appropriate Class 3 modification process for the activity covered in the temporary authorization and the agency determines that the extension is warranted to allow the facility to continue the activity while Class 3 procedures are completed. See Appendix L for an EPA fact sheet on modifying RCRA permits.

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## Public Participation in Closure and Post- Closure

Facilities may discontinue operations at one or more units for a number of reasons. For example, units may have reached capacity, the facility owner or operator may no longer wish to accept wastes, or the facility may have lost interim status and be required to close by the permitting agency. During closure, facility owners or operators complete treatment, storage, and disposal operations; apply final covers or caps to landfills; and dispose of or decontaminate equipment, structures, and soil. Post-closure, which applies only to land disposal facilities that do not "clean close" (i.e., remove all contaminants from the unit), is normally a 30-year period after closure during which owners or operators of disposal facilities conduct monitoring and maintenance activities to preserve the integrity of the disposal system.

**Sign In Sheet**  
**FOR**  
**EPA/KDHE/KOCH MEETING**  
**FEBRUARY 27, 2004**  
**1:00-4:00 P.M.**

Name	Company	Phone Number	E-Mail Address
Andrew R. Stone	US EPA Region 7	(913) 551-7662	stone.andrew@epa.gov
MOSTAFA KAMAL	KDHE/BWM	(785) 296-1609	mkamal@kdhe.state.ks.us
Everett Spellman	KDHE/Blum	785-296-1616	espellma@kdhe.state.ks.us
Bill Anderson	KDHE - Legal	785-296-5334	banderso@kdhe.state.ks.us
Gary LeRock	Koch Nitrogen	620 <del>227</del> -8631 ext 300	lerockg@Kochind.com
Laurie Sahatjian	KIF	316-828-8499	sahatjil@kochind.com
Stephen Richmond	Bowditch Dewey	508-416-2410	srichmond@bowditch.com

**Sign In Sheet**  
**FOR**  
**EPA/KDHE/KOCH MEETING**  
**FEBRUARY 27, 2004**  
**1:00-4:00 P.M.**

Name	Company	Phone Number	E-Mail Address
<i>Brian R. Moore</i>	<i>Koch Nitrogen Company</i>	<i>(620) 227-8631</i>	<i>mooreb@kochind.com</i>
<i>Katherine Dunn</i>	<i>KDHE / BLM</i>	<i>(785) 296-6561</i>	<i>kdunn@kdh.state.ks.us</i>
<i>Alex Chen</i>	<i>EPA Region 7 (Office of Regional Counsel)</i>	<i>(913) 551-7962</i>	<i>chen.alex@epa.gov</i>
<i>Jody Hudson</i>	<i>EPA - R-7</i>	<i>913-551-7179</i>	<i>hudson.jody@epa.gov</i>