

March 12, 2001

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Re: Comments regarding deficiencies in the state of Indiana Title V Program and SIP

These Comments are submitted on behalf of Citizen's Organized Watch, Inc. (COW) under 40 CFR § 70.10 and in response to U.S. EPA's "Notice of Comment Period on Program Deficiencies" published in the Federal Register on December 11, 2000. These Comments identify a number of deficiencies in Indiana's Title V regulations and in the manner in which the Indiana Department of Environmental Management (IDEM) is administering the Indiana Title V program. COW appreciates the opportunity to share their concerns and hopes that U.S. EPA will act promptly to ensure that Title V permitting requirements are implemented properly in Indiana.

These Comments identify additional, specific deficiencies with respect to Indiana's Title V regulations and IDEM's implementation of the Indiana Title V program. Commenters seek a formal determination by U.S. EPA that these deficiencies violate 40 CFR Part 70.

**1. General Comments:**

a) Since the interim approval, there have been very significant changes made to the Indiana code, many have weakened it. These changes are not confined to those original issues of interim approval, have taken place outside the normal publicly visible process, and have taken place over an extended period of time that far out lasted the intended 2 year time limit for correcting interim approval issues. The change has been extensive and includes code sections that had been approved. Indiana and the USEPA have created new problems in allowing this situation to drag on. The extensive changes to Indiana's

program and code are effectively a new program that does not resemble Indiana's original SIP Submission. The trail of changes has become more complicated than simply correcting the items of interim approval and therefore Indiana's program should be reevaluated as a whole.

b) Indiana is giving the permit shield to minor permit modifications. This explicitly violates 40 CFR Part 70.

c) Indiana consistently takes various EPA guidance documents (CAM, White Paper, etc.), and puts statements from these documents in their permits without regulatory basis or consistency. E.g., in the initial compliance certification Indiana allows the facility to certify compliance with streamlined requirements rather than applicable requirements. This is dangerous. Some of the guidance documents are simply referring to how EPA would like to revise 40 CFR Part 70, but EPA never actually revised the rule. Indiana should not transform statements made in guidance documents into applicable requirements by simply incorporating them into its Title V permits. If some aspect of the guidance should be consistently applied, it should be incorporated into the code so that it can be evaluated in context and has a consistent basis for application. Permits should apply code, not make new.

The Indiana Rules governing compliance certifications are at 326 IAC 2-7-4C12.

d) Supersession is a very big problem in Indiana's program. State rules say that construction permits automatically morph into state operating permits, implying that the construction permits expire. This is contrary to Part 70 and EPA guidance. From a letter to Hodanbosi and Lagges, STAPPA/ALAPCO, from John S. Seitz, Director Office of Air Quality Planning and Standards, dated May 20, 1999:

"It is the Agency's view that title V permits may not supersede, void, replace, or otherwise eliminate the independent enforceability of terms and conditions in SIP-approved permits. To assure compliance with "applicable requirements" such as SIP-approved permit terms and conditions, title V permits must record those

requirements, but may not eliminate their independent existence and enforceability under title I of the Clean Air Act (i.e., may not supersede them). Title V permits may state that they “subsume” or “incorporate” SIP-approved permit terms and conditions as EPA interprets such statements to mean that the title V permit includes all SIP-approved permit terms, but does not supersede, void, replace, or otherwise eliminate their independent legal existence and enforceability. Regardless of terminology, to the extent that title V permits are used to accomplish the legal result of supersession, EPA believes that such use is improper.”

e) I don’t have the cite, but there is a new law that says if you violate the permit limit and a parameter, there is only one violation. The language of 326 IAC 2-7-5 (1)(E) seems to be out of step with the Part 70 requirement that any violation of permit conditions is a violation of the Clean Air Act.

f) Startup/shutdown, malfunction: The language of 326 IAC 2-7-5 (1)(F) “emission limitations shall be addressed on a case-by-case basis in the permit” implies that the state can create an emission limit in the permit, instead of taking the limit from the code. This must not be allowed to occur. We would hope that an answer to this comment would include a statement entered into the record that says that the state cannot change emission limitations in the permit, and that the state is not interpreting its rules in this manner.

g) There are issues under the 326 IAC 2-1.1-3, Exemptions section that EPA has not resolved, or are not apparently resolved within the latest Indiana code. Some of these are issues that had been identified previously by the EPA under code cites that have since been repealed (most of 326 IAC 2-1 has been repealed and replaced with 326 IAC 2-1.1 but the content has been significantly altered, not just the numbering scheme). According to Indiana, and as published in a document available from IDEM on their web page that has the heading "Federally Approved State Rules – State Implementation Plan," dated 3/22/00, 326 IAC 2-1.1, which contains the Exemptions code was resubmitted 2/3/99, and some portions of 326 have been changed as late as last year. It is very difficult to know which issues under these changeable requirements EPA has already identified as problems, so it is very difficult to avoid covering the same issues in these comments.

1) The exemption limits had been expressed in the original code in both pounds per hour and pounds per day and both of the stated limits for each pollutant were

required. The recent changes to 326 IAC 2-1.1-3(d) are each expressed in a single tons per year value. This is a significant relaxation and change from the originally approved code. At a minimum the pounds per hour limits should be reinstated along with the tons per year values.

2) The sulfur dioxide exemption level in Indiana's old code was equivalent to 9.13 tons per year and EPA had found that to be unacceptably high at approximately twice the expected level. 326 IAC 2-1.1-3(3)(d)(1)(B) exempts up to 10 tons per year of sulfur dioxide. Therefore this original issue has not been corrected and remains cause to withhold full approval.

3) The formerly acceptable limits for CO and NO<sub>x</sub> were equivalent to 4.56 tons per year and have been increased to 25 and 10 tpy respectively. VOC was 2.74 tpy and is now 10 tpy. Each of these values must be reevaluated in the context of the extensive changes to the SIP and brought more in line with the original approved limits and expectations for Insignificance.

4) 326 IAC 2-1.1-3(g)(2)(F) and (G) seem to exempt an existing source from the code for permit revisions and modifications, and source modification if the modification to the existing source does not result in an increase to the potential to emit lead at or less than one (1) ton per year for lead and copper smelters and for other sources at or less than five (5) tons per year.

A) The first problem with the above is that these levels are very high and would trigger BACT at 0.6 tpy if these levels were being considered all by themselves during NSR. These levels do not provide a realistic trigger for evaluation of modifications to Title V sources and should be tightened.

B) Secondly, the CAA seeks to regulate pollutants and does not concentrate on the end product of a facility. Any significance threshold set for a pollutant such as lead sets a significance level that is based on the pollutant and there should be no differentiation based on the end product of the source.

5) 326 IAC 2-1.1-3(g)(2)(H) almost states the 0.6 tpy of lead limit that would make a modification significant under this section but places an added burden on the source already having a potential to emit lead greater than or equal to five (5) tpy. The net effect is that until or unless a source has a potential to emit five (5) tpy modifications

which increase lead PTE are not significant. This bypasses the significance thresholds set in NSR and PSD and should therefore be disallowed.

**3. From the Model Permit:**

a) B16 of the model permit: if you fail to perform monitoring, the source is not required to report it as a deviation unless they have failed to perform it 5% of the time. The state cannot change the applicable requirement by designating a certain amount of noncompliance is acceptable. This any similar language that allows permit limits to be exceeded or any actions that are not in compliance, should not be allowed.

b) Very similarly to the above, the model permit at C18 excuses monitoring failures if the failures are less than 5% of the recorded data and there was a temporary unavailability of qualified staff.

c) The model permit at C12 does not require sources to monitor immediately. This is unacceptable and Part 70 does not provide for extensive periods where monitoring is not being performed.

**4. Fort Wayne Foundry, Part 70 Operating Permit and Enhanced New Source Review, Operation Permit No.: T003-6027-00070:**

a) General comment for this permit: This source was never apparently subjected to New Source Review. This Permit indicates that it also includes with its Part 70 applicability, an "Enhanced New Source Review." There is very little by way of support data for the emissions claimed and no planned testing to verify compliance with the minor limits imposed. The limited information in this permit makes it very difficult to assess the validity of the New Source Review qualities of this permit, Enhanced or otherwise. For instance, five (5) Natural Gas fired furnaces used to melt aluminum at a maximum charge rate of 9.75 tons per hour are listed as producing no NOx. This is very difficult to believe. The NOx for these furnaces might be insignificant, but zero is a

fantastic feat. There are also no controls on these emissions units. Since all are a part of the source, it is their combine capacity and potential to emit that should be considered and cannot without realistic data.

It is not clear that this permit is anything but a Part 70 permit. Enhanced NSR is where there has been an NSR of some type with public participation and then those issues are added to a Title V permit using the administrative amendment procedures. There is no evidence that this is what has happened here and it is misleading. We question if Indiana really has an approved merged program for Title V and NSR. If it's merged, then at minimum it must be made plain to the public that this is just a Title V permit. Very confusing.

b) The Permit shield language in B14 includes language that at (b) effectively attempts to supercede rather than incorporate earlier permits. The issue of supersession is one that has been discussed between the EPA and Indiana. As late as last year this topic produced language such as the following from Eaton Weiler on 5/11/2000, subject Supersession/Permit Shield, "In the end, terms and conditions in the NSR permits have to remain independently enforceable as applicable requirements. The language of the permit shield can only be revised insubstantially from the language in the Clean Air Act 504(f) and the corresponding regulations in 40 CFR 70.6(f)."

c) In item D.2.3, only selected furnaces will be tested. The sources limits are for the entire source. Compliance with the permit, and the limited demonstration of that compliance that can be achieved with the prescribed one time testing, can not adequately demonstrate compliance on a continuing basis and can not be considered practically enforceable.

d) In item B.23 IDEM attempts to limit the authority and access of an inspector (IDEM, OAM, USEPA, or an authorized representative) by preconditioning access using and then not defining the phrase, "at reasonable times." This limitation is too vague to be reasonable.

e) C.18 states that, "The documents submitted pursuant to this condition do not require the certification by the "responsible official" as defined by 326 IAC 2-7-1(34)." All such data are required to be certified and reported under Part 70. 326 IAC 2-7-5(3)(C)(i) and 326 IAC 2-7-4(f) seem to clearly indicate that certification of all permit required reports is a requirement. Indiana must not only have acceptable code in place, it must use and require it in permits, as well as enforce it.

f) The language in permit condition C.18 sets up conditions that effectively allow for noncompliance with permit conditions that, under Part 70, must be complied with at all times. It allows for a retest after a failed stack test at some time in the future when the source might demonstrate compliance. This theme changes permit conditions into "goals" as opposed to "limits" which must be complied with on a continuous basis. Any scenario that transforms permit limits into goals that the source has multiple chances to attain or labels and treats compliance testing failures as anything but a demonstration of noncompliance, defeats the effectiveness of the permit and should not be allowed. There can be no excuses, other than circumstances provided for under emergency conditions, for failing to meet a limit that the source must always meet.

g) C.22 states that, "...The Emergency/Deviation Occurrence Report does not require the certification by the "responsible official" as defined by 326 IAC 2-7-1(34)." All such data and required reports are required to be certified and reported under Part 70. 326 IAC 2-7-5(3)(C)(i) and 326 IAC 2-7-4(f) seem to clearly indicate that certification of all permit required reports is a requirement. Indiana must not only have acceptable code in place, it must use and require it in permits, as well as enforce it.

h) In the provisions of D2.4, Visible Emissions Notations, a trained employee shall record whether emissions are normal or abnormal. These provisions can not be considered practically enforceable. To suggest that this description is even practical for the operator is a stretch. These stacks are the uncontrolled emissions of the vented straight to the atmosphere and are the same stacks that are to be tested one time only and

not all of them, only selected ones. The standard seems to be normal verses abnormal and the recording period required in D.2.5 is once per shift. There is no tolerance or calibration/qualification for the recorder and the recording period does not match the requirements in D.2.4 as required. These requirements are not practical or enforceable.

Respectfully Submitted,

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