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ENVIR. APPEALS BOARD

In re: PPG Industries Ohio, Inc.)
PPG Industries, Inc.)
Permit No. RCRA OHD 004 304 689)

PETITION FOR REVIEW

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TABLE OF CONTENTS

Table of Authorities	i
Introduction, Contested Permit Conditions and Issues Presented for Review	3
Factual and Statutory Background	9
Threshold Procedural Requirements	11
Argument	12
Conclusion	21
List of Exhibits	22

TABLE OF AUTHORITIES

FEDERAL REGULATIONS

40 C.F.R. § 124.19(a).....3, 10, 11

40 C.F.R. §§264.106113

40 C.F.R. §§264.106213

40 C.F.R. §264.10643, 13

40 C.F.R. §264.1064(m)3, 4, 12, 13

40 C.F.R. §264.10845, 15

40 C.F.R. §264.1084(c).....4, 5, 14, 15

40 C.F.R. §264.1(g)(8).....5, 12, 15, 16

40 C.F.R. §264.1(g)(8)(ii).....16

40 C.F.R. §265.108719

40 C.F.R. §265.1(c)(11).....5, 12, 15

40 C.F.R. §2706

40 C.F.R. §270.164, 14

40 C.F.R. §270.25 (Subpart BB).....5, 14

40 C.F.R. §270.27 (Subpart CC).....5, 14

40 C.F.R. §270.30(e).....17

40 C.F.R. §270.32(b)(2).....16, 17, 18

40 C.F.R. §270.32(e).....18

40 CFR Parts 60, 61, or 63.....3, 12

40 CFR Part 264.....3, 5, 8, 9, 12, 13, 15,
16

40 CFR Part 264 Subpart BB.....3, 4, 5, 12, 14

40 CFR Part 264 Subparts BB (equipment) and CC (tanks)9

40 CFR Part 264 Subpart CC.....3, 4, 5, 8, 14

40 CFR Part 264 Subparts C and D16

40 CFR Part 265.....5

42 USC §6925(c)(3).....6, 12, 16, 17

71 Fed. Reg. 16862, et seq (April 4, 2006).....3, 13, 22

71 Fed. Reg. 16877 et. seq (April 4, 2006).....3, 13, 22

Laws Letter7, 17, 19

FEDERAL STATUTES

Resource Conservation and Recovery Act of 1976, and the Hazardous and Solid Waste Amendments (HSWA) of 1984, 42 U.S.C. §6901, *et seq*9

Section 3005(c)(3), of the Resource Conservation and Recovery Act of 1976, and the Hazardous and Solid Waste Amendments (HSWA) of 1984, 42 U.S.C. §6925(c)(3)6, 12, 16, 17

Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, and the Hazardous and Solid Waste Amendments (HSWA) of 1984, 42 USC §6901, et. seq. (“RCRA”).....9

MISCELLANEOUS AUTHORITY

See, Correspondence from Elliot P. Laws, Assistant Administrator to The Honorable Davis M. McIntosh, May 23, 1996, pg. 4 (U.S. EPA RCRA Database, Doc. ID 9498, 1996(06), RO 14041 (hereinafter “Laws Letter”) (Attachment E)7

See, Ltr. from Mr. Peter Guerrero, Special Assistant to the Division Director, U.S. EPA, to Mr. Timothy Taylor, Wang Laboratories, Inc., September 6, 1984 (RCRA Database Doc. No. PPC 9471.1984(03), RO#12298) (Attachment J)16

I. INTRODUCTION, CONTESTED PERMIT CONDITIONS AND ISSUES PRESENTED FOR REVIEW

Pursuant to 40 C.F.R. § 124.19(a), PPG Industries Ohio, Inc. and PPG Industries, Inc. (collectively "Petitioners" or " PPG") petition for review of the conditions of Federal RCRA Permit No. OHD 004-304-689 ("the Permit")(Attachment A), which was issued to PPG on April 5, 2007 by the United States Environmental Protection Agency, Region 5. The Permit covers PPG's facility located at 559 Pittsburgh Road, Circleville, Ohio and specifically addresses only air emission standards for equipment leaks (40 CFR Part 264, Subpart BB) and tanks and containers (40 CFR Part 264, Subpart CC). PPG contends that certain Permit conditions are based either on clearly erroneous findings of fact and conclusions of law or which implicate important policy decisions made by U.S. EPA that the Environmental Appeals Board ("Board") should review. Specifically, PPG challenges the following conditions in the Permit:

- (1) PPG contests the Requirement that it must submit an annual certification to the Director indicating PPG's election for compliance with 40 CFR Part 264, Subpart BB. The Permit on page 11 of 24, in the introductory language to Section III of the Permit, requires PPG to submit an annual certification of the election made by PPG for demonstrating compliance with 40 CFR Part 264, Subpart BB. Pursuant to 40 CFR §264.1064(m), PPG is required to demonstrate compliance with Subpart BB either through maintaining documentation as required by 40 CFR §264.1064 or by maintaining the applicable documentation required under 40 CFR Parts 60, 61, or 63. Nowhere in the rule is PPG required to provide an annual certification of this election to Region V. In fact, the rule only requires PPG to maintain documentation of this election with the operating record. 40 CFR §264.1064(m). Further, EPA published a final rule on April 4, 2006 as part of its Burden Reduction Initiative. *See*, 71 Fed. Reg. 16862, et seq. (April 4, 2006)

(Attachment B). In that rule, EPA eliminated a number of notification requirements in Subpart BB relating to the implementation of alternative work practices. It is wholly inconsistent with this approach for Region V to add notification requirements that are not even in the Subpart BB regulations, so PPG requested that this requirement be removed from the draft permit. Region V's response to PPG's request to remove this requirement indicates that the agency has misinterpreted the language of 40 CFR §264.1064(m) by adding a requirement for an affirmative certification on an annual basis. *See, Response to Comments Regarding The Federal Resource Conservation and Recovery Act (RCRA) Permits to be Issued to PPG Industries Ohio, Inc. (Owner & Operator) and PPG Industries, Inc. (Co-Operator) Circleville, Ohio, OHD 004 304 689* (hereinafter "Response to Comments"), pgs. 1-2 (Attachment C). The Region's response to PPG's request to remove this requirement from the Draft Permit is either an abuse of discretion or based on an erroneous conclusion of law.

(2) Section IV.C.1.c – Hazardous Waste Storage Tanks. The agency has included a requirement in this section for the submission of revised piping and instrumentation diagrams ("P&IDs") whenever PPG is required to file a permit modification for changes in the operation of a tank that is required to meet tank Level 1 standards specified under 40 CFR §264.1084(c). *See, Section IV.C.1.c.* In the Response to Comments, the agency references the specific requirements for a Part B permit application found at 40 CFR §270.16. This is the incorrect citation for the documentation that PPG is required to submit to U.S. EPA as part of the federal RCRA permit. As the Permit specifically states, "...this permit addresses: (1) air emission standards for equipment leaks (40 CFR Part 264, Subpart BB), tanks and containers (40 CFR Part 264, Subpart CC)..." The Permit, pg. ii. Consequently, the applicable Part B permit

documentation requirements are found at 40 CFR §270.25 (Subpart BB) and 40 CFR §270.27 (Subpart CC). Neither of these regulations require the submission of P&ID documentation. Although there are other aspects of the facility's RCRA permit that are subject to the various documentation requirements, all of those applicable sections of the RCRA permit are delegated to Ohio EPA. The inclusion of this condition in the Permit is therefore based either upon an abuse of discretion or an erroneous conclusion of law and Region V has no legal authority to require the P&IDs.

(3) Section IV.C. -Tanks. Throughout this section, Region V imposes numerous conditions on the hazardous waste storage tanks at PPG's Circleville Facility. A review of the table found at the end of Section IV.C.1. shows that Region V is attempting to regulate the two emergency over-flow tanks located at the Facility as Level 2 tanks under 40 CFR §264.1084. The two emergency over-flow tanks in question, however, are exempt from regulation under 40 CFR §264.1(g)(8) and 40 CFR §265.1(c)(11). These tanks are used solely to respond to emergencies at the Facility that may result in a release or threatened release of hazardous waste. The emergency tanks are therefore excluded from regulation under 40 CFR Part 264 and 40 CFR Part 265. 40 CFR §264.1(g)(8), 40 CFR §265.1(c)(11). To the extent Region V is attempting to regulate these tanks because the agency has concluded that they are not emergency tanks, the conditions are based upon an erroneous factual conclusion. The agency lacks the legal authority to regulate these tanks under 40 CFR Parts 264 and 265 and reference to the emergency tanks in the permit is inappropriate. Due to the lack of authority to regulate these emergency over-flow tanks and the complex and overlapping requirements in Section IV.C.1, PPG is requesting review of all of the provisions in Section IV.C.1.

It should also be noted that Ohio EPA agrees with PPG that these tanks are unregulated emergency over-flow tanks and the tanks are not included in the Ohio RCRA permit covering the balance of the RCRA permit for the Circleville Facility. *See*, Ohio Hazardous Waste Permit Renewal, PPG Industries Ohio, Inc., U.S. EPA ID No.: OHD 004 304 689, Ohio ID No: 01-65-0641 (December 29, 2006) (hereinafter "Ohio RCRA Permit") (Attachment D).

(4) Section IV.C.2.b Requirements for Level 2 Tanks, temperature and pressure monitoring. There is no requirement in the regulations for the monitoring imposed by the Region in this section. It appears that the Region is justifying the proposed condition on general regulatory requirements found in 40 CFR §270 related to Part B Permit Applications and the general omnibus authority found in Section 3005(c)(3), of the Resource Conservation and Recovery Act of 1976, and the Hazardous and Solid Waste Amendments (HSWA) of 1984, 42 U.S.C. §6925(c)(3). Invoking the omnibus authority to justify this operating condition is contrary to the established policy of the agency with respect to the use of the omnibus authority and is not sufficiently substantiated in the Response to Comments. Before invoking the omnibus authority to impose a term or condition not otherwise found in the regulations, the permit writer must fully justify how the proposed term or condition ensures greater protections than those afforded by the regulations. *See, Correspondence from Elliot P. Laws, Assistant Administrator to The Honorable David M. McIntosh, May 23, 2996, pg. 4 (U.S. EPA RCRA Database, Doc. ID 9498.1996(06), RO 14041) (hereinafter "Laws Letter") (Attachment E).* To the extent any effort was made to use the omnibus authority in this case to justify the additional monitoring, there is insufficient justification in the Response to Comments to warrant these additional requirements. *See, Response to Comments, pg. 3.* The use of the omnibus authority to impose additional terms

and conditions not described by the regulations and without sufficient justification is a critical policy issue that the Board should consider. Further, since the monitoring of temperature and pressure is primarily a safety issue, there is no regulatory nexus between these requirements in the Permit and 40 CFR Part 264, Subpart CC, and Region V lacks the authority to impose these conditions. As there is no regulatory nexus, these conditions also intrude into the delegated authority of Ohio EPA. The Board should consider the policy implications of using the omnibus authority to circumvent the authority of Ohio EPA.

(5) Section IV.C.3.b.2 – Control Devices, Thermal Oxidizer Unit (TOU). There is no requirement in the regulations to impose the operational, monitoring and maintenance conditions in the Permit on the TOU. As in the case of Issue for Review Number 4, it does not appear that the Region has properly established the need for using the omnibus authority to impose these additional terms and conditions. The use of the omnibus authority to impose additional terms and conditions without sufficient justification is a critical policy issue that the Board should consider.

(6) Section IV.C.4 – Nitrogen Blanketing System. There is no requirement in the regulations for PPG to install and operate a nitrogen blanketing system at the Facility. As in the case of Issues for Review Number 4 and 5, it does not appear that the Region has properly established the need for using the omnibus authority to impose these additional terms and conditions. The use of the omnibus authority to impose additional terms and conditions without sufficient justification is a critical policy issue that the Board should consider.

To the extent Region V is attempting to regulate operational elements of the tanks that

are wholly unrelated to air emissions, the region is also intruding into the regulatory purview of Ohio EPA. The scope of the federal Permit in this case is limited to implementing 40 CFR Part 264, Subparts BB and CC. Since the nitrogen blanketing system is primarily a safety system, Region V lacks the regulatory nexus for these conditions under 40 CFR Part 264, Subpart CC. Further, these terms and conditions intrude into the delegated authority of Ohio EPA under the RCRA program. The Board should consider the policy implications of allowing Region V to utilize the omnibus authority to circumvent the delegated authority of Ohio EPA.

II. FACTUAL AND STATUTORY BACKGROUND

The Permit authorizes PPG to manage hazardous waste generated at PPG's Circleville, Ohio facility ("Circleville Facility" or "Facility") and transported to the Circleville Facility from other PPG locations. PPG's Circleville Facility was originally brought on-line in 1963 and it employs more than 200 people. The Circleville Facility is comprised of two principle, but separate, operations, a resin manufacturing plant producing resins used in paints and coating and an Energy Recovery Unit ("ERU"). The ERU is a hazardous waste incinerator that generates steam used in the resin manufacturing plant. Outside of providing steam to the resin manufacturing plant, the ERU is completely separate from the resin manufacturing plant. The Permit was issued pursuant to the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, and the Hazardous and Solid Waste Amendments (HSWA) of 1984, 42 USC §6901, *et seq.* ("RCRA"). U.S. EPA has delegated authority to the State of Ohio to administer many RCRA programs, and Ohio issued a hazardous waste permit in December 2006 covering most aspects of the Circleville Facility's hazardous waste operations. *See*, Ohio Hazardous Waste Permit Renewal, PPG Industries Ohio, Inc., U.S. EPA ID No.: OHD 004 304 689, Ohio ID No: 01-65-0641 (December 29, 2006) (hereinafter "Ohio RCRA Permit") (Attachment D). Ohio is not yet authorized to administer the 40 CFR Part 264, Subparts BB (equipment) and CC (tanks, surface impoundments and containers), which regulate air emissions from equipment, tanks, surface impoundments and containers that come into contact with certain types of hazardous waste. Consequently, U.S. EPA Region V is the issuing authority for the Permit.

The Permit was issued following more than a decade of negotiations between PPG, Ohio EPA and Region V. In 1993, PPG filed a renewal application for both the State and Federal

RCRA permits covering the Circleville Facility. During the period from 1993 to 2003, PPG and Ohio EPA were involved in extensive negotiations over the State portions of the RCRA permit. As the federal Permit is limited in scope as compared to the State permit, the principle negotiations during the renewal process were between Ohio EPA and PPG. *See*, Ltr. From Ms. Maura C. LaGreca to U.S. EPA and Ohio EPA, (February 27, 2006) (Attachment F). In 2006, PPG submitted a revised Section M application to USEPA. *Id.*; Section M Application (Attachment G). As a result of discussions with both agencies, draft federal and state permits were issued on or about September 26, 2006. PPG provided detailed comments on both the federal and state draft permits by letter dated November 9, 2006. *See*, Ltr. From Ms. Maura C. LaGreca to U.S. EPA and Ohio EPA, (November 9, 2006) (“PPG Comments”) (Attachment H). U.S. EPA issued the federal RCRA permit on April 5, 2007. *See*, Ltr. From Ms. Margaret M. Guerriero, Director to Ms. Maura C. LaGreca (April 5, 2007) (Cover letter to the Permit, Attachment A). PPG has filed this timely appeal of the federal RCRA permit pursuant to 40 C.F.R. § 124.19(a).

III. THRESHOLD PROCEDURAL REQUIREMENTS

1. 40 C.F.R. § 124.19(a). PPG submitted detailed comments on the draft permit through the attached written comments dated November 9, 2006. *See*, PPG Comments. (Attachment H).

2. As is evidenced by the attached comments from PPG, all of the issues presented for review that were included in the draft permit were raised and discussed in detail during the public comment period. Specific cites to the comments filed on the conditions in the draft permit are as follows:

	<u>Contested Permit Section</u>	<u>Cite to Comment</u>
1.	Section III.	PPG Comments, pg. 1
2.	Section IV.C.	PPG Comments, pg. 1
3.	Section IV.C.1.c	PPG Comments, pg. 1
4.	Section IV.C.2.b	PPG Comments, pg. 1
5.	Section IV.C.3.b.2	PPG Comments, pg. 1
6.	Section IV.C.4	PPG Comments, pg. 1

IV. ARGUMENT

A careful review of the contested conditions in the Permit shows that there are four underlying problems with how U.S. EPA processed the Permit. First, Region V has erroneously concluded that the requirement for annual documentation of the compliance method selected for 40 CFR Part 264, Subpart BB requires an annual certification to the agency. This conclusion is inconsistent with the clear language of 40 CFR §264.1064(m). Second, Region V has erroneously concluded that it has the regulatory authority to require the submission of P&IDs when the regulations do not require such submissions. Third, Region V has erroneously concluded that the emergency over-flow tanks at the ERU are regulated under 40 CFR Part 264. These emergency overflow tanks meet the requirements for the exemption found in 40 CFR §§264.1(g)(8) and 40 CFR §265.1(c)(11) and are not subject to regulation by Region V. Finally, Region V has opted to invoke the omnibus authority granted to the agency by 42 USC §6925(c)(3) without properly considering whether or not the burdensome additional requirements are necessary to provide greater protection to public health or the environment than afforded by the regulations alone. Each of these errors is discussed in detail below.

A. It is clear error and an abuse of discretion for Region V to require the submission of an annual certification of PPG's election to comply with 40 CFR Part 264, Subpart BB because the regulation does not require such certification.

In the introductory language to Section III of the Permit, Region V has included a term and condition requiring PPG to submit an annual certification of the method of compliance selected by the company for compliance with 40 CFR Part 264, Subpart BB. As detailed by Region V in the Response to Comments, PPG may demonstrate compliance with Subpart BB by either maintaining documentation required under 40 CFR §264.1064(m) or the applicable documentation required under 40 CFR Parts 60, 61, or 63, as applicable. *See*, 40 CFR

§264.1064(m); Response to Comments, pgs. 1-2. 40 CFR §264.1064(m), provides:

(m) The owner or operator of a facility with equipment that is subject to this subpart and to regulations at 40 CFR part 60, part 61, or part 63 may elect to determine compliance with this subpart either by documentation pursuant to §264.1064 of this subpart, or by documentation of compliance with the regulations at 40 CFR part 60, part 61, or part 63 pursuant to the relevant provisions of the regulations at 40 CFR part 60, part 61, or part 63. The documentation of compliance under regulations at 40 CFR part 60, part 61, or part 63 shall be kept with or made readily available with the facility operating record.

40 CFR §264.1064(m) (emphasis added). What is missing from the regulation is any affirmative obligation to provide any annual certification of the election to U.S. EPA.

In the Response to Comments, Region V argues that the requirement for annual certification under 40 CFR §264.1064(m) was unaffected by the rule changes made in April 2006 amending 40 CFR §§264.1061 and 264.1062. Response to Comments, pgs. 1-2. What Region V fails to consider is that both 40 CFR §§264.1061 and 264.1062 had affirmative obligations for owners or operators to provide certain certifications to U.S. EPA before the rulemaking. *See*, 71 Fed. Reg. 16877 (April 4, 2006) (Attachment B). There is no such affirmative obligation in 40 CFR §264.1064(m). As the summary of the April 4, 2006 rulemaking highlights, U.S. EPA was attempting to streamline the regulatory requirements by “ensuring that only the information that is actually needed and used to implement the RCRA program is collected and the goals of protection of human health and the environment are retained.” 71 Fed. Reg. 64, pg. 16862 (April 4, 2006). It was the stated intent of the agency to reduce the reporting and certification requirements found in RCRA. It follows that the absence of a specific annual certification requirement in 40 CFR §264.1064(m) is not a valid regulatory basis for Region V to create a new certification requirement, rather it demonstrates the agency’s intent not to require such certifications. Consequently, not only is the annual certification not required, it is directly contrary to the most recent efforts of the agency to reduce unneeded

regulatory burdens.

- B. It is clear error and an abuse of discretion to require the submission of P&IDs with any permit modification as required by Section IV.C.1.c.

Region V has included a requirement in this section for the submission of revised piping and instrumentation diagrams ("P&IDs") whenever PPG is required to file a permit modification for changes in the operation of a tank that is required to meet tank Level 1 standards specified under 40 CFR §264.1084(c). *See*, Section IV.C.1.b. In the Response to Comments, the agency references the specific requirements for a Part B permit application found at 40 CFR §270.16 as its justification for this condition in the permit. This is the incorrect citation for the documentation that PPG is required to submit to U.S. EPA as part of the federal RCRA permit application. As the Permit specifically states, "...this permit addresses: (1) air emission standards for equipment leaks (40 CFR Part 264, Subpart BB), tanks and containers (40 CFR Part 264, Subpart CC)..." The Permit, pg. ii. Consequently, it is the applicable Part B permit documentation requirements found at 40 CFR §270.25 (Subpart BB) and 40 CFR §270.27 (Subpart CC) that are controlling, not 40 CFR §270.16. Neither of these regulations require the submission of P&ID documentation. Although there are other aspects of the facility's RCRA permit that are subject to the various documentation requirements, all of those applicable sections of the RCRA permit are delegated to Ohio EPA. The inclusion of this condition in the Permit is therefore based upon an erroneous conclusion of law and Region V has no legal authority to require submission of the P&IDs.

Not only was this issue raised in PPG's comments on the draft federal permit, PPG made it clear when it submitted certain P&IDs at the request of Region V that the P&IDs were not part of the permit application. *See*, Ltr. From Ms. Maura C. LaGreca to U.S. EPA and Ohio EPA,

March 27, 2006 (Cover letter for technical document submissions, without attachments) (Attachment I). Notwithstanding the fact that PPG specifically indicated that the P&IDs were included only for informational purposes, it appears from the Response to Comments, that Region V considered the documents as part of the Part B application. See, Response to Comments, pgs. 2-3. This is consistent with Region V's apparent misunderstanding of the requirements under the regulations for Part B applications under 40 CFR Part 264, Subparts BB and CC. In any event, PPG is not required to submit any P&IDs to Region V and this requirement in the Permit is unlawful.

C. The Emergency Over-Flow Tanks at the Facility are Not Regulated under 40 CFR Part 264 and the Terms or Conditions in the Permit that Apply to The Emergency Over-Flow Tanks are Unlawful.

Throughout Section IV of the Permit, Region V imposes numerous conditions on the hazardous waste storage tanks at PPG's Circleville Facility. These conditions are correctly applied to the most of the tanks at the Circleville Facility but a review of the table found at the end of Section IV.C.1. shows that Region V has identified as regulated tanks two emergency over-flow tanks. As a result of this error, Region V attempts to impose requirements on these tanks under 40 CFR §264.1084.

The two emergency over-flow tanks in question, however, are exempt from regulation because of 40 CFR §264.1(g)(8) and 40 CFR §265.1(c)(11). These tanks are used solely to respond to emergencies at the Facility that may result in a release or threatened release of hazardous waste. 40 CFR §264.1(g)(8) and 40 CFR §265.1(c)(11) provide an exemption for tanks used only to collect hazardous waste during an emergency that includes a release or threatened release of hazardous waste. To the extent Region V is attempting to regulate these tanks because the agency has concluded that they are not emergency tanks, the conditions are

based upon an erroneous factual conclusion. The agency lacks the legal authority to regulate these tanks under 40 CFR Parts 264 and 265 and reference to the emergency tanks in the permit is inappropriate.

The agency has in past interpretations of these regulations made clear that any structure used exclusively for immediate response to discharges of hazardous wastes are excluded from the regulatory standards of 40 CFR Parts 264 and 265, except for preparedness and prevention and contingency plans. *See*, Ltr. From Mr. Peter Guerrero, Special Assistant to the Division Director, U.S. EPA, to Mr. Timothy Taylor, Wang Laboratories, Inc., September 6, 1984 (RCRA Database Doc. No. PPC 9471.1984(03), RO # 12298)(Attachment J). These tanks are used exclusively for emergency response and thus fall squarely within the exemption. It is unlawful for the permit to contain terms and conditions applicable to these emergency tanks other than the requirements found in 40 CFR Part 264 Subparts C (Preparedness and Prevention) and D (Contingency Plan and Emergency Procedures). 40 CFR §264.1(g)(8)(ii).

Ohio EPA agrees with PPG that these tanks are unregulated emergency over-flow tanks and the tanks are not included in the Ohio RCRA permit. *See*, Ohio RCRA Permit, (Attachment C).

C. Region V has Failed to Properly Invoke the Omnibus Authority to Support the Additional Terms and Conditions in the Permit that are Not Included in the Regulations.

In the Response to Comments, Region V appears to rely on the omnibus authority found in 42 USC §6925(c)(3) as amplified by 40 CFR §270.32(b)(2) to support additional operating terms and conditions. This reliance is misplaced and directly contradicts agency policies on invoking the omnibus authority. With respect to the omnibus authority, U.S. EPA has explained to members of Congress that "the Agency's authority is broad but is not unlimited. To invoke

the omnibus authority to add conditions to an [sic] RCRA permit, EPA must show that the additional conditions are necessary to ensure protection of human health and the environment.” See, Laws Letter (emphasis added)(Attachment E). Mr. Laws went on to state that “the permit writer must explain and document why the Agency believes that human health or the environment is not fully protected under the regulations and must provide a sound technical basis for...” the additional permit condition. *Id.* (emphasis added). In order to invoke the omnibus authority, therefore, Region V must not only show that the proposed condition is necessary, it must explain and document why the agency believes the current regulatory requirements are inadequate. Neither of these requisite elements were met in this case.

Although Region V has not directly cited to the omnibus authority at 42 USC §6925(c)(3), it cited to the concurrent regulatory authority found at 40 CFR §270.32(b)(2). See, Response to Comments, pg. 3. It has referenced this authority in support of additional operational and monitoring requirements not found in the regulations in Section IV.C.2.b, (Requirements for Level 2 Tanks, temperature and pressure monitoring), Section IV.C.3.b.2, (Control Devices, Thermal Oxidizer Unit (TOU)), and Section IV.C.4 (Nitrogen Blanketing System). All of these requirements are not found in the regulations and the only justification given by Region V for their inclusion was the omnibus authority. The inadequacy of the Region’s explanation for the need for these three additional terms and conditions is evidenced by the lack of detail provided in the Response to Comments. Each will be addressed in turn.

With respect to the proposed temperature and pressure monitoring, Region V states that PPG has a regulatory obligation under 40 CFR §270.30(e) to properly operate its facilities and control system. Response to Comments, pg. 3. This cursory and obvious statement actually supports PPG’s contention that the monitoring of temperature and pressure in the tanks is

unnecessary. As Mr. Law's letter outlines, the omnibus authority should be invoked only when the regulations are demonstrated to be inadequate to protect human health and the environment. Laws Letter (Attachment E). The existence of a specific regulatory requirement addressing the very issue Region V is attempting to regulate under the omnibus authority highlights the inappropriateness of using the omnibus authority in this instance. The Response to Comments further underscores this point by stating that "[t]he condition simply outlines and specifies pressures needed for appropriate emission control, operation and maintenance under the RCRA rules." Response to Comments, pg. 3. This is exactly what 40 CFR §270.32(e) requires. It is difficult to articulate how a term and condition that is redundant to a specific regulatory requirement can be necessary to protect human health and the environment.

It is also important to note that tanks without pressure and temperature monitoring have been in safe operation at the Circleville Facility for more than 20 years. PPG's on-site experience demonstrates that the monitoring in the Permit is absolutely unnecessary to the proper operation of the tanks and consequently the propose permit condition is not necessary to protect human health or the environment. Region V lacks the authority under the omnibus authority in RCRA to impose this condition in the Permit.

It is also unclear from the Response to Comments what documentation supports Region V's use of the omnibus authority in Section IV.C.2.b. Other than a general reference to "industrial tank design practice," the Region makes no attempt to provide appropriate documentation, or even references to the source of authority for this statement. From a practical standpoint, such statements make it virtually impossible for PPG to challenge the appropriateness of the additional conditions in the permit. Region V should have to do more to document the need for an additional permit condition than simply make unsubstantiated

statements in responsiveness summaries. As the Laws Letter highlights, it is Region V's obligation to explain and document the need for a permit condition imposed pursuant to the omnibus authority in RCRA. PPG requests that the Board carefully review this deficiency as it implicates a critical policy consideration – what can a permit writer rely on when imposing terms and conditions under the omnibus authority?

Turning to the requirements for the operation of the TOU in Section IV.C.3.b.2, the Response to Comments do not meet the requirements for invoking the omnibus authority. Response to Comments, pg. 4. As discussed above, Region V has the burden of establishing the need for this condition through adequate explanation and documentation that shows the proposed condition is necessary to protect human health or the environment. The regulations already require proper operation and maintenance of control equipment, making the requirements in the Permit redundant. *See*, 40 CFR §265.1087. It is inconsistent with the use of the omnibus authority to include a permit condition that addresses controls and requirements already addressed in a detailed rule. Even if the requirements in the regulations are inadequate to ensure protection of human health and the environment, Region V's cursory statements in the Response to Comments are inadequate to justify the use of the omnibus authority. As a matter of sound policy, and as expressed in the Laws Letter, it is critical that the permit writer provide both a sufficient explanation and documentation before imposing additional conditions in a permit. Region V has not met this burden and the permit condition is not proper under the omnibus authority.

Finally, Region V is attempting to require nitrogen blanketing on all the tanks at the Circleville Facility. Again, there is no regulatory basis for this requirement and Region V is again attempting to impose permit conditions through the omnibus authority. Region V needs to

provide considerably more documentation of the need for nitrogen blanketing before it is appropriate to include it as a permit condition. If Region V has nothing more to justify this requirement other than a general reference to industry standards, it has not met its burden to provide sufficient information and documentation to justify the need for the condition. *See, Response to Comments, pg. 4.*

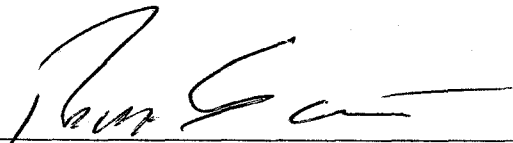
As a matter of sound policy, the Board should review all of the proposed conditions that Region V has justified through the use of the omnibus authority. The omnibus authority is an important tool to address advances in control technologies and documented inadequacies in the regulations, it is not a vehicle for the imposition of redundant and unnecessary requirements in individual permits. Before this general authority is used, it is incumbent on the permit writer to provide a detailed justification for the proposed permit condition. Without a detailed justification, including, as needed, technical documentation and citations to relevant authority, not only is the permittee unable to adequately respond to the permit writer's justification for these conditions, but the Board is deprived of any factual basis to assess whether or not the condition was properly included in the permit under the omnibus authority.

V. CONCLUSION

Based on the arguments presented above, PPG requests the following relief:

1. Removal of the annual certification requirement in Section III;
2. Removal of all permit conditions on the emergency over-flow tanks from Section IV.C.1
3. Removal of permit sections Section IV.C.1.c, Section IV.C.2.b, Section IV.C.3.b.2 and Section IV.C.4.

Respectfully submitted,



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and PPG Industries, Inc.*

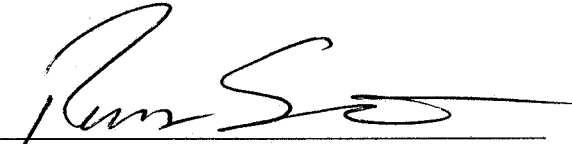
EXHIBIT LIST

- A. Federal RCRA Permit No. OHD 004-304-689 (“the Permit”) (Attachment A)
- B. 71 Fed. Reg. 16862, et. seq. (April 4, 2006) (Attachment B)
- C. *Response to Comments Regarding The Federal Resource Conservation and Recovery Act (RCRA) Permits to be Issued to PPG Industries Ohio, Inc. (Owner & Operator) and PPG Industries, Inc. (Co-Operator) Circleville, Ohio OHD 004 304 689* (hereinafter “Response to Comments”) pgs. 1-2 (Attachment C)
- D. Ohio Hazardous Waste Permit Renewal, PPG Industries Ohio, Inc., U.S. EPA ID No.: OHD 004 304 689, Ohio ID No: 01-65-0641 (December 29, 2006) (hereinafter “Ohio RCRA Permit”) (Attachment D)
- E. *Correspondence from Elliot P. Laws, Assistant Administrator to The Honorable David M. McIntosh*, May 23, 1996, pg. 4 (U.S. EPA RCRA Database, Doc. ID 9498.1996(06), RO 14041) (hereinafter “Laws Letter”) (Attachment E)
- F. Ltr. From Ms. Maura C. LaGreca to U.S. EPA and Ohio EPA, (February 27, 2006) (Attachment F)
- G. Section M Application (Attachment G)
- H. Ltr from Ms. Maura C. LaGreca to U.S. EPA and Ohio EPA, (November 9, 2006) (“PPG Comments”) (Attachment H)
- I. Ltr. from Ms. Maura C. LaGreca to U.S. EPA and Ohio EPA, March 27, 2006 (Cover letter for technical document submissions, without attachments) (Attachment I)
- J. Ltr. from Mr. Peter Guerrero, Special Assistant to the Division Director, U.S. EPA, to Mr. Timothy Taylor, Wang Laboratories, Inc., September 6, 1984 (RCRA Database Doc. No. PPC 9471.1984(03), RO#12298 (Attachment J)

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing "Petition for Review" was served upon the following by regular mail on the 4th day of May, 2007:

United States Environmental Protection Agency, Region 5
Program Management Branch (DU-7J)
U.S. EPA Region 5
77 West Jackson Boulevard
Chicago, IL 60604



Robert J. Schmidt

Date: 5/4/2007