



## INDIANA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

*We Protect Hoosiers and Our Environment.*

100 N. Senate Avenue • Indianapolis, IN 46204

(800) 451-6027 • (317) 232-8603 • [www.idem.IN.gov](http://www.idem.IN.gov)

Michael R. Pence  
Governor

Carol S. Comer  
Commissioner

September 25, 2015

Mr. Rod Oglesby  
Midwest Fertilizer Company LLC  
101 West Ohio Street, Suite 1450  
Indianapolis, IN 46204

Re: Response to Review Request No. 129-36302-00059:  
Permit status evaluation – PSD/New Source  
Construction and Part 70 Permit (T129-33576-00059)

Dear Mr. Oglesby:

On September 14, 2015, Midwest Fertilizer Company LLC submitted a letter requesting an approval from the Office of Air Quality (OAQ) for an eighteen (18) month extension to its construction deadline stated in PSD/New Source Construction and Part 70 Operating Permit No. 129-33576-00059, issued on June 4, 2014.

Pursuant to 326 IAC 2-2-8(a)(1), the approval to construct shall become invalid if construction is not commenced within eighteen (18) months after receipt of the approval, if construction is discontinued for a period of eighteen months (18) months or more, or if construction is not completed within a reasonable time. Pursuant to 326 IAC 2-2-8(a)(1), IDEM may extend this time frame to commence construction upon a satisfactory showing that an extension is justified. Midwest Fertilizer Company LLC submitted a request for an extension on September 14, 2015, along with its proposed justification.

In the September 14, 2015, submission, the source provided detailed information concerning the basis for the extension request, including the reasons why Midwest Fertilizer Company LLC has been unable to commence construction and why the source believed that an extension is necessary. The September 14, 2015 extension request and supporting documentation is attached to this determination as Attachment A.

IDEM OAQ has considered the information provided by Midwest Fertilizer Company LLC for the extension request. After careful evaluation of all the information presented in Attachment A, IDEM has determined that a satisfactory showing has been made to justify an additional eighteen (18) month extension for the project without the need for substantive changes to the existing construction approval. Therefore, the deadline for the commencing construction under the PSD permit for Midwest Fertilizer Company LLC is hereby extended until June 4, 2017.

On September 14, 2015, the source notified OAQ that construction had not begun for the entire stationary nitrogen fertilizer manufacturing facility and requested that the commencement of construction time period for these units be extended to June 4, 2017.

Accordingly, to incorporate this determination into Midwest Fertilizer Company LLC's existing PSD/New Source Construction and Part 70 Operating Permit No. T129-33576-00059, Condition B.2-Revocation of Permit shall be revised in a separate administrative amendment.

All other conditions of the permit shall remain unchanged and in effect. Please attach a copy of this letter to the front of the original permit.



A copy of the permit is available on the Internet at: <http://www.in.gov/ai/appfiles/idem-caats/>. For additional information about air permits and how the public and interested parties can participate, refer to the IDEM's Guide for Citizen Participation and Permit Guide on the Internet at: <http://www.in.gov/idem/6900.htm>.

This decision is subject to the Indiana Administrative Orders and Procedures Act - IC 4-21.5-3-5. If you have any questions on this matter, please contact Deena Patton, at (800) 451-6027, press 0 and ask for Deena Patton or extension 4-5400, or dial (317) 234-5400.

Sincerely,



Matthew Stuckey, Branch Chief  
Permits Branch  
Office of Air Quality

MS/dp

cc: File - Posey County  
U.S. EPA, Region V  
Posey County Health Department  
Compliance and Enforcement Branch  
IDEM Southwest Regional Office

Attachment A

Midwest Fertilizer Company, LLC

Justification for Administrative Amendment  
to Provide an 18-month Extension Period  
to Conform with US EPA Guidance

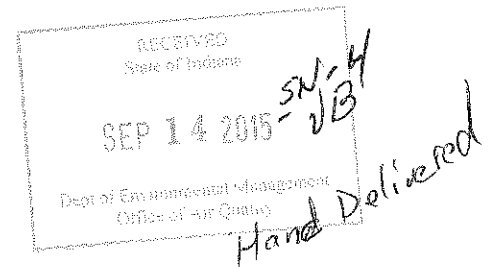
January 2014

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September 9, 2015

Mr. Matt Stuckey, Chief  
 Indiana Department of Environmental Management  
 Permits Branch, Office of Air Quality  
 100 North Senate Avenue  
 MC61-53 IGCN1003  
 Indianapolis, Indiana 46204-2251



Re: Request for Extension of Time to Commence Construction  
 Midwest Fertilizer Company LLC  
 Permit No. T 129-33576-00059

Dear Mr. Stuckey:

Midwest Fertilizer Corporation (MFC) received a PSD/New Source Construction and Title V Operating Permit on June 4, 2014 (T-129-33576-00059). Condition B.2 of that permit stated that *"this permit to construct shall expire if construction is not commenced within eighteen (18) months after receipt of this approval or if construction is discontinued for a period of eighteen (18) months or more"*. The 18 month period will expire on December 4, 2015 and MFC does not now believe it will be able to "commence construction" by that date. Accordingly, MFC is requesting that IDEM grant an extension of 18 months and issue an Administrative Amendment to modify Condition B.2 to read as follows:

*"Pursuant to 326 IAC 2-2-8(a)(1) this permit to construct shall expire if construction is not commenced on or before June 4, 2017 or if construction is discontinued for a period of eighteen (18) months or more."*

We are also requesting that the company name on the permit be changed to "Midwest Fertilizer Company LLC".

The following discussion is provided to support our request for this extension.

### Regulatory Background

Indiana is authorized to issue construction permits such as the one issued to MFC under the Prevention of Significant Deterioration (PSD) pre-construction permitting program based on approval of 326 IAC 2-2 into to Indiana State Implementation Plan (SIP). Indiana's PSD rules are patterned after the federal PSD rules found at 40 CFR 52.21. The requirement to "commence construction" within 18 months of receipt of the PSD permit is found at 326 IAC 2-2-8(a)(1) as reference in Permit Condition B.2. 326 IAC 2-2-8(a) also provides that: *"The commissioner may extend the eighteen (18) month period upon a satisfactory showing that an extension is justified. This provision does not apply to the time period between construction of the approved phases of a phased construction project. Each phase must commence construction within eighteen (18) months of the projected and approved commencement date."* 326 IAC 2-2-1 defines "commence" to mean... *"that the owner or operator has all necessary preconstruction approvals or permits and either has: 1) begun, or caused to begin, a continuous program of actual on-site construction of the source to be completed within*

*a reasonable time; or 2) entered into binding agreements or contractual obligations, which cannot be canceled or modified without substantial loss to the owner or operator, to undertake a program of actual construction of the source to be completed within a reasonable time.*

Based on Indiana's PSD regulations, IDEM clearly has the authority to grant such extensions, although the regulations themselves do not provide explicit criteria to define what "a satisfactory showing that an extension is justified" means. However, specific guidance was issued by EPA on January 31, 2014<sup>1</sup> and it is our understanding that IDEM has used this guidance as the basis for considering and approving other similar extension requests<sup>2</sup>. The guidance as it relates to first time extension requests notes that there is relatively little benefit for a rigorous extension review in light of its high cost and that a first time extension should generally be granted without review or reassessment of the main elements of the PSD requirements such as the Best Available Control Technology (BACT) and air quality impact assessments.

### **Why construction cannot begin within the initial 18 month period.**

EPA's January 31, 2014 guidance notes that "a permittee's first PSD permit extension request should include a detailed justification of why the source cannot commence construction within the initial 18-month deadline. For example, relevant factors for this justification could include ongoing litigation over the PSD permit, natural disasters that directly affect the facility, significant or unusual economic impediments (including inability to secure financial resources necessary to commence construction) and/or delays in obtaining other required permits."

MFC's proposed ammonia fertilizer plant is a fully integrated, state-of-the-art, nitrogen fertilizer manufacturing facility and upon commencement of commercial operation, will produce a combination of nitrogen fertilizers, including ammonia, urea, urea ammonium nitrate ("UAN") and diesel exhaust fluid ("DEF"), a diesel engine additive that reduces exhaust emissions. The economic impact of the construction of the \$2.6 billion plant will require 2000 highly skilled staff, and construction will take over three and a half years. Subsequently the operational phase will involve around 200 staff and will have a long-term socio-economic impact with the plant generating more than \$500 million in economic output (i.e. sales) on an annual basis.

In line with the Financing covenants, the sponsors for the project have to meet significant pre-requisites and are incurring substantial initial development costs for time consumptive activities including: securing financing; securing land; obtaining a wide range of permits; and negotiating and finalizing a Lump Sum Turnkey (LSTK) EPC contract etc. In the US an LSTK fixed price contract for such a large project is rare and therefore the time for finalizing such a contract is quite protracted and complex.

Over the past year or so, MFC and its sponsor's engaged in LSTK contract negotiations with a prospective EPC contractor, but the contract negotiations eventually failed causing significant delay in the project including the ability to "commence construction". MFC is now negotiating the LSTK EPC Contract with another well-known and highly reputed Contractor. While we would note that EPC negotiations are a mix of technical, financial, commercial and legal terms and requires extensive time and effort, we believe we will be able to conclude these most recent negotiations in the next several months allowing us to enter into a binding EPC contract thereby "commencing" construction. In the unlikely but possible event that MFC is required to engage with other contractors we believe that the requested 18-month extension will provide for sufficient time to finalize an EPC Contract and commence construction of the plant.

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<sup>1</sup> "Guidance on Extension of Prevention of Significant Deterioration (PSD) Permits under 40 CFR 52.21(r) (2)", Stephen D. Page, Director, Office of Air Quality Planning and Standards, January 31, 2014.

<sup>2</sup> Similar first time Extension Requests were approved for: Indiana Gasification on June 26, 2014; St. Joseph Energy Center on April 1, 2014; and Ohio Valley Resources on March 3, 2015.

## **Technology Requirements of the Permit.**

EPA's guidance notes that a "review or redo of substantive permit analyses such as BACT, air quality impacts analysis (AQIA) or PSD increment consumption analyses should generally not be necessary for a first permit extension request". The guidance further notes that "EPA's recent experience is that improvements in pollution control technology for criteria pollutants have not been occurring as rapidly as was anticipated at the time of the earlier draft EPA policies on permit extensions. Thus, the time and resource burdens involved in reviewing an earlier permitting decision after the initial 18 months do not produce as much value in this context".

MFC concurs with this guidance in that we do not believe that there has been a change in the control technologies available for emission sources similar to those included in the current permit. We are unaware of any similar sources permitted after our project which would identify alternate more effective control technologies or more stringent emission limitations.

## **Air Quality Impacts and "Grandfathering"**

MFC would note that the National Ambient Air Quality Standards (NAAQS) and PSD increments in place at the time our permit was issued have not changed nor did MFC claim a "grandfathered" status as it related to new ambient air quality standards such as the annual PM<sub>2.5</sub> standard. As such the air quality impact analysis is still equally valid for the project. We would also note that the Posey County site remains an area classified as either "attainment" or "unclassifiable" or all of the NAAQS.

## **Procedural Requirements**

EPA's January 31, 2014 guidance notes that "Public notice and comment is not necessary for permit extension actions that would simply extend the deadline for commencing construction without reconsideration or amendment of the substantive conditions of the permit". As such we are requesting that IDEM review and approve our request for an extension and publish its approval on your website consistent with your practice for other similar time extensions. It is also our understanding that modification of Condition B.2 as noted above will require an Administrative Amendment to our permit and we are requesting that such an amendment also be issued.

We have attached the signed Cover form for this request and a completed and current GSD-01 form. If you have any questions regarding this extension request please contact Rod Oglesby at 970.305.7850 or Tom Rarick with ERM at 317.706.2003.

Sincerely,



Michael Chorlton, CEO  
Midwest Fertilizer Company LLC

# Mail Code 61-53

IDEM Staff	LPOGOST 9/25/2015 Midwest Fertilizer Company LLC 129 - 36302 - 00059 /final)		Type of Mail:  <b>CERTIFICATE OF MAILING ONLY</b>	AFFIX STAMP HERE IF USED AS CERTIFICATE OF MAILING
Name and address of Sender		Indiana Department of Environmental Management Office of Air Quality – Permits Branch 100 N. Senate Indianapolis, IN 46204		

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1		Rob Oglesby Midwest Fertilizer Company LLC 101 W Ohio St Suite 1450 Indianapolis IN 46204 (Source CAATS)									
2		Michael Chorlton CEO Midwest Fertilizer Company LLC 101 W Ohio St Suite 1450 Indianapolis IN 46204 (RO CAATS)									
3		Posey County Commissioners County Courthouse, 126 E. 3rd Street Mount Vernon IN 47620 (Local Official)									
4		Posey County Health Department 126 E. 3rd St, Coliseum Bldg Mount Vernon IN 47620-1811 (Health Department)									
5		Mount Vernon City Council and Mayors Office 520 Main Street Mount Vernon IN 47620 (Local Official)									
6		Tom Rarick Environmental Resources Management (ERM) 8425 Woodfield Crossing Blvd, Suite 560-W Indianapolis IN 46240 (Consultant)									
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