



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 7

11201 Renner Boulevard
Lenexa, Kansas 66219

NOV 26 2012

VIA UPS NEXT DAY AIR
TRACKING No.: 1Z W0R 377 01 9784 7280
AND E-MAIL

Ms. Laurie C. Sahatjian
Associate General Counsel
Environmental Health & Safety
Koch Industries, Inc.
4111 East 37th Street North
Wichita, Kansas 67220

RE: Request for Class 1 Permit Modification
Koch Nitrogen Company – Dodge City, Kansas
KSD 044625010

Dear Ms. Sahatjian:

The U.S. Environmental Protection Agency Region 7 (“EPA”) has reviewed your November 15, 2012 letter requesting a modification to Koch Nitrogen Company, LLC’s (“KNCLLC”) current RCRA Hazardous Waste Management Permit (Part II) (“Permit”), which was originally issued on March 21, 2003. The reason for this permit modification request was KNCLLC’s corporate restructuring on November 30, 2012 by merging the existing company into a new LLC in a different State. The desired restructuring will be to change the State in which KNCLLC is restructured from a Delaware LLC to a Kansas LLC.

The regulations at 40 C.F.R. § 270.40(b) state, “[c]hanges in the ownership or operational control of a facility may be made as a Class 1 modification with prior written approval” of EPA. They also require that the new owner or operator submit “a revised permit application no later than 90 days prior to the scheduled change.” EPA was not made aware of the impending merger until late in October, 2012; therefore, this notice requirement was not met.

In 2008, KNCLLC requested a similar permit modification without giving the required ninety (90) day notice as required in the regulations. Once again, KNC is asking for an expedited permit modification without giving the required ninety (90) day notice. Future requests for permit modifications by KNCLLC must be made within the required ninety (90) day notice period.

In this instance, given the factual circumstances of this request, I am hereby approving this particular permit modification request. In doing so, I considered the following:



1. KNCLLC's written statement to EPA that the continuing company will be the successor by law to all liabilities of the existing company, and that KNCLLC can confirm in writing that it will accept all liability related to the Dodge City facility and the RCRA Permit. Please provide written confirmation that this continuing company will accept all liability related to the Dodge City facility and the RCRA Permit by November 30, 2012.

2. KNCLLC's written statement to EPA that the merger will not result in any operational or ownership changes at the facility. It is EPA's understanding that the parent company and owner of KNCLLC will remain the same (i.e., Koch Fertilizer, LLC as reorganized in 2009 from the former Koch Mineral Services, LLC), and that the current officers and facility employees will also remain the same.

3. It is EPA's understanding that KNCLLC has made a similar Class I permit modification request to the Kansas Department of Health and Environment (KDHE) for Part I of the Permit, and KDHE will approve this request by November 30, 2012, provided KNCLLC provides KDHE with the documents requested in its November 16, 2012 e-mail from Mostafa Kamal to Jessie Merrigan of Lathrop & Gage.

The EPA will also agree to the schedule as proposed by KDHE.

As you know, as a result of this permit modification, KNCLLC must comply with several other requirements in 40 C.F.R. § 270.40(b) and 270.42(a). In particular, KNCLLC must demonstrate compliance with the financial assurance requirements of 40 C.F.R. Part 264, subpart H to EPA, no later than six months from the date of the change of ownership or operational control of the facility. In addition, KNCLLC must send notice of this modification, within 90 days after EPA approves the modification request, to all persons on the facility mailing list and the appropriate units of State and local government. Please provide EPA with a copy of all documentation that KDHE requested in its November 16 e-mail and the written confirmations requested by EPA in paragraph 1. above by November 30, 2012.

In closing, in accordance with the scheduled merger date of November 30, 2012, the Permittee for the above-referenced permit is listed, and shall remain as Koch Nitrogen Company, LLC. A letter amendment noting the change from a Delaware LLC to a Kansas LLC will be appended to the existing permit. If you have any questions about this letter, please contact Belinda Holmes in EPA's Office of Regional Counsel, at (913) 551-7714.

Sincerely,



Becky Weber

Director

Air and Waste Management Division

cc: Jessica E. Merrigan, Esq.
Mostafa Kamal, KDHE